

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY**

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.;  
ENTERGY NUCLEAR INDIAN POINT 2, LLC;  
ENTERGY NUCLEAR INDIAN POINT 3, LLC;  
HOLTEC INTERNATIONAL; and HOLTEC  
DECOMMISSIONING INTERNATIONAL, LLC;  
APPLICATION FOR ORDER CONSENTING TO  
TRANSFERS OF CONTROL OF LICENSES  
AND APPROVING CONFORMING LICENSE  
AMENDMENTS

(Indian Point Nuclear Generating Station)

Docket Nos.:

50-3

50-247

50-348

72-051

**PETITIONER RIVERKEEPER, INC.'S REPLY MEMORANDUM IN FURTHER  
SUPPORT OF ITS PETITION TO INTERVENE AND FOR A HEARING**

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Pursuant to 10 C.F.R. § 2.309(i)(2) (2018), Riverkeeper, Inc., submits this Reply in further support of Riverkeeper’s Petition to Intervene and Request for a Hearing (the “Petition”). In an effort to argue that the Petition is inadmissible, Applicants attempt to paint the Petition as speculation, wide-ranging, unrelated to this license transfer and unsupported. But a review of the actual Petition reveals quite the opposite. As discussed below and within Petition itself, each allegation of Applicants’ lack of reliability and candor is supported by documentation and relates to the fitness of Applicants to fulfil the obligations they seek to undertake.

Applicants’ attempt to contend that Riverkeeper lacks standing is even more futile. The injuries alleged by Riverkeeper’s members are precisely the type of injuries that have provided standing in the past. Indeed, the “what if” types of injuries so maligned by Applicants are the *only type* of injuries that could exist when challenging an applicant’s fitness to operate or decommission a nuclear power plant. The issue before the United States Nuclear Regulatory Commission (“NRC” or the “Commission”) will *always* be “what if the applicant performs its duties incompletely or unsafely.” That is the very question before the Commission, and Riverkeeper’s members are precisely the citizens that the Commission must be concerned with – people who live very close to the facility and enjoy the very environment put at risk.

## **BACKGROUND**

On January 30, 2020, the Commission published in the *Federal Register* a notice regarding the license transfer application of Holtec Decommissioning International, LLC, (“Holtec”) to obtain the licenses for the Indian Point Energy Center (“IPEC”) in anticipation of undertaking the decommissioning of Units 1, 2, and 3 at the Indian Point Facility.

On February 12, 2020, Petitioner Riverkeeper, Inc. (“Riverkeeper”) filed a Petition to Intervene and Request for a Hearing with the Secretary (the “Petition”) asserting one Contention

– that Holtec is neither reliable nor trustworthy pursuant to the requirements in the Atomic Energy Act, 42 U.S.C. § 2232 (2012) and 10 C.F.R. § 50.80(c) (2018).

Applicants filed an Opposition to Riverkeeper’s Petition (“Opposition”) on March 9, 2020. Applicants make two principal arguments in their Opposition: (1) that Riverkeeper’s Contention is inadmissible, and (2) that Riverkeeper lacks standing. Each argument fails when one examines the content of the Contention and standing affidavits submitted in support thereof.

**I. RIVERKEEPER’S CONTENTION IS ADMISSIBLE UNDER WELL ESTABLISHED AUTHORITY REGARDING TRUSTWORTHINESS AND RELIABILITY.**

Applicants claim that Riverkeeper’s Contention – that the licensees, HDI, Holtec Indian Point 2, LLC, and Holtec Indian Point 3, LLC, lack integrity – is “wide ranging” or “speculation.” (Opposition at 5). They further contend that the accusations do not relate to the licensed activities, largely because the allegations bear on the integrity of Holtec and its controlling shareholder, Dr. Krishna Singh. (Opposition at 6-10). These arguments mischaracterize Riverkeeper’s Contention, which establishes – based on repeated and consistent misconduct of the Holtec collection of companies and Dr. Singh in the operation or decommissioning of nuclear power plants – a continuing lack of reliability and trustworthiness within the meaning of the Atomic Energy Act, 42 U.S.C. § 2232 and 10 C.F.R. § 50.80(c). (*see* Contention at 10-20).

**A. Riverkeeper’s Contention Is Directly Connected to the Proposed Licensed Activities Given the Corporate Structure of the Licensees and The Contents of the Application.**

While the allegations in the Contention are concededly not about the specific entities that ultimately will be the transferees, the Contention is nevertheless relevant and tied to the licensed activities at issue. The Contention sets out how the use of newly formed single-project corporate entities should not and cannot serve to shield the true controlling entities from any scrutiny.

(Contention at 10-12). Further, Riverkeeper demonstrates through the Applicants' own filings the degree of control and influence Dr. Singh has over this very project, making his conduct and the conduct of the companies he controls relevant. (Contention at 11-12). When viewed fairly and completely, Riverkeeper's Contention about the structure and past conduct of Holtec's controlling shareholder and corporate entities demonstrates a consistent lack of reliability. These allegations are plainly relevant to the licensed activities, given that they relate directly to the individual and entities creating and overseeing the entire group of newly formed decommissioning corporations.

The Applicants attempt to hide behind an elaborate corporate structure created for the purposes of decommissioning. According to the Applicants, because the newly created entities would be responsible for decommissioning, the prior bad acts of Holtec and Dr. Singh are irrelevant. (Opposition at 6-10). However, as set forth in the Contention, Holtec set up a complex web of limited liability companies for the very purposes of minimizing the financial risk and scrutiny to which the corporate parent and shareholders would otherwise be exposed to. If the creation of new legal entities were sufficient to shield any applicant from scrutiny, then the commission's obligation to examine integrity and trustworthiness would be thwarted.

The Applicants rely on *Fitzpatrick & Indian Point*, CLI-00-22, 52 NRC 266 at 312 (2000) to describe Riverkeeper's Contention as being based on a faulty theory of "community corporate responsibility based on historical events related to the parent company and unrelated subsidiaries." (Opposition at 7-8 n.26). The issue addressed by NRC in *Fitzpatrick & Indian Point* was, as the Applicant states, whether "difficulties at other plants run by a corporate parent will affect the plant(s) at issue before the Commission" (Opposition at 8), but such is not the case with Riverkeeper's Contention. *Fitzgerald & Indian Point* concerned operating a nuclear power-

generating facility, not managing a decommissioning. Moreover, the specific issues in *Fitzgerald & Indian Point* were “questionable maintenance practices and inadequate procedures, work performance, and operator training.” Riverkeeper’s Contention is based on Holtec’s lack of trustworthiness, not bad practices operating a power-generating facility. Thus, the Applicants’ reliance on *Fitzgerald & Indian Point* is misplaced because *Fitzgerald* is not about “character”; it is about a substandard operating record. (Opposition at 8 n. 26).

Nor is the *Oyster Creek* matter helpful to Applicants. To be sure, Riverkeeper must “tie its concerns. . . to any material issue within the scope of [the] license transfer proceeding.” *In the Matter of Exelon Generation Co., LLC (Oyster Creek Nuclear Generating Station)*, Nuclear Reg. Rep. (CCH) ¶ 31759 (N.R.C. June 18, 2019), but the facts here are entirely distinct from those in *Oyster Creek*. In the *Oyster Creek* proceeding, the commission rejected a contention concerning trustworthiness of SNC Lavalin because it found no direct link between those issues and the licensing action at issue and because the contention lacked any details or support:

Here, the Township does not describe the bribery or other charges it references and does not link them to any aspect of the technical or financial qualifications of the Applicants. It does not claim or provide any indication that individuals who may have been involved in the asserted wrongdoing remain at SNC-Lavalin or are likely to be involved in managing Oyster Creek's decommissioning activities. The Township does not indicate when and where the referenced violations by SNC-Lavalin personnel occurred. The Township presents no connection between the referenced charges against SNC-Lavalin and the Applicants' technical qualifications to safely carry out the necessary decommissioning and spent fuel management activities until license termination.

*Id.* at ¶ 31759. Unlike *Oyster Creek*, the Contention here addresses misconduct, supported by documentation, in factually similar contexts to the transfer at issue. Riverkeeper’s Contention explains that Holtec has been accused of or found to have been guilty of misconduct and

covering up sloppy operations in this context, with specificity and documentation. This case is entirely unlike the unsupported supposition rejected in *Oyster Creek*.

Applicants' argument that Riverkeeper must find malfeasance by each of the specific leadership or personnel listed in the Application (Opposition at 10) ignores reality and defies common sense. If true, such a standard would allow any corporate entity to continue to flaunt the NRC and break the law with impunity, so long as it replaced individual employees found to have been responsible at each turn. This is not what is required, and allegations such as those in the Contention have been found to provide a basis for a hearing in the past. (*See* Contention at 12-13 and authority cited therein).

**B. Riverkeeper's Contention Relates to the Safe Operation or Decommissioning of a Nuclear Power Plant and Does Not Require Re-litigation of Past Issues.**

The Applicants next contend that Riverkeeper is "looking into alleged misconduct in the performance of licensed activities at a nuclear power plant" will be tantamount to "resurrect[ing] past NRC inspection findings or violations." (Opposition at 11). Riverkeeper is not asking NRC to investigate or make determinations about the performance of licensed activities at other nuclear power plants. Rather, Riverkeeper's Contention is that Holtec's repeated incidents of misconduct and making misleading representations are indicators that Holtec is and will be unreliable and untrustworthy. As set forth in the Contention, if the Applicants cannot be trusted or relied upon, this issue is relevant to the Application and worthy of consideration. (Contention at 12-13).

The Commission need not "re-litigate" all these issues to examine them. A hearing would give the opportunity for Holtec to present the array of documents it cites in the Opposition that purport to clear it from wrongdoing, and the Commission could consider all of the evidence before it in making its determination. No final findings or determinations of guilt or liability need

be established for the misconduct at issue; rather, like any other issues warranting a hearing, the various sides' contentions should be examined with only one determination for the Commission: should the license transfer application be granted.

Each of Applicant's explanations regarding its past misconduct fail with even a bit of examination. With respect to the assertion in the Opposition that Holtec would not willingly violate an NRC regulation (Opposition at 10) one only need to look so far as the cask incident, documented in Riverkeeper's Contention at 14, where Holtec deliberately changed the cask configuration and deliberately chose to not notify NRC, the supposition that the changes to the cask were improvements, notwithstanding. Applicants attempt to discredit Riverkeeper's reliance on the Notice of Violation ("NOV") by asserting Holtec's after-the-fact rationale for not notifying NRC prior to changing the cask design. The fact that Holtec proffered an excuse for its failure to notify NRC is irrelevant; Riverkeeper offered the NOV to show that Holtec failed to comply with the rules in the first instance – a later rationalization for this non-compliance does not alter that fact.

The Opposition also down-plays the incident where Holtec (Singh) provided false information to the New Mexico Commissioner of State Lands *and* to the NRC's Chairwoman. (Opposition at 15-16) The Applicants attempt to distinguish the Consolidated Interim Storage Facility (CISF) in New Mexico by arguing it is not relevant to the licensed activities at IPEC, but this is not an accurate reflection of Riverkeeper's Contention. Riverkeeper's Contention is based on Holtec's *lack of trustworthiness*, not its ability to build and operate a CISF. Holtec's deception was overt, as set forth in the Contention and supporting documents. The letter that New Mexico's Commissioner of State Lands sent to Chairwoman Svinicki speaks for itself. (Contention at 18)



Similarly, HDI is unable to mitigate the concerns raised by the San Onofre incident, where Holtec deliberately hid an accident from the Occupational Safety and Health Administration until a whistleblower report surfaced. The Applicants present a deliberately misleading explanation in its Opposition (at 13-15). The Applicants argue that “none of this has anything to do with HDI *and IPEC*.” (Opposition at 14) (emphasis added). While this incident may not yet apply to IPEC, it has *everything* to do with *HDI* and its lack of trustworthiness. The Applicant cannot escape Riverkeeper’s untrustworthiness contention by asserting that Holtec has no record of untrustworthiness at IPEC. Of course, it does not. The issue, and Riverkeeper’s Contention, is how Holtec will bring its untrustworthiness to IPEC if NRC were to approve the license transfer. But for the whistleblower, Holtec may have gotten away with deceiving OSHA. More importantly, this example is another discrete, documented incident where Holtec deliberately hid an incident from a government agency, in violation of its reporting requirements.

Along this same vein, Applicants seek to dismiss Holtec’s deception of the Tennessee Valley Authority (TVA) because Holtec’s business dealings with the TVA occurred twenty years ago and have “long since been investigated and closed.” (Opposition at 16). That the documented TVA incident happened twenty-years ago is not a reason for NRC to forget about the past. If anything, as Riverkeeper’s Contention asserts, the TVA incident shows Holtec’s record of untrustworthiness began at least twenty years ago. Thus, even though time has passed since the TVA incident, Holtec has not taken action to rectify the incident – that is, Singh remains the CEO despite his direct involvement in the TVA scandal. Furthermore, Holtec’s past misconduct is still relevant to Holtec’s lack of trustworthiness and can, therefore, certainly be considered by the Commission.

**C. Riverkeeper's Contention Contains More than Sufficient Factual Support to Warrant a Hearing.**

The cases cited by the Applicants do not show that Riverkeeper's Contention is not sufficiently supported. (Opposition at 18-20 n. 63-65). As discussed above, Riverkeeper provided documentation to support each referenced incident within the Contention and the purported contrary documents that the Applicants cite do not establish a lack of misconduct. Moreover, a careful analysis of each of the authorities relied upon by the Applicants shows that they do not support Applications in the way they wish.

As discussed above, *Oyster Creek*, 64 NRC at 118-119, is inapposite. Applicants rely on *Oyster Creek* and other authorities in their admonition that a licensing board may not make factual inferences on Petitioner's behalf. (Opposition at 19 n. 3) This line of cases is in inapplicable here because Riverkeeper's documented examples of Holtec's bribery, misleading statements, and deliberate failures to disclose required information, are explicit, clearly stated and documented in the Contention at 13-19. Thus, the Commission need not infer anything.

Applicants cite *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 N.R.C. 451, 472 (2006), as authority for the Commission to reject Riverkeeper's Contention for referencing "articles or correspondence" without "explanation or analysis" of their relevance. (Opposition at 19 n. 64) The "references and correspondence" used by Riverkeeper in its Contention are directly related to Riverkeeper's Contention that Holtec is untrustworthy. The letter from New Mexico's Commissioner of Public Lands directly implicates Holtec's CEO, Krisha Singh, in providing false information; the documentation of the TVA incident directly implicates Krishna Sing in a bribery scandal; and the article about the San Onofre incident relates directly to Holtec's hiding information from a government agency.

Moreover, contrary to the scientific issues in *Georgia Tech*, LBP-95-6, 41 NRC 281, 305 (1995), no special expertise is needed for Riverkeeper's Contention. In *Georgia Tech*, the Commission confronted a *technical* contention concerning the issue of whether the site was unsafe due to geological conditions, and the failure of the petitioners in that case to support their claim with expert analysis. Riverkeeper's Contention is not technical, nor does it require expert opinion. Thus, *Georgia Tech*, is similarly unavailing.

Applicants further cite *Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant)*, LBP-84-49, 22 NRC at 899, and *Duke Power Co. (Catawba Nuclear Power Station, Units 1 and 2)*, LBP-82-107A, 16 NRC 59, in an attempt to create the impression that Riverkeeper's Contention is a mischaracterization of the record. Riverkeeper's Contention is not lacking in factual support – namely, the New Mexico letter, and the San Onofre and TVA incidents – nor does it “mischaracterize the record.” As discussed in detail above, Riverkeeper's Contention sets forth examples of misconduct that withstand scrutiny. In sharp contrast, in *Carolina Power and Light Co.* (1985 NRC LEXIS 10) and *Duke Power Co.* (1982 NRC Lexis 26) the petitioners made a clear, factual mistakes. In *Carolina Power and Light Co.*, the contention alleged a 42-minute delay in notification, but the very document the petitioner relied upon showed that notification was “virtually immediate” for an incident that happened. *Carolina Power & Light Co.*, 22 N.R.C. at 913. Similarly, the contention in *Duke Power Co.* alleged that certain dose assessments were omitted in the Draft Environmental Statement, however, the environmental statement did contain the dose assessments and the petitioner had incorrectly relied on the wrong table. *Duke Power Co.*, 16 N.R.C. at 1804. No such clear factual errors exist here, and these cases are inapposite.

In short, while Applicants contend that none of these documented deceptive actions attributed to Holtec and Krisna Singh “bear on HDI’s fundamental ability and *willingness* to comply with NRC regulations,” Riverkeeper asserts that these documented deceptive practices, that span more than twenty years, go to the heart of the question of Holtec’s lack of trustworthiness. (Opposition at 17-18) In any event, Applicants cite no authority stating that a contention *must* be limited to evidence of a *present intent* to violate NRC regulations. Such a standard would be impossible to meet and is not the law. (*See* Contention at 12-13)

## **II. RIVERKEEPER HAS BOTH PROXIMITY AND REPRESENTATIONAL STANDING.**

Applicants’ arguments regarding standing warrant very little discussion. Applicants state the principles for representational standing, but do not make, and cannot make, any argument that Riverkeeper does not meet these standards. (Opposition at 21). Authorization for Riverkeeper to represent each of the two members on whose behalf Riverkeeper filed its Contention is expressly stated in each member’s declaration. (Contention at Ex. A, p. 26, and Ex. B, p. 29).

Rather, Applicants take issue with Riverkeeper’s standing based on the precepts of traditional standing. Applicants argue that Riverkeeper cannot establish proximity standing because this matter is a license transfer and does not “obvious[ly] entail[] an increased potential for offsite consequences.” (Opposition at 24). and that the claims of injuries are based on “what ifs” regarding the decommissioning of the plant. (Opposition at 25-26). These arguments, if correct, would entirely shield *any* license transfer application from examination. Of course any injury alleged from an improper decommissioning, or a depletion of decommissioning funds, or the financial or technical expertise of the Applicants are based on “what ifs.” There can be no other type of injury because the transfer has not yet occurred. Each and every possible injury is

based on a hypothetical that something goes wrong – money is depleted, the decommissioning is not completed or is completed in an unsafe manner. These are exactly the types of injuries that the Commission has found to provide a basis for standing. (Contention at 8-11).

Accordingly, in a future-looking procedure – like a license transfer – the only harm that is possible or relevant in a declaration is future harm. Accordingly, the only way to address what might happen in the future is through the risk, or threat, of future harm. That the declarants (1) live in close proximity to the plant: (2) use the resources in their neighborhoods and the immediate vicinity of the plant: (3) would be among the first to suffer actual harm, or suffer from the *threat* of harm, is the very definition of a “plausible chain of causation.” It is Riverkeeper’s Contention that Applicants will not properly decommission the site, based on a lack of trustworthiness and reliability, or will mismanage the decommissioning funds based on past misconduct. This is a direct link between the license transfer at issue and the injuries.

Notably, the Opposition concedes that proximity standing is based on the presumption that an accident associated with a nuclear facility *could* adversely affect the health and safety of the people nearby. (Opposition at 23) Riverkeeper meets its burden by showing that its two members reside within 1 mile and within 1.5 miles of the plant. Thus, they are both geographically and temporally proximate. Furthermore, one of the declarants has children enrolled in an elementary school that is even closer – within *four thousand feet* – of the plant. (Contention Ex. A, p. 27) Certainly, this is sufficient to establish any presumption needed for proximity standing.

## **CONCLUSION**

For the foregoing reasons, Riverkeeper’s hearing request and petition to intervene should be granted and its contention should be admitted.

Respectfully submitted on March 26, 2020,

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that copies of Reply of Riverkeeper, Inc. in Support of its Petition to Intervene and for a Hearing have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above captioned proceeding, on March 26, 2020.

Signed electronically by:

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