

Form C-A (for Agency Cases)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

☐ APPLICATION FOR ENFORCEMENT☒ PETITION FOR REVIEW CORRECTED

PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

NAME OF AGENCY: U.S. Nuclear Regulatory Commission

AGENCY DOCKET NO.: 50-003, 50-247,
50-286

TITLE IN FULL:

Please see attachment.ORDER NUMBER DD-02-06
APPROXIMATE NO. OF PAGES IN RECORD 500
JURISDICTION OF COURT OF APPEALS: yesDATE ENTERED 11/18/02; final 12/13/02
NO. OF EXHIBITS one
USCAHAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? ☐ Yes ☒ No IF YES, STATE
CASE NAME: CITATION: DOCKET NO:ATTORNEY(S) FOR PETITIONER(S): Karl Coplan NAME
78 N. Broadway, White Plains, NY 10603 (914)422-4343 ADDRESS TELEPHONEATTORNEYS FOR RESPONDENT(S): Please see attachment. NAME
ADDRESS TELEPHONEAPPEAL TAKEN. ☒ AS OF RIGHT ☐ BY DISCRETION (SPECIFY STATUTES UNDER WHICH APPEAL IS TAKEN) 28 USCA 2342(4)
PETITIONER/APPLICANT IS ☐ AGENCY ☐ OTHER PARTY ☐ NON-PARTY. SPECIFY STANDING Please see attachment.FACTS UPON WHICH VENUE IS BASED Petitioner, Riverkeeper, has its principal office in the 2nd Cir.

NATURE OF ORDER ON WHICH REVIEW OR ENFORCEMENT IS SOUGHT

☒ ADMINISTRATIVE REGULATION/RULEMAKING ☐ BENEFITS REVIEW ☐ UNFAIR LABOR PRACTICE:
☐ ROUTES: ☐ HEALTH & SAFETY ☐ EMPLOYER
☐ COMMUNICATIONS ☐ IMMIGRATION ☐ UNION
☐ COMMERCE ☐ TARIFFS
☐ OTHER (SPECIFY)CONCISE DESCRIPTION OF PROCEEDINGS BELOW AND ORDER TO BE REVIEWED OR ENFORCED (NOTE THOSE PARTS OF THE ORDER FROM WHICH RELIEF IS SOUGHT) Please see attachment.ISSUES PROPOSED TO BE RAISE ON PETITION OR APPLICATION Please see attachment.
RELIEF SOUGHT: Please see attachment.

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH:

- (A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL?
- ☐
- YES
- ☒
- NO
-
- (B) INVOLVES AN ISSUE SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL?
- ☐
- YES
- ☒
- NO
-
- (IF YES, STATE WHETHER "A" OR "B" OR BOTH AND PROVIDE

DOCKET: CASE NAME:

COURT OR AGENCY: CITATION: NUMBER

FOR PETITIONER OR APPLICANT:

Riverkeeper, Inc. Karl Coplan (914)422-4343
(PRINT) NAME OF PETITIONER NAME OF COUNSEL OF RECORD TELEPHONE
02/12/03

DATE

SIGNATURE OF COUNSEL OF RECORD

ATTACHMENT TO SECOND CIRCUIT FORM C-A

TITLE IN FULL

Riverkeeper, Inc., Petitioner,

v.

Samuel J. Collins, Director, Office of Nuclear Reactor Regulation; Dr. William Travers, Executive Director for Operations of the Nuclear Regulatory Commission; United States Nuclear Regulatory Commission; the United States of America; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Entergy Nuclear Operations, Inc., Respondents.

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SPECIFY STANDING

Organizational – Petitioner, Riverkeeper, Inc., has members who are personally affected.
Statutory - 42 U.S.C. § 2014 (s); 42 U.S.C. § 2239.

CONCISE DESCRIPTION OF PROCEEDINGS BELOW AND ORDER TO BE REVIEWED OR ENFORCED

2.206 Petition

On November 8, 2001, pursuant to 10 C.F.R. § 2.206, Riverkeeper filed a petition (supplemented on December 20, 2001) with Dr. William Travers, Executive Director for Operations of the Nuclear Regulatory Commission (NRC). Riverkeeper requested that the NRC:

- 1.) Order the licensee to suspend operations, revoke the license, or adopt other measures resulting in a temporary shutdown of the Indian Point 2 and 3 ("IP2 and IP3").
- 2.) Order the licensee to conduct a full review of the facilities' vulnerabilities, security measures and evacuation plans.
- 3.) Require Entergy to provide information documenting the existing and readily attainable security measures which protect IP2 and IP3 against land, water, and airborne terrorist attacks.
- 4.) Immediately modify the IP 2 and IP3 operating licenses to mandate specified security measures sufficient to protect the facility, including institution of a no-fly zone surrounding the plant and barriers to attack from the Hudson River.
- 5.) Order the revision of the licensee's Emergency Response Plan to account for possible terrorist attacks and prepare a comprehensive response to multiple, simultaneous attacks.
- 6.) In the absence of available measures to ensure the security of the IP facility against terrorist attacks, to take prompt action to permanently retire the facility.
- 7.) Order the licensee to immediately convert from water-cooled to hardened dry cask system for spent fuel storage as a measure to protect spent fuel storage from terrorist attacks.

Petitioner seeks relief from the Nuclear Regulatory Commission's denial of items 1, 4, 5, 6, 7.

NRC Response (Final Action)

NRC responded to the 2.206 petition on November 18, 2002 (final for purposes of review on December 16, 2002) by:

- 1.) Partially granting the request for immediate security upgrade by issuing NRC February 25, 2002 Orders to all nuclear power plants to review security preparedness, but denying any temporary shutdown of IP2 or IP3.
- 2.) Partially granting a full review of the facilities' vulnerabilities, security measures and evacuation plans.
- 3.) Denying the request for specific information about the security measures because of policy to not release safeguards information to the public.
- 4.) Denying the request to mandate certain security measures such as no-fly zone.
- 5.) Denying the request to require revision of the licensee's Emergency Response Plan.
- 6.) Denying the request to order dry-cask storage of spent fuel.

NRC stated that the decision constitutes final action.

The NRC decision is signed by Samuel J. Collins, Director, Office of Nuclear Reactor Regulation.

ISSUES PROPOSED TO BE RAISED ON PETITION OR APPLICATION:

I. Where NRC has acknowledged that there is a "gap" between the licensee's capability to protect against terrorist attacks and the protections provided by the government at the Indian Point site, and given the National Research Council's determination that "the potential for a September 11-type surprise attack in the near term [on a nuclear power plant is]... high," did the Nuclear Regulatory Commission abdicate its statutory duty to "to protect health and to minimize dangers to life or property..." under 42 U.S.C. § 2201 (i), when the NRC denied Riverkeeper's request to adopt measures to temporarily shut down IP2 and IP3?

II. Where NRC has acknowledged that there is a "gap" between the licensee's ability to protect the plant against airborne terrorist attack and the protections provided by the government, and given the National Research Council's determination that "the potential for a September 11-type surprise attack in the near term [on a nuclear power plant is]... high," did the Nuclear Regulatory Commission abdicate its statutory duty "to protect health and to minimize dangers to life or property..." under 42 U.S.C. § 2201 (i) by failing to order the immediate shut down of the Indian Point facility?

III. Where NRC has acknowledged that there is a "gap" between the licensee's ability to protect the plant against airborne terrorist attack and the protections provided by the government, and given the National Research Council's determination that "the potential for a September 11-type surprise attack in the near term [on a nuclear power plant is]... high," did the Nuclear Regulatory Commission abdicate its statutory duty "to protect health and to minimize dangers to life or property..." under 42 U.S.C. § 2201 (i) by failing to order the revision of the licensee's Emergency Response plan?

IV. Where NRC has acknowledged that there is a "gap" between the licensee's ability to protect the plant against airborne terrorist attack and the protections provided by the government, and given the National Research Council's determination that "the potential for a September 11-type surprise attack in the near term [on a nuclear power plant is]... high," did the Nuclear Regulatory Commission abdicate its statutory duty "to protect health and to minimize dangers to life or property..." under 42 U.S.C. § 2201 (i) by failing to condition continued operation of the IP2 and IP3 power plants on the implementation of specific protective measures such as a no-fly zone and physical barriers to attack from the Hudson River?

V. Where NRC has acknowledged that there is a "gap" between the licensee's ability to protect the plant against airborne terrorist attack and the protections provided by the government, and given the National Research Council's determination that "the potential for a September 11-type surprise attack in the near term [on a nuclear power plant is]... high," did the Nuclear Regulatory Commission abdicate its statutory duty "to protect

health and to minimize dangers to life or property..." under 42 U.S.C. § 2201 (i) by failing to order the licensee to convert to dry-cask storage for all of its 30 years worth of spent fuel rods currently located onsite as a measure to protect against dispersal of spent fuel rod radiation in a terrorist attack?

RELIEF SOUGHT:

- I. An order remanding to the NRC to require immediate suspension of operation of IP2 and IP3 and immediate and permanent revocation of Indian Point license if, after conducting a full review of the facility's vulnerabilities, security measures and evacuation plans, the NRC cannot protect health or minimize danger to life or property through available protective measures including a no fly zone around the plants and physical barriers to attack from the Hudson River.
- II. An order remanding to the NRC to require immediate conversion of the current spent fuel storage technology from a water cooled system to a hardened dry-cask system in a bunkered structure in order to reduce the long-term risk associated with potential exothermic oxidation within the existing on-site spent fuel storage facility and to protect against a terrorist attack. The NRC must also require the fortification of the spent fuel pool storage building which will continue to house irradiated fuel less than five years old.
- III. An order remanding to the NRC to require the revision of the licensee's Emergency Response Plan in order to prepare for near-term threats of terrorist attacks.