

February 27, 2009 (1:00pm)

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

Entergy Nuclear Operations, Inc. )  
(Indian Point Nuclear Generating )  
Units 2 and 3 )

Docket Nos.  
50-247-LR  
and 50-286-LR

**RIVERKEEPER, INC.'S CHALLENGE TO NRC STAFF'S  
ASSESSMENT OF IMPACTS OF SPENT FUEL POOL LEAKS IN THE  
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 ("Consolidated Contention") challenges Entergy Nuclear Operations, Inc.'s ("Entergy") assessment of the current and future environmental impacts of the ongoing spent fuel pool leaks and groundwater contamination.<sup>1</sup> On December 22, 2008, the Nuclear Regulatory Commission Staff ("NRC Staff") issued Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 (hereinafter referred to as the "IP DSEIS"). In this document, the NRC Staff discusses the spent fuel pool leak issue. Unfortunately, the NRC Staff relies upon the same arguments that Entergy has put forth to date and, thereby, comes to the same conclusion regarding the significance of the leakage.

Specifically, in the IP DSEIS, the NRC Staff, just like Entergy, completely focuses on the findings that there are no drinking water exposure pathways affected by the contaminated groundwater and that the maximum dose to humans from consumption of aquatic foods is within

<sup>1</sup> See Riverkeeper, Inc.'s Request for Hearing and Petition to Intervene in Indian Point License Renewal Proceeding, November 30, 2007 ("Riverkeeper Petition for Hearing"), at 74-86; Consolidated Contention.

regulatory limits.<sup>2</sup> To support this line of thinking, the NRC Staff points to a groundwater investigation performed by New York State which made the same findings.<sup>3</sup> Based upon a purported detailed evaluation of Entergy's analysis in the Environmental Report ("ER"), an inspection of Entergy's investigation into the leaking and groundwater contamination, and in light of certain commitments made by Entergy to continue monitoring and address the leaking, the NRC Staff comes to a conclusion identical to Entergy's: that "while the information related to spent fuel pool leakage is new, it is not significant."<sup>4</sup>

Since the NRC Staff's assessment in the IP DSEIS mirrors Entergy's evaluation of the spent fuel pool leaks, it fails to address *any* of the concerns raised by the Consolidated Contention.<sup>5</sup> As such, Riverkeeper hereby challenges the NRC Staff's assessment of groundwater contamination from spent fuel pool leaks in the IP DSEIS as suffering from the same deficiencies articulated in the Consolidated Contention.<sup>6</sup> Riverkeeper incorporates all of the arguments made in the Consolidated Contention to now apply not just to Entergy's assessment, but also to the NRC Staff's essentially identical analysis.

As Riverkeeper understands NRC regulations and precedent, a formal amendment to the Consolidated Contention is not warranted at this time. The regulations dictate that petitioners may amend contentions arising under the National Environmental Policy Act ("NEPA") if there are data or conclusions in the NRC draft environmental impact statement that "differ significantly" from the data or conclusions in the applicant's documents.<sup>7</sup> In this case, there are

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<sup>2</sup> IP DSEIS at 2-107 to 2-108.

<sup>3</sup> *Id.* at 2-108 to 2-109.

<sup>4</sup> *Id.* at 2-107, 4-36, 4-49.

<sup>5</sup> See Consolidated Contention; Riverkeeper Petition for Hearing at 74-86.

<sup>6</sup> See Consolidated Contention; Riverkeeper Petition for Hearing at 74-86.

<sup>7</sup> 10 C.F.R. § 2.309(f); see also *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), ASLBP No. 04-821-01-ESP, 2005 N.R.C. LEXIS 40, \*6 (2005) ("Any timely challenge to the DEIS must . . . address alleged 'material differences' between information in the DEIS and that previously available in the Applicant's filings"); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2), CLI-02-08, 56

no data or conclusions in the NRC Staff's IP DSEIS that "differ significantly" from Entergy's submissions to date.<sup>8</sup> Quite the contrary, the NRC Staff's data and conclusions in the IP DSEIS do not present any information that differs at all, let alone significantly, from the analysis put forth by Entergy. In fact, the NRC Staff essentially adopts Entergy's assessment of groundwater contamination from spent fuel pool leaks. Accordingly, Riverkeeper does not believe it is required to burden the ASLB with an unnecessary amendment to the Consolidated Contention at this time.

Riverkeeper is aware that the ultimate "responsibility for NEPA evaluation rests with the U.S. Nuclear Regulatory Commission, not with the Applicant, and . . . an Intervenor's challenge to NEPA compliance should be made with respect to the Agency's actions," but that, NRC "procedures, in an effort to keep the process expeditiously moving, require an Intervenor to raise environmental issues first with respect to the Applicant's ER and permit amendment . . . when issues arise in further filings by the Applicant and/or in the Agency's documents when they are released, in each case to the extent they contain information not contained in the Applicant's previous filings or in the Agency's previously released documents."<sup>9</sup>

As such, even though Riverkeeper is not amending the Consolidated Contention since the IP DSEIS contains no different information relating to the spent fuel pool leaks, Riverkeeper explicitly requests that the ASLB recognize that the Consolidated Contention applies against the NRC Staff's analysis in the IP DSEIS as equally as against the applicant's assessment. Based on

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N.R.C. 373, 2002 NRC LEXIS 208, \*29-30 (2002) ("intervenors' amended contention must rest on data or conclusions that 'differ significantly' from what was submitted in the Environmental Report. An amended NEPA contention is not an occasion to raise additional arguments that could have been raised previously . . . [and must] be based only on 'any new information not previously available'").

<sup>8</sup> See IP DSEIS at 2-107 to 2-109, 4-35 to 4-36, 4-49.

<sup>9</sup> *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), ASLBP No. 04-821-01-ESP, 2005 N.R.C. LEXIS 61, \*5-6 (2005); see also *Private Fuel Storage L.L.C.*, 60 N.R.C. 125 ("Our contention pleading rule requires a petitioner to file NEPA contentions on the applicant's ER so that environmental issues are raised as soon as possible in the proceeding.").

NRC precedent, this is entirely appropriate.<sup>10</sup> To the extent that the ASLB deems that a formal amendment to the Consolidated Contention is required, please accept the foregoing as such.

Respectfully submitted,

Deborah Brancato for  
Phillip Musegaas, Esq.  
Hudson River Program Director  
Riverkeeper, Inc.  
828 South Broadway  
Tarrytown, NY 10591  
914-478-4501 (ext. 224)  
[phillip@riverkeeper.org](mailto:phillip@riverkeeper.org)

Deborah Brancato  
Deborah Brancato  
Staff Attorney  
Riverkeeper, Inc.  
828 South Broadway  
Tarrytown, NY 10591  
914-478-4501 (ext. 230)  
[dbrancato@riverkeeper.org](mailto:dbrancato@riverkeeper.org)

Deborah Brancato for  
Manno Jo Green  
Environmental Director  
Hudson River Sloop Clearwater, Inc.  
112 Market Street  
Poughkeepsie, NY 12601  
845-454-7673 (ext. 113)  
[Mannajo@clearwater.org](mailto:Mannajo@clearwater.org)

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<sup>10</sup> See *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), ASLBP No. 07-850-01-ESP-BD01, 67 N.R.C. 54 (2008) (stating that a licensing board may consider environmental contentions made against an applicant's ER as challenges to an agency's subsequent DEIS where the DEIS analysis or discussion at issue is essentially "in para materia" with the ER analysis or discussion that is the focus of the contention); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-23, 54 NRC 163, 172 (2001) petition for review denied, CLI-04-4, 59 NRC 31, 40-41 (2004) (discussing the "migration tenet"/substitution with the superseding DEIS, acknowledging that if the Staff's analysis is different, any challenges to the adequacy of that analysis must be raised in an amended or new contention); *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), ASLBP No. 04-821-01-ESP, 2005 N.R.C. LEXIS 61, \*5-6 (2005).

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**CERTIFICATE OF SERVICE**

I certify that on February 27, 2009 copies of the foregoing "Riverkeeper Inc.'s Challenge to NRC Staff's Assessment of Impacts of Spent Fuel Pool Leaks in the Draft Supplemental Environmental Impact Statement" were served on the following by first-class mail and e-mail:

Lawrence G. McDade, Chair Atomic Safety and Licensing Board Panel Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: <a href="mailto:Lawrence.McDade@nrc.gov">Lawrence.McDade@nrc.gov</a>	Judge Kaye D. Lathrop 190 Cedar Lane East Ridgeway, CO 81432 E-mail: <a href="mailto:Kaye.Lathrop@nrc.gov">Kaye.Lathrop@nrc.gov</a>
Richard E. Wardwell Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: <a href="mailto:Richard.Wardwell@nrc.gov">Richard.Wardwell@nrc.gov</a>	Michael J. Delaney, V.P. – Energy New York City Econ. Development Corp. 110 William Street New York, NY 10038 E-mail: <a href="mailto:mdelaney@nycedc.com">mdelaney@nycedc.com</a>
John J. Sipos, Esq. Assistant Attorney General Office of the New York Attorney General for the State of New York The Capitol Albany, NY 12224 E-mail: <a href="mailto:John.Sipos@oag.state.ny.us">John.Sipos@oag.state.ny.us</a>	Martin J. O'Neill, Esq. Kathryn M. Sutton, Esq. Paul M. Bessette, Esq. Mauri T. Lemoncelli, Esq. Morgan, Lewis & Bockius, LLP 1111 Pennsylvania Ave. N.W. Washington, D.C. 20004 E-mail: <a href="mailto:martin.oneill@morganlewis.com">martin.oneill@morganlewis.com</a> <a href="mailto:pbessette@morganlewis.com">pbessette@morganlewis.com</a> <a href="mailto:ksutton@morganlewis.com">ksutton@morganlewis.com</a>

<p>Diane Curran, Esq.  Harmon, Curran, Spielberg &amp; Eisenberg, LLP  1726 M. Street NW, Suite 600  Washington, DC 20036  E-mail: <a href="mailto:dcurran@harmoncurran.com">dcurran@harmoncurran.com</a></p>	<p>Office of Commission Appellate Adjudication  U.S. Nuclear Regulatory Commission  Washington, D.C. 20555  E-mail: <a href="mailto:OCAAMAIL@nrc.gov">OCAAMAIL@nrc.gov</a></p>
<p>Office of the Secretary  Rulemakings and Adjudications Staff  U.S. Nuclear Regulatory Commission  Washington, D.C. 20555  E-mail: <a href="mailto:HEARINGDOCKET@nrc.gov">HEARINGDOCKET@nrc.gov</a></p>	<p>William C. Dennis, Esq.  Entergy Nuclear Operations, Inc.  440 Hamilton Avenue  White Plains, NY 10601  E-mail: <a href="mailto:wdennis@entergy.com">wdennis@entergy.com</a></p>
<p>Stephen C. Filler, Board Member  Hudson River Sloop Clearwater, Inc.  303 South Broadway, Suite 222  Tarrytown, NY 10591  E-mail: <a href="mailto:sfiller@nylawline.com">sfiller@nylawline.com</a></p>	<p>Manna Jo Greene  Hudson River Sloop Clearwater, Inc.  112 Little Market Street  Poughkeepsie, NY 12601  E-mail: <a href="mailto:Mannajo@clearwater.org">Mannajo@clearwater.org</a></p>
<p>Justin D. Pruyne, Esq.  Assistant County Attorney, Litigation Bureau  Of Counsel to Charlene M. Indelicato, Esq.  Westchester County Attorney  148 Martine Avenue, 6<sup>th</sup> Floor  White Plains, NY 10601  E-mail: <a href="mailto:jdp3@westchestergov.com">jdp3@westchestergov.com</a></p>	<p>Joan Leary Matthews, Esq.  Senior Attorney for Special Projects  New York State Department  of Environmental Conservation  625 Broadway, 14<sup>th</sup> floor  Albany, New York 12233-5500  E-mail: <a href="mailto:jlmatthe@gw.dec.state.ny.us">jlmatthe@gw.dec.state.ny.us</a></p>
<p>Zachary S. Kahn, Esq., Law Clerk  Atomic Safety and Licensing Board Panel  U.S. Nuclear Regulatory Commission  Washington, D.C. 20555  E-mail: <a href="mailto:Zachary.Kahn@nrc.gov">Zachary.Kahn@nrc.gov</a></p>	<p>Thomas F. Wood, Esq.  Daniel Riesel, Esq.  Ms. Jessica Steinberg, J.D.  Sive, Paget and Riesel, P.C.  460 Park Avenue  New York, NY 10022  E-mail: <a href="mailto:driesel@sprlaw.com">driesel@sprlaw.com</a>  <a href="mailto:jsteinberg@sprlaw.com">jsteinberg@sprlaw.com</a></p>
<p>Robert D. Snook, Esq.  Assistant Attorney General  55 Elm Street, P.O. Box 120  Hartford, CT 06141-0120  E-mail: <a href="mailto:Robert.Snook@po.state.ct.us">Robert.Snook@po.state.ct.us</a></p>	<p>John L. Parker, Esq.  Regional Attorney, Region 3  New York State Department of  Environmental Conservation  21 South Putt Corners  New Paltz, NY 12561  E-mail: <a href="mailto:jlparker@gw.dec.state.ny.us">jlparker@gw.dec.state.ny.us</a></p>

<p>Elise N. Zoli, Esq.  Goodwin Procter, LLP  53 State Street  Boston, MA 02109  E-mail: <a href="mailto:ezoli@goodwinprocter.com">ezoli@goodwinprocter.com</a></p>	<p>Janice A. Dean, Esq.  Assistant Attorney General  Office of the Attorney General  120 Broadway, 26<sup>th</sup> Floor  New York, NY 10271  E-mail: <a href="mailto:Janice.dean@oag.state.ny.us">Janice.dean@oag.state.ny.us</a></p>
<p>Sherwin E. Turk  Beth N. Mizuno  Brian G. Harris  David E. Roth  Andrea Z. Jones  Office of General Counsel  Mail Stop: 0-15D21  U.S. Nuclear Regulatory Commission  Washington, D.C. 20555-0001  E-mail: <a href="mailto:Sherwin.Turk@nrc.gov">Sherwin.Turk@nrc.gov</a>;  <a href="mailto:Beth.Mizuno@nrc.gov">Beth.Mizuno@nrc.gov</a>; <a href="mailto:brian.harris@nrc.gov">brian.harris@nrc.gov</a>;  <a href="mailto:David.Roth@nrc.gov">David.Roth@nrc.gov</a>; <a href="mailto:andrea.jones@nrc.gov">andrea.jones@nrc.gov</a>;</p>	<p>Daniel E. O'Neill, Mayor  James Seirmarco, M.S.  Village of Buchanan  Municipal Building  236 Tate Avenue  Buchanan, NY 10511-1298  E-mail: <a href="mailto:vob@bestweb.net">vob@bestweb.net</a></p>
<p>Mylan L. Denerstein, Esq.  Executive Deputy Attorney General  120 Broadway, 25<sup>th</sup> Floor  New York, NY 10271  E-mail: <a href="mailto:mylan.denerstein@oag.state.ny.us">mylan.denerstein@oag.state.ny.us</a></p>	

Deborah Brancato  
Deborah Brancato

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