

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

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

In the Matter of ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-0247-LR and
50-286-LR

ASLBP No. 07-858-03-LR-BD01

May 28, 2009

Order

(Denying Riverkeeper's Filing to Preserve Right to Amend Contention TC-2)

On March 18, 2009, Riverkeeper, Inc. ("Riverkeeper") asked this Licensing Board to expressly recognize its right to amend Riverkeeper Contention TC-2 once it has had a chance to review Entergy "basis documents" that the NRC Staff had reviewed in preparing its Safety Evaluation Report with Open Items ("SER").¹ The Board agrees with the NRC Staff² that by seeking an affirmative action by the Board, Riverkeeper's filing was, for all intents and purposes, a motion. Accordingly, we conclude that Riverkeeper's submission must be treated by the Board as a motion, and must be denied because Riverkeeper did not include a certification, as required by 10 C.F.R. § 2.323(b), explaining how it made "a sincere effort" to contact the other parties to resolve the issues raised in the motion prior to its filing.

That being said, the Board does not believe that any motion asking for an advisory decision on this point could be appropriate. Rather, if after a review of the documents it has

¹ Riverkeeper, Inc.'s Preservation of Right to Amend Contention TC-2 – Flow Accelerated Corrosion Based Upon NRC Staff's Safety Evaluation Report with Open Items (Mar. 18, 2009) at 2-3.

² See NRC Staff's Answer to "Riverkeeper, Inc.'s Preservation of Right to Amend Contention TC-2 – Flow Accelerated Corrosion Based Upon NRC Staff's Safety Evaluation Report with Open Items" (Mar. 30, 2009) at 2-3.

requested from Energy, Riverkeeper believes that new information has been discovered that supports a new or amended contention, it can then submit the appropriate petition. The Board will evaluate Riverkeeper's submissions when they are properly before us.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 28, 2009

³ Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for Riverkeeper, Inc.; (5) Manna Jo Green, the Representative for Clearwater; (6) Counsel for the State of Connecticut; (7) Counsel for Westchester County; (8) Counsel for the Town of Cortlandt; (9) Mayor Alfred J. Donahue, the Representative for the Village of Buchanan; and (10) Counsel for the New York City Economic Development Corporation.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-247-LR
)	50-286-LR
(Indian Point Nuclear Generating Station,)	
Units 2 and 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Denying Riverkeeper's Filing to Preserve Right to Amend Contention TC-2), have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001

Administrative Judge
Lawrence G. McDade, Chair

Sherwin E. Turk, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian Harris, Esq.

Administrative Judge
Richard E. Wardwell

Andrea Z. Jones, Esq.
Karl Farrar, Esq.

Administrative Judge
Kaye D. Lathrop
190 Cedar Lane E.
Ridgway, CO 81432

Brian Newell, Paralegal

Zachary S. Kahn, Law Clerk

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

ORDER (Denying Riverkeeper's Filing to Preserve Right to Amend Contention TC-2)

William C. Dennis, Esq.
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Andrew M. Cuomo, Attorney General
John J. Sipos, Assistant Attorney General
Mylan L. Denerstein
Deputy Assistant Attorney General
Division of Social Justice
Janice A. Dean
Assistant Attorney General
Office of the Attorney General
of the State of New York
The Capitol
State Street
Albany, New York 12224

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Martin J. O'Neill, Esq.
Mauri T. Lemoncelli, Esq.
Counsel for Entergy Nuclear Operation, Inc.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Joan Leary Matthews, Esq.
Senior Attorney for Special Projects
New York State Department
of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-5500

Michael J. Delaney
Vice President, Energy Department
New York City Economic Development
Corporation (NYCEDC)
110 William Street
New York, NY 10038

Robert D. Snook, Esq.
Office of The Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Arthur J. Kremer, Chairman
New York Affordable Reliable Electricity
Alliance (AREA)
347 Fifth Avenue, Suite 508
New York, NY 10016

Stephen C. Filler, Board Member
Hudson River Sloop Clearwater, Inc.
303 South Broadway, Suite 222
Tarrytown, NY 10591

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

ORDER (Denying Riverkeeper's Filing to Preserve Right to Amend Contention TC-2)

Daniel E O'Neill, Mayor
James Siermarco, M.S.
Liaison to Indian Point
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298

Manna Jo Greene, Environmental Director
Hudson River Sloop Clearwater
112 Little Markey Street
Poughkeepsie, NY 12601

Thomas F. Wood, Esq.
Town of Cortlandt
Daniel Riesel, Esq.
Jessica Steinberg, J.D.
Counsel for the Town of Cortlandt
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022

Nancy Burton, Esq.
Connecticut Residents Opposed
to Relicensing of Indian Point (CRORIP)
147 Cross Highway
Redding Ridge, CT 06876

Elise N. Zoli, Esq.
Goodwin Proctor, LLP
Exchange Place
53 State Street
Boston, MA 02109

Justin D. Pruyne
Assistant County Attorney, Litigation Bureau
Of Counsel to Charlene M. Indelicato, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601

FUSE USA
John LeKay
Heather Ellsworth Burns-DeMelo
Remy Chevalier
Bill Thomas
Belinda J. Jaques
351 Dyckman Street
Peekskill, New York 10566

Westchester Citizens' Awareness Network
(WestCan), Citizens Awareness Network,
(CAN), et al
Susan H. Shapiro, Esq.
21 Pearlman Drive
Spring Valley, NY 10977

Victor M. Tafur, Senior Attorney
Philip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
828 South Broadway
Tarrytown, NY 10591

Richard L. Brodsky
Assemblyman
5 West Main Street
Suite 205
Elmsford, NY 10523

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

ORDER (Denying Riverkeeper's Filing to Preserve Right to Amend Contention TC-2)

Diane Curran, Esq.
Counsel for Riverkeeper, Inc.
Harmon, Curran, Spielberg,
& Eisenberg, LLP
1726 M. Street NW, Suite 600
Washington, DC 20036

Sarah L. Wagner, Esq.
Legislative Office Building, Room 422
Albany, NY 12248

[Original signed by Linda D. Lewis]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of May 2009