RAS 4309

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
ENTERGY NUCLEAR INDIAN POINT 2, LLC, and ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-247
	)	
(Indian Point Nuclear Generating Unit No. 2; Facility Operating License DPR-26)	)	

ENTERGY NUCLEAR INDIAN POINT 2, LLC, AND ENTERGY NUCLEAR OPERATIONS, INC. ANSWER TO RIVERKEEPER, INC. PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operation, Inc. (collectively, "Entergy") hereby answer the late-filed petition for leave to intervene and request for hearing ("Petition") filed on March 20, 2002, by Riverkeeper, Inc. (hereinafter, "Petitioner" or "Riverkeeper").[1] The Petition responds to the Notice of Opportunity for a Hearing ("Notice") published in the *Federal Register* on August 22, 2001, for the Indian Point Nuclear Generating Unit No. 2 ("IP2"), concerning the Consolidated

[1] Although the Petition is dated March 18, 2002, the cover letter transmitting it to Entergy via first-class mail is dated March 20, 2002. Thus, for purposes of analysis, we are treating the Petition as being formally served on Entergy on March 20, 2002. Using that as the formal service date, and abiding by the filing requirements set forth in 10 C.F.R. § 2.714(c), Entergy's response to the Petition must be filed on or before April 4, 2002.

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Edison Company of New York, Inc. ("ConEd")[2] proposed amendments to the IP2 operating license.[3] As discussed below, Petitioner has not demonstrated that its late-filed request should be granted based upon a balancing of the factors specified in 10 C.F.R. § 2.714(a)(1)(i)-(v). Nor has it satisfied the Nuclear Regulatory Commission ("NRC" or "Commission") standing requirements codified at 10 C.F.R. §§ 2.714(a)(2) and 2.714(d). Therefore, the Petition must be denied.

II. BACKGROUND

The license amendment request ("LAR") at issue, submitted to the NRC on July 13, 2001, would make a one-time change to Technical Specifications ("TS") Surveillance Requirement 4.4.A.3 to revise the frequency for the Type A containment integrated leak rate test ("ILRT") from at least once per ten years to once per fifteen years.[4] The Type A test is an overall (integrated) leakage rate test of the containment structure. In its no significant hazards

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2 ConEd was the owner and licensed operator of IP2 on July 13, 2001, when the license amendment application at issue was submitted to the Nuclear Regulatory Commission. On August 27, 2001, the Nuclear Regulatory Commission issued an Order approving transfer of the IP2 operating license from ConEd to Entergy Nuclear Indian Point 2, LLC as the owner, and Entergy Nuclear Operations, Inc. as the licensed operator of the facility. Transfer of the licenses occurred on September 6, 2001, with the closing of the sale transaction.

3 *See* "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York," 66 Fed. Reg. 44,161, 44,165 (August 22, 2001).

4 Letter from J.S. Baumstark to NRC, "Indian Point 2 License Amendment Request: Containment Integrated Leakage Rate Testing Frequency," Docket No. 50-247, NL 01-093, July 13, 2001. As explained in the LAR, IP2 last performed a Type A ILRT on June 20, 1991. LAR at 1. The next ILRT is scheduled to be performed before the refueling outage currently scheduled for October 2002 — thus leading to the instant request for a one-time exception to allow ILRT at a once-per-fifteen-year frequency.

evaluation, ConEd determined, in pertinent part, that the proposed change "does not affect the ability of the containment to mitigate the consequences of an accident." LAR at 8.

As discussed in the LAR, issuance of the proposed amendment would result in substantial benefit to IP2 without involving a significant hazards consideration. *Id.* at 1. Indeed, the NRC in the August 22, 2001, *Federal Register* Notice made a proposed determination that the amendment request involves no significant hazards considerations, pursuant to 10 C.F.R. § 50.92. This proposed determination is consistent with those made by the NRC Staff in the context of other LARs seeking this one-time ILRT TS exception.

In the *Federal Register* Notice, the NRC requested public comment on the proposed license amendment and established a thirty-day period for that purpose. 66 Fed. Reg. at 44,161. Neither Petitioner, nor any other member of the public, submitted comments to the NRC in response to the Notice. Pursuant to the Notice, as well as 10 C.F.R. § 2.714, timely requests for a hearing or petitions to intervene were due more than six months ago — on September 21, 2001. *Id.* Again, no such timely petitions were filed with the NRC.

The Notice specified that "[n]ontimely filings of petitions for leave to intervene... and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 C.F.R. §§ 2.714(a)(1)(i)–(v) and 2.714(d)." 66 Fed. Reg. at 44,161, 44,162. Acknowledging the untimely nature of its Petition, on March 20, 2002, Riverkeeper attempted to justify the tardiness of its Petition on the basis of "[a] news article published in February 2002, [which] reported that on February 5th, NRC asked the current licensee, Entergy Nuclear Operations, Inc. (Entergy), to 'prove that the rusted spots [in the steel dome of the containment] were not the result of a 6.5

square-inch leak area that would release radiation into the atmosphere in an emergency.'" Petition at 1-2.[5]

III. ARGUMENT

As explained below, Petitioner's nontimely filing should not be entertained because a balancing of the factors set forth in § 2.714(a)(1)(i)-(v) tips markedly against granting Petitioner's late-filed request and clearly in favor of denying the Petition. Moreover, even if considered, the Petition is legally deficient because it fails to satisfy applicable standing requirements. As a result, the request for hearing should be denied.

A. The Petition Does Not Meet the Standards of 10 C.F.R. § 2.714(a)(1) For a Late-Filed Petition

Under 10 C.F.R. § 2.714(a)(1), nontimely filings will not be entertained absent a determination that a petition and/or request should be granted based upon a balancing of five factors:

(i) good cause, if any, for failure to file on time;

(ii) the availability of other means whereby the petitioner's interest will be protected;

(iii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(iv) the extent to which the petitioner's interest will be represented by existing parties; and

(v) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

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[5] Petitioner quotes, and appends to its Petition, a February 15, 2002, *Journal News* article written by Roger Witherspoon entitled, "Indian Point 2's Rusted Lining Causes Concern."

As demonstrated below, the results of the balancing test are definitively and heavily weighted against allowing Petitioner to initiate an adjudicatory proceeding and delay issuance of the proposed license amendment at this late date.

1. The Petition Is Untimely Without Good Cause

The Petition must be denied because it is late without good cause. The purportedly new information which Petitioner brings to this forum as justification for its late intervention (*i.e.*, the February 20, 2002, story in the *Journal News*) contains absolutely no new information. In fact, the *Journal News* itself indirectly refers to a February 5, 2002, NRC Request for Additional Information ("RAI") which the NRC provided *directly* to the Executive Director of Riverkeeper, Inc. at that time.[6] For Petitioner — more than forty days after this notification — to now claim that it is newly-revealed is both inexplicable and unjustified.

As demonstrated below, even if Petitioner was not "aware of the [rust] problem until February 2002," there was ample opportunity for it to become aware. Specifically, the February 5, 2002, RAIs expressly refer to earlier, publicly-available correspondence between the NRC Staff and Entergy on this same issue; namely, a preliminary set of RAIs in response to the LAR dated October 4, 2001. The latter generally inquired about the extent to which "areas of the corroded liner plate and penetrations [of the containment] have been defined as requiring

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6 See service list attached to letter from P.D. Milano (NRC) to M.R. Kansler (Entergy Nuclear Operations, Inc.), "Request for Additional Information Regarding One-Time Extension of Containment Integrated Leak Rate Test Frequency, Indian Point Nuclear Generating Unit No. 2 (TAC No. MB2414)," February 5, 2002. This document was made publicly available by NRC on its Agency-wide Documents Access and Management System ("ADAMS") on February 13, 2002 (Accession No. ML020360045).

augmented inspections (IWE-1240) during the subsequent inspection periods."[7] In addition, the October 4 RAIs expressly stated that:

> [i]nspections of some reinforced and steel containments have indicated degradation from the uninspectable (embedded) side of the steel shell and steel liner of the concrete containments. These degradations can only be found by VT-3 or VT-1 examinations if they are through the thickness of the shell or liner by periodic ultrasonic examination of 100 percent of the uninspectable surfaces. Please discuss how the potential leakage due to age-related degradation mechanisms described above as well as the unrepaired corrosion of the containment components . . . are factored into the risk assessment related to the extension of the containment integrated leakage rate test interval.[8]

A representative of the Pace University School of Law is among those who were directly provided with a copy of the October 4, 2001, RAIs — the very same law school representing Petitioner herein — at the time of their issuance.[9] To now claim that this information only "became public knowledge" on February 20, 2002, is simply untrue. Even if Petitioner did not receive these RAIs through its counsel, they were made publicly available by the NRC when they were entered on the docket more than five months ago.

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7 Letter from P.D. Milano (NRC) to M. Kansler (Entergy), "Indian Point Nuclear Generating Unit No. 2 — Request for Additional Information Regarding One-Time Extension of Containment Integrated Leakage Rate Test Frequency (TAC NO. MB2414)," October 4, 2001, Enclosure at 1, question 4.

8 *Id.*, Enclosure at 2, question 8. Compare with February 5, 2002, RAI No. 1, "[t]he NRC staff notes that unobserved degradation can exist on the embedded (uninspectable) side of the steel liner of concrete containments. These degradations can only be found during visual examinations (VT-1 or VT-3) if the degradation is throughwall or by ultrasonic examination of the liner. With the areas of degradations observed at IP2 and the possibility of degradation in uninspectable areas of the containment liner, provide the basis for not performing an ILRT before August 2002 to ensure the leak tightness of the 'as is' containment." *See* note 7 *supra*.

9 *Id.*, Service List. The NRC made this document publicly available through ADAMS on October 15, 2001 (Accession No. ML012730014). Entergy's response to the October 4, 2001, RAIs is dated November 30, 2001, and was released to the public, via ADAMS, on December 17, 2001 (Accession No. ML-13410010).

The purportedly new information is anything but new, with an IP2-specific pedigree dating back to at least May 16, 2000, when the NRC issued an inspection report in which it noted that ConEd identified the containment liner corrosion at issue in early 2000.[10] The NRC also made this information publicly available well before publication of the *Federal Register* Notice on August 22, 2001.[11] Given that the NRC Staff subsequently posed the questions set forth in the October 2001, RAIs, it is implausible for Riverkeeper to claim good cause for a late-filed petition based on a newspaper article published in February 2002, or that the NRC itself was unaware of the information. Petition at 3.[12]

It has long been held that a licensing board will not accept a petitioner's claim of excuse for late intervention where the petitioner failed to uncover and apply publicly available information in a timely manner. *Kansas Gas & Elec. Co.* (Wolf Creek Generating Station, Unit No. 1), LBP-84-17, 19 NRC 878, 886-87 (1984)(*citing Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-42, 18 NRC 112, 117, *aff'd*, ALAB-743, 18 NRC 387 (1983)). The information with which Petitioner seeks to justify its late intervention herein not only was publicly available, but also was provided directly to Petitioner and/or its legal counsel

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10 NRC Integrated Inspection Report 05000247/2000-003, May 16, 2000, Finding M2.1 at 9.

11 The May 16, 2000, Inspection Report was made publicly available, via ADAMS, on May 19, 2000 (Accession No. ML003915736).

12 If by stating that ConEd "did not even discuss the rust in the dome in its application," and pointing to the subsequent NRC Staff RAIs the Petitioner is implying that the LAR must be rejected as incomplete, it is again in error. RAIs certainly do not indicate an incomplete LAR. *See Curators of the Univ. of Mo.*, CLI-95-8, 41 NRC 386, 395 (1995); *see also Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349-50 (1998). An RAI is routine and no more than a question from the NRC Staff. It does not mean that an LAR is incomplete, because no LAR could possibly anticipate every NRC question.

by the NRC. Thus, Petitioner is lacking good cause for its extreme tardiness in seeking to intervene.[13]

2. *Petitioner Has Made No Demonstration That Its Participation May Reasonably Be Expected To Assist In Developing A Sound Record*

The Petition is devoid of material information by which one can conclude that Petitioner's participation may reasonably be expected to assist in the development of a sound record. In this regard, Petitioner claims that it "will provide independent engineering analysis showing the significance of the rust in the containment dome and the importance of performing the containment integrate [sic] leak rate test immediately to determine whether the containment structure has been comprised [sic]." Petition at 3. Petitioner further promises to "provide expert testimony consistent with findings in the independent engineering report." *Id.* With respect to the latter, "Petitioner expects that expert testimony will provide more detail with respect to the specifics of the risk of rust in the containment dome and the importance of the ten-year integrated leak rate tests in an aging facility such as IP2." *Id.* at 3-4.

These are nothing more than hollow assertions, devoid of any supporting fact to lend them either credence or an air of reasonable expectation. Who will prepare the "independent engineering analysis"? What issues will the analysis address? Who is Petitioner's expert witness, and what are his or her credentials? Because any and all such information regarding the identity and/or qualifications of Petitioner's purported independent expert(s) is lacking, it is not reasonable to expect assistance on these fronts. Petitioner must present a bill of

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[13] The Commission has emphasized that the "good cause" factor, set forth in 10 C.F.R. § 2.714(a)(1)(i), is the "first and principal test for late intervention." *Westinghouse Elec. Corp.* (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 329 (1994). As demonstrated above, Petitioner has failed this most important test.

particulars in support of these claims. *See Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978). Vague assertions, such as those offered by Riverkeeper, are insufficient. *See Miss. Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). This factor weighs heavily against granting the Petition.

3. Granting the Petition Will Delay the Proceeding

Where there is no pending proceeding, as herein, the potential for delay weighs heavily against a petitioner because granting the request will result in the establishment of an entirely new formal proceeding, not just the alteration of an already-established hearing schedule. *See Tx. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 167 (1993). In this case, Petitioner's participation would create a formal adjudicatory proceeding, thereby giving rise to the very real potential for delay. Such delay would adversely affect Entergy's ability to effectively plan for the next IP2 refueling outage — the prime purpose of the LAR. LAR, Cover Letter at 2. As a result, this factor also weighs heavily against the Petitioner and its late-filed request. Accordingly, upon balancing the factors in 10 C.F.R. § 2.714(a)(1), the Commission should reject the late-filed Petition.[14]

B. Petitioner Has Not Established Standing to Intervene

In ruling on untimely petitions such as this, the Commission must consider, in addition to the late-filed factors specified in 10 C.F.R. § 2.714(a)(1), the standing requirements

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[14] The second and fourth factors (§§ 2.714(a)(1)(ii), 2.714(a)(1)(iv)) are the only ones that weigh somewhat in favor of the Petitioner, due to the lack of a formal adjudicatory proceeding. Nonetheless, Petitioner's vaguely-defined interest in protecting its members' health and safety is adequately protected through existing NRC Staff inspection and enforcement activities, as well as its review of the LAR. In addition, Petitioners can challenge such NRC oversight via the processes provided by 10 C.F.R. §§ 2.206 and 2.802.

specified in 10 C.F.R. §§ 2.714(a)(2) and 2.714(d). It is fundamental that any entity requesting a hearing or seeking to intervene in a Commission proceeding must demonstrate standing to do so. The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the Commission is to consider:

> (i) The nature of the petitioner's right to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

In determining whether a petitioner has established the requisite interest, the Commission traditionally has applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utils. Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). The Commission has further determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that:

> 1. it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute;
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> 2. the injury can fairly be traced to the challenged action; and
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> 3. the injury is likely to be redressed by a favorable decision.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2),

CLI-99-4, 49 NRC 185, 188 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); *Ga. Inst. of Tech.* (Georgia Tech Research Reactor -- Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In particular, with respect to the alleged "injury-in-fact," the Commission has held that it is incumbent upon the petitioner to allege some "plausible chain of causation" from the licensing action at issue to the alleged injury that would or could be redressed in the proceeding. *Zion*, CLI-99-4, 49 NRC at 192.

An alleged injury may be actual or threatened. *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995), *cert. denied*, 515 U.S. 1159 (1995). Nevertheless, it must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan*, 504 U.S. at 560 (citations omitted). Additionally, the claimed injury suffered by a petitioner must fall within the "zone of interests" sought to be protected by the Atomic Energy Act ("AEA") or the National Environmental Policy Act ("NEPA"). *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-04, __ NRC __, slip op. at 7 (Jan. 24, 2002); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998).

Thus, a petitioner must have a "real stake" in the outcome of the proceeding to establish an injury-in-fact for standing. While this stake need not be a "substantial" one, it must be "actual," "direct," or "genuine." *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the petitioner must allege some injury that will occur as a result of the action

taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982) (*citing Allied-Gen. Nuclear Serv.* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976)); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982).

As recited in *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991), there are two routes by which an organization — such as Riverkeeper — can attempt to demonstrate standing in an NRC hearing. First, it can assert injury to organizational interests and demonstrate that these interests are protected by the Atomic Energy Act. *Id.* Second, an organization can base standing on the interests of individuals that it represents. *See, e.g., Ga. Tech*, CLI-95-12, 42 NRC at 115. To derive representational standing from an individual, an organization must identify at least one member (by name and address) and provide some "concrete indication" that the member has authorized the organization to represent him or her in the proceeding. In addition, the petition must demonstrate the standing of that individual assessed against the standards recited above. *See, e.g., Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987). As discussed below, Petitioner has failed to demonstrate either representational or organizational standing. Accordingly, it should not be admitted to participate in this proceeding.

1. Petitioner's Apparent Assertion of Representational Standing Is Inadequate

Riverkeeper appears to assert representational standing based on its members' broadly-defined "health, safety and property interests." Petition at 5. As a threshold matter, however, Petitioner cannot be granted representational standing because it has not identified at least one

member (by name and address) who would possess standing in his or her individual capacity and who has authorized Riverkeeper to represent him or her. The latter deficiency, alone, constitutes a sufficient basis upon which to conclude that Petitioner lacks standing to intervene. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31 (1998); *Vt. Yankee*, LBP-87-7, 25 NRC at 118.

Even if Petitioner were to identify a member willing to be represented by it in this proceeding, however, his or her purported interests — as set forth in the Petition — are inadequate to bestow representational standing upon Riverkeeper. Noting that "many" of its members "live and work within a ten-mile radius" of IP2, Riverkeeper claims that its members "are concerned with the substantially higher probability and consequences of a potential radiation leak." Petition at 4-5.[15] With this as background, Riverkeeper goes on to claim that "[t]he presence of rust in the containment dome indicates there may be a leak in the dome's steel lining as well as other age-related deterioration. Failure to identify such a leak would defer required repair measures, greatly increasing the safety risks to Petitioner's members." *Id.* at 5.

Such broad assertions, without more, do not demonstrate the requisite injury-in-fact. *See Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117-18 (1998) (a petitioner must show an injury that is "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical") (*citing Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)). The very language used by Petitioner (*i.e.*, "there *may* be a leak . . . as well as *other* age-related

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[15] To the extent Petitioner seeks to challenge the NRC Staff's proposed no significant hazards determination under 10 C.F.R. § 50.92(c), it is raising a matter that cannot be addressed in this forum. *See* 10 C.F.R. § 50.58(b)(6).

deterioration"), in combination with a total lack of supporting fact, underscores the fact that these purported interests constitute nothing more than hypothesis and conjecture.

Furthermore, with respect to the requirement for an injury-in-fact, neither Riverkeeper nor any of its members can base standing on a presumption that would follow from some geographical proximity to IP2.[16] The NRC has recognized a presumption of injury in fact based on residence within 50 miles of a nuclear plant with respect to applications for construction permits, operating licenses, and license amendments where the amendment has a significant potential for offsite consequence. *See, e.g., Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989); *see also Sequoyah Fuels,* CLI-94-12, 40 NRC at 75 n.22. Here, while members may live within 50 miles of IP2, there has been no showing whatsoever that the LARs create the potential for offsite consequences. Petitioner's unidentified and speculative "concern with the substantially higher probability and consequences of a potential radiation leak" is insufficient to establish the requisite showing of a nexus between the LAR and the distinct and palpable harm necessary to demonstrate standing in this proceeding.

In response to the issue of concern to Riverkeeper (*i.e.*, as set forth in the February 5, 2002, NRC RAIs), Entergy concludes that the containment liner is currently within the original design bases and will continue to be within the design bases for at least 18 years

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16 In this regard, Petitioner states that "many" of its "members live and work within a ten-mile radius of the Indian Point Nuclear Generating Facility, Unit No. 2 . . . ." Petition at 5.

using the calculated maximum potential future corrosion rate and the most conservatively calculated design basis minimum required liner thickness of 0.34" (based on buckling stress).[17]

> There is no reduction in the structural capacity or ability of the containment structure to perform the intended safety function. The available margins, in both the reinforced concrete containment and inner steel liner, are well within the requirements of the design basis. Therefore, the structural integrity and leak tightness of the containment structure is assured and the surveillance interval for the ILRT may be extended for another 5 years without any significant additional risk.[18]

Riverkeeper has not shown a palpable injury-in-fact fairly traceable to the LAR at issue. The immediate concern is being addressed as an ongoing inspection/compliance matter. The LAR would not in itself change the design or design basis of the containment. Thus, residence near IP2, alone, is an inadequate basis upon which to establish standing in this proceeding. *Puget Sound*, 16 NRC at 983.

Petitioner also claims to have a "significant interest in protecting its members' property." Petition at 5. Specifically, it claims that "[a] radiological emergency will substantially decrease the property value in the surrounding towns and villages." *Id.* This assertion of economic injury does not fall within the zone of interests arguably protected by the Atomic Energy Act of 1954, as amended.

> The AEA concentrates on the licensing and regulation of nuclear materials for the purpose of protecting public health and safety and the common defense and security. The appropriate party to raise safety objections about a specific licensing action is the party who, because of the licensing, may face some radiological harm (or the party who seeks the license). As

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17 Letter from F. Dacimo (IP2) to NRC, "Indian Point Nuclear Generating Unit No. 2 -- Response to Request for Additional Information Regarding One-time Extension of Containment Integrated Leak Rate Test Frequency (TAC No. MB2414)," March 13, 2002, Attachment 1 at 6.

18 *Id.* at 6, 10.

> such, it has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.

Int'l Uranium (USA) Corp. (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 265 (1998). *See also Va. Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-06 (1976). Riverkeeper cannot claim representational standing on assertions of diminished property value without showing radiological harm stemming from the proposed license amendment. This Petitioner has not done.

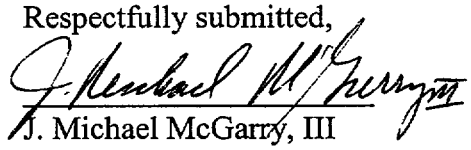
2. *Petitioner's Assertion of Organizational Standing Must Be Rejected*

Riverkeeper has made no clear effort to assert the interests of the organization itself as the basis for standing (*i.e.*, organizational standing). Nevertheless, it claims to have an "interest that there is currently no breach in the integrity of the dome." Petition at 5. If this is meant to be an assertion of organizational standing, then it must fail. As explained above, Petitioner has not established that there is any potential for offsite consequences as a result of the LAR that could cause palpable harm. Therefore, it has failed to establish its standing in this matter.

IV. CONCLUSION

For the reasons set forth above, Petitioner's late-filed request for a hearing and petition for leave to intervene in this proceeding should be denied.

Respectfully submitted,



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Dated in Washington, D.C.
this 4th day of April, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Indian Point Nuclear Generating Unit No. 2; Facility Operating License DPR-26)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Name of Party:	Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601

J. Michael McGarry, III
Counsel for Entergy Nuclear Indian Point 2, LLC
And Entergy Nuclear Operations, Inc.

Dated at Washington, District of Columbia
this 4th day of April 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
ENTERGY NUCLEAR INDIAN POINT 2, LLC, and ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-247
	)	
	)	
(Indian Point Nuclear Generating Unit No. 2; Facility Operating License DPR-26)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name:	Kathryn M. Sutton
Address:	Winston & Strawn 1400 L Street, N.W. Washington, DC 20005
E-Mail:	ksutton@winston.com
Telephone: Facsimile:	(202) 371-5738 (202) 371-5950
Admissions:	District of Columbia Court of Appeals
Name of Party:	Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601

Kathryn M. Sutton
Winston & Strawn
Counsel for Entergy Nuclear Indian Point 2, LLC
And Entergy Nuclear Operations, Inc.

Dated at Washington, District of Columbia
this 4th day of April 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

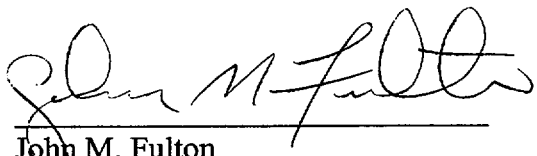
BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Entergy Nuclear Indian Point 2 LLC, and	)	Docket No. 50-247
Entergy Nuclear Operations, Inc.	)	
	)	
(Indian Point Nuclear Generating Unit No. 2;	)	
Facility Operating License DPR-26)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name:	John M. Fulton
Address:	Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601
E-Mail:	jfulton@entergy.com
Telephone: Facsimile:	(914) 272-3502 (914) 272-3205
Admissions:	District Court of Massachusetts
Name of Party:	Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. 440 Hamilton Avenue White Plains, NY 10601



John M. Fulton
Assistant General Counsel,
Entergy Nuclear Operations, Inc.

Dated at White Plains, New York
this 4th day of April 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
ENTERGY NUCLEAR INDIAN POINT 2,	)	
LLC, and ENTERGY NUCLEAR	)	Docket No. 50-247
OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Unit No. 2;	)	
Facility Operating License DPR-26)		

CERTIFICATE OF SERVICE

I hereby certify that copies of "ENTERGY NUCLEAR INDIAN POINT 2, LLC, AND ENTERGY NUCLEAR OPERATIONS, INC. ANSWER TO RIVERKEEPER, INC. PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING" and a "NOTICE OF APPEARANCE" for John M. Fulton, Kathryn M. Sutton, and J. Michael McGarry, III in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 4th day of April 2002. Additional e-mail service has been made this same day as shown below.

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Rulemakings and Adjudications Staff
(original + two copies)
(e-mail: HEARINGDOCKET@nrc.gov)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Janice E. Moore
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
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Karl Coplan, Esq.
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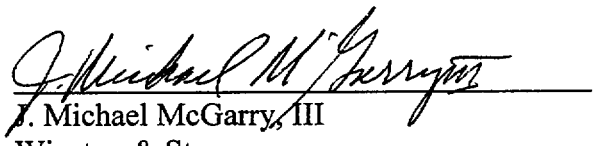

J. Michael McGarry, III
Winston & Strawn
Counsel for Entergy Nuclear Indian Point 2 LLC,
and Entergy Nuclear Operations, Inc.