

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell

In the Matter of

ENERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

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

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

June 1, 2012

ORDER

(Denying New York's Motion in Limine and
Holding Riverkeeper's Motion in Limine in Abeyance)

On April 30, 2012, Intervenors the State of New York (New York)¹ and Riverkeeper, Inc. (Riverkeeper)² each moved in limine to exclude portions of the March 2012 evidentiary submissions by Entergy Nuclear Operations, Inc. (Entergy) and the NRC Staff. Consistent with the Board's April 18, 2012 order,³ on May 14, 2012, Entergy⁴ and the NRC Staff⁵ filed timely

¹ State of New York Motion to Strike Portions of Entergy and NRC Staff Witness Testimony as Impermissible Under NRC Regulations (Apr. 30, 2012) [hereinafter New York Motion].

² Riverkeeper, Inc. Motion in Limine to Exclude Portions of Pre-Filed Testimony and Statement of Position Regarding RK-TC-2 (Flow Accelerated Corrosion) (Apr. 30, 2012) [hereinafter Riverkeeper Motion].

³ See Licensing Board Order (Memorializing Items Discussed at April 16, 2012 Pre-Hearing Conference) (Apr. 18, 2012) at 1 (unpublished) (extending time to respond to potential April 2012 motions in limine).

⁴ Entergy's Answer Opposing New York State's Motion to Strike Portions of Entergy Pre-Filed Testimony on Contention NYS-17B (Property Values) and NYS-37 (Energy Alternatives) (May 14, 2012) [hereinafter Entergy Answer to New York Motion]; Entergy's Answer Opposing Riverkeeper, Inc. Motion in Limine to Exclude Portions of Pre-Filed Testimony and Statement of

responses in opposition to the Intervenors' Motions. That same day, Riverkeeper also filed a response supporting New York's Motion in Limine.⁶

For the reasons described below, we deny New York's Motion and hold Riverkeeper's Motion in abeyance pending development of a more robust factual record during the evidentiary hearing.

I. APPLICABLE LEGAL STANDARDS

We have summarized applicable standards regarding motions in limine in NRC hearings in a prior order,⁷ and need not repeat them here. As relevant here, however, we note that 10 C.F.R. § 2.323(b) imposes a consultation requirement before the filing of motions. We also reiterate our exhortation that such consultations should "not [be] initiated at the last minute, but instead commenced sufficiently in advance to provide enough time for the possible resolution of the matter or issues in question."⁸

II. NEW YORK MOTION

New York's Motion in Limine seeks to exclude testimony filed by Entergy pertaining to two contentions. We address these two contentions separately.

Position Regarding RK-TC-2 (Flow-Accelerated Corrosion) (May 14, 2012) [hereinafter Entergy Answer to Riverkeeper Motion].

⁵ NRC Staff's Answer in Opposition to "State of New York Motion to Strike Portions of Entergy and Staff Witness Testimony as Impermissible under NRC Regulations" (May 14, 2012) [hereinafter NRC Staff Answer to New York Motion].

⁶ Riverkeeper, Inc. Response in Support of State of New York Motion to Strike Portions of Entergy and NRC Staff Witness Testimony (May 14, 2012) [hereinafter Riverkeeper Answer to New York Motion]. Entergy filed a response to Riverkeeper's Answer on May 23, 2012. See Entergy's Reply to Riverkeeper, Inc. Response in Support of State of New York Motion to Strike Portions of Entergy Testimony (May 23, 2012) [hereinafter Entergy Reply to Riverkeeper Answer].

⁷ See Licensing Board Order (Granting in Part and Denying in Part Applicant's Motions in Limine) (Mar. 6, 2012) at 3-4 (unpublished) [hereinafter March 6, 2012 Licensing Board Order].

⁸ Licensing Board Scheduling Order (July 1, 2010) at 8 n.23 (unpublished).

A. Contention NYS-17B

On July 6, 2011, we admitted in part Contention NYS-17B, which generally alleges that the NRC Staff's December 2010 Final Supplemental Environmental Impact Statement (FSEIS) for Indian Point Units 2 and 3 (IP2 and IP3) "fails to address the impact of the continued operation of IP2 and IP3 for another 20 years on offsite land use, including real estate values in the surrounding area in violation of 10 C.F.R. §§ 51.71(a), 51.71(d), 51.95(c)(1), and 51.95(c)(4)."⁹

New York's Motion in Limine seeks to exclude portions of the testimony of Entergy's witnesses Donald P. Cleary and C. William Reamer, and the NRC Staff's witness Jeffrey J. Rikhoff, including specific questions posed to these witnesses.¹⁰ New York's Motion rests on three main arguments. First, New York characterizes Entergy's and the NRC Staff's respective testimonies as that of non-attorneys offering legal opinions and conclusions, which it argues is inappropriate and usurps the authority of the Board.¹¹ Second, because National Environmental Policy Act (NEPA)-related documents for Indian Point have already been offered into evidence, New York claims that the testimony from Entergy and the NRC Staff that summarize these

⁹ See Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) at 11, 16-19 (unpublished) [hereinafter July 6, 2011 Licensing Board Memorandum and Order]. In that same order, we summarized the history of NYS-17B and its antecedent contentions NYS-17 and NYS-17A, and thus we need not repeat that history here. See id. at 9-10.

¹⁰ See New York Motion at 2, 6-18. New York's Motion is accompanied by a chart detailing the portions of the testimony it seeks to strike. See id., NYS-17B Chart at 1-7. Specifically, New York seeks to strike questions 28-34, 36-73, and 75-85 (along with corresponding answers) that appear in a document in Entergy's evidentiary submission titled "Testimony of Entergy Witnesses Donald P. Cleary, C. William Reamer, and George S. Tolley Regarding Contention NYS-17B (Property Values)," which is marked for identification as ENT000132 and was filed on March 28, 2012. New York also seeks to strike questions 10-16, 19-20, 22-23, and 32-33 (along with corresponding answers) that appear in a document in the NRC Staff's evidentiary submission titled "NRC Staff's Testimony of Jeffrey J. Rikhoff, Andrew L. Stuyvenberg, and John P. Boska Concerning Contentions NYS-17, 17A and 17B (Land Use)," which is marked for identification as NRC000081 and was filed on March 30, 2012.

¹¹ New York Motion at 6-11.

documents is excessively repetitious and cumulative.¹² Third, New York construes Entergy's and the NRC Staff's descriptions of NEPA and NRC regulations (and these parties' avowed compliance with these laws) as collateral attacks on the Board's decision to admit NYS-17B and its predecessor contentions.¹³

Entergy objects to New York's Motion on several grounds. First, because New York's Motion was filed more than thirty days after submission of Entergy's testimony, Entergy describes New York's Motion as untimely.¹⁴ Second, Entergy asks the Board to reject New York's portrayal of Entergy witnesses as offering legal opinions, and instead maintains that its witnesses are describing the methodology of their review based on their extensive experiences.¹⁵ Third, given that New York's evidentiary presentation is similar to Entergy's, and that this proceeding already has voluminous documents proposed for admission into the evidentiary record, Entergy disagrees with New York's position that Entergy's summary of NEPA-related documents is repetitious and cumulative.¹⁶ Fourth, in light of the fact that the Board has not ruled on the merits of NYS-17B, and that Entergy's witnesses are permitted to discuss their experiences in conducting NEPA-related reviews, Entergy asserts that its testimony does not question the Board's admission of NYS-17B.¹⁷

The NRC Staff also urges the Board to reject New York's Motion. Because New York only mentioned three objectionable questions in its 10 C.F.R. § 2.323(b) consultation and later expanded that list in its actual Motion, the NRC Staff insists that New York has failed to meet its

¹² Id. at 12-14.

¹³ Id. at 14-18.

¹⁴ Entergy Answer to New York Motion at 4.

¹⁵ Id. at 5-9.

¹⁶ Id. at 10-12.

¹⁷ Id. at 12-14.

consultation obligations.¹⁸ The NRC Staff also argues that New York's Motion itself falls short of identifying which testimony is cumulative or repetitious, and that New York is incorrect in characterizing the NRC Staff's testimony as providing improper legal opinion or challenging the Board's decision on the admissibility of NYS-17B.¹⁹

Riverkeeper supports New York's Motion.²⁰ Specifically, Riverkeeper argues that New York's "motion properly seeks the exclusion of testimony that constitutes impermissible legal arguments and conclusions, and should be granted."²¹

We agree with Entergy that New York's Motion in Limine was filed beyond the allotted thirty days after the submission of Entergy's evidence. Given the volume of evidence presented by Entergy and the NRC Staff and the efficiency afforded to all participants in New York's filing a combined motion against Entergy and the NRC Staff, we sua sponte grant New York an extension of that time nunc pro tunc. While we are sympathetic to the quantity of evidence New York had to analyze and the time constraint in which it was bound both to prepare the Motion and to consult with opposing counsel before filing it, we agree to a certain extent with the NRC Staff that New York did not reveal sufficiently its objections to the NRC Staff's testimony when conducting its 10 C.F.R. § 2.323(b) consultation. In order to facilitate dispute resolution and to

¹⁸ NRC Staff Answer to New York Motion at 4-5, 8.

¹⁹ Id. at 5-8.

²⁰ Riverkeeper Answer to New York Motion at 1.

²¹ Id. As further support for its Answer, Riverkeeper notes that "Entergy has similarly offered . . . impermissible testimony [containing legal arguments and conclusions] in relation to Riverkeeper and Clearwater's Consolidated Contention RK-EC-3/CW-EC-1." Id. at 2. Entergy has responded to this claim by arguing that it constitutes an "out-of-time de facto motion in limine in violation of the Board's Scheduling Order." Entergy Reply to Riverkeeper Answer at 2. Riverkeeper's claims regarding RK-EC-3/CW-EC-1 were not included in its April 30, 2012 Motion in Limine, and thus the Board will not treat these claims as a timely motion in limine. As such, we refuse to strike portions of Entergy's RK-EC-3/CW-EC-1 testimony based on the arguments set forth in Riverkeeper's Answer to New York's Motion. Nevertheless, even if we ignore Riverkeeper's procedural flaws and treat Riverkeeper's Answer as its own motion, we still reject it for the same reason that we refuse to treat as improper legal opinion the testimony on NYS-17B and NYS-37 filed by Entergy and the NRC Staff. See infra.

accord to all participants the ability to understand what they might be obliged to respond to, we encourage New York (and each participant) to be as exhaustive as possible in any future Section 2.323(b) consultations.

Nevertheless, we need not reject New York's Motion on those grounds because we reject it on others. We disagree with New York that Entergy and the NRC Staff have provided testimony that is improper for being legal opinion, cumulative, or repetitious. While some of the testimony provided by Entergy and the NRC Staff might appear as statements of a witness's opinion as to what the law requires, we are comfortable exercising our responsibility to interpret independently what the law is. Statements by Entergy's and the NRC Staff's witnesses on the requirements of NRC regulations and NEPA are relevant only inasmuch as they provide to the Board a window into Entergy's and the NRC Staff's processes for complying with NEPA-related obligations. They will not on their face, however, serve to establish whether the FSEIS complies with these obligations. While any summarizations of NEPA-related documents by these witnesses necessarily repeat the contents of these documents, such summarizations might be helpful for us in understanding the context of these documents in the witnesses' opinions. Moreover, such testimony provides a useful cross-reference to the relevant portions of these documents.

We also disagree with New York that Entergy's and the NRC Staff's testimony questions the admissibility of NYS-17B. At the admissibility stage, Entergy and the NRC Staff were permitted to raise objections to the admission of the contention, even if those objections were not accepted by the Board. Now, while the flavor of some of those objections has traveled from the admissibility stage to the evidentiary stage of this proceeding, Entergy and the NRC Staff are free to make merits-based statements contesting New York's merits-based position on this contention. Whether Entergy and the NRC Staff are correct regarding the viability of this contention is what we are called upon to decide in our initial decision on this contention, not in response to a motion in limine.

Therefore, for the foregoing reasons, we deny New York's Motion in Limine to exclude portions of Entergy's and the NRC Staff's testimony on NYS-17B.

B. Contention NYS-37

On July 6, 2011, we admitted in part Contention NYS-37 as follows:

The FSEIS discussion of energy alternatives (Chapter 8) fails to provide a meaningful analysis of energy alternatives or responses to criticism of the [Draft Supplemental Environmental Impact Statement], in violation of the requirements of 42 U.S.C. §§ 4331 and 4332; 10 C.F.R. §§ 51.91(A)(1), and (C), 51.92(2), 51.95(C)(4), and Part 51, Subpart A, Appendix A and Appendix B; 40 C.F.R. §§ 1052.1, 1052.2(G), 1502.9, and 1502.14; and 5 U.S.C. § 551 et seq.²²

The full history of Contention NYS-37 and its predecessor contentions (NYS-9 and NYS-33) was set forth in our March 6, 2012 order.²³

New York's Motion in Limine seeks to exclude portions of Entergy's and the NRC Staff's testimony on NYS-37 for some of the same reasons it seeks to exclude testimony relating to NYS-17B, namely that Entergy and the NRC Staff have improperly offered testimony that New York characterizes as legal opinions and as excessively cumulative and repetitious.²⁴ In addition, New York asserts that portions of Entergy's and the NRC Staff's testimony irrelevantly "address[] the non-existent claim that the FSEIS fails to adequately consider alternatives to relicensing Indian Point."²⁵

²² July 6, 2011 Licensing Board Memorandum and Order at 29, 33-35.

²³ See March 6, 2012 Licensing Board Order at 16-17.

²⁴ New York Motion at 6-14; see also id., NYS-37 Chart at 1-4. Specifically, New York seeks to exclude questions 24-25, 28-32, 36-47, 52, 103, and 156 (and corresponding answers) in a document titled "Testimony of Entergy Witnesses Donald P. Cleary, David Harrison Jr., and Eugene T. Meehan Regarding Contention NYS-37 (Energy Alternatives)," which is marked for identification as ENT000479 and was filed on March 30, 2012. New York also seeks to exclude questions 10-13, 19-20, 31-32, and 47-54 (and corresponding answers) in a document titled "NRC Staff's Testimony of Andrew L. Stuyvenberg Concerning Contention NYS-9, NYS-33 and NYS-37 (Alternatives, Consolidated)," which is marked for identification as NRC000133 and was filed on March 30, 2012.

²⁵ Id. at 18.

In opposition to New York's allegation that portions of Entergy's testimony impermissibly offers legal opinion, Entergy first argues that "expert witnesses will be subject to questioning by the Board and the Board may accord such weight to the testimony as it sees fit, [thus] there is no risk that Entergy's testimony 'usurps the role' of the Board."²⁶ Second, Entergy notes that to the extent its expert testimony summarizes the NEPA-related documents in this proceeding, this expert testimony neither burdens nor complicates the evidentiary record.²⁷

Finally, in response to New York's assertion that portions of Entergy's testimony irrelevantly "address[] the non-existent claim that the FSEIS fails to adequately consider alternatives to relicensing Indian Point,"²⁸ Entergy contends that there is a clear link between FSEIS Section 8.2 (no-action alternative) and FSEIS Section 8.3 (alternative energy sources) because the analysis within the no-action alternative section (8.2) relies on the findings within the alternative energy sources section (8.3).²⁹ Thus, Entergy argues that its testimony regarding alternative energy sources should not be stricken because it provides necessary context for its no-action alternative testimony.³⁰

Similar to its position regarding NYS-17B, the NRC Staff first maintains that New York's Motion as it relates to NYS-37 should be denied in its entirety because New York has fallen short of satisfying its consultation requirements.³¹ Second, the NRC Staff applies to NYS-37 the NRC Staff's argument that portions of its testimony should not be stricken under the pretext that

²⁶ Entergy Answer to New York Motion at 8-9.

²⁷ Id. at 10.

²⁸ New York Motion at 18.

²⁹ See Entergy Answer to New York Motion at 15.

³⁰ See id. at 15-16.

³¹ See NRC Staff Answer to New York Motion at 4-5, 8, 10-11.

this testimony offers impermissible legal opinion.³² Third, because New York notes that portions of the NRC Staff's testimony are repetitious, but does not argue that this testimony is unduly repetitious, the NRC Staff asserts that New York has not met its burden to exclude this testimony.³³

Finally, the NRC Staff asserts that "the entirety of the no-action analysis is not, as New York would like it to be, in FSEIS Section 8.2."³⁴ Instead, the NRC Staff represents that portions of the no-action analysis are in FSEIS Section 8.3.³⁵ Thus, according to the NRC Staff, testimony regarding FSEIS Section 8.3 is not irrelevant to the no-action analysis, and thus should not be stricken.³⁶

For the same reasons stated in Section II.A supra concerning NYS-17B, we deny New York's Motion to exclude portions of Entergy's and the NRC Staff's testimony regarding NYS-37 on the basis that this testimony offers improper legal opinion or is repetitious and cumulative.³⁷

We also reject New York's claim that this testimony irrelevantly addresses FSEIS Section 8.3. The degree to which the FSEIS's alternatives analysis bears on our analysis of the sufficiency of the document's no-action alternative analysis is a merits question that is more appropriately resolved at the evidentiary hearing in this proceeding rather than in ruling on a motion in limine. Thus, at this time, we do not find testimony concerning FSEIS Section 8.3 irrelevant, and therefore deny New York's Motion to exclude this testimony.

³² Id. at 5-6.

³³ See id. at 6-8.

³⁴ Id. at 10.

³⁵ See id. at 10.

³⁶ See id. at 10-11.

³⁷ While it is not dispositive to our holding regarding NYS-37, we also restate here our expectation, mentioned in Section II.A supra, that in the future the parties will engage in more substantial 10 C.F.R. § 2.323(b) consultations.

For the foregoing reasons, we deny New York's Motion in Limine to exclude portions of Entergy's and the NRC Staff's testimony on NYS-37.

III. RIVERKEEPER MOTION

On July 31, 2008, we admitted Contention RK-TC-2 from Riverkeeper's original petition to intervene, which alleges that:

- (1) Entergy's [aging management plan (AMP)] for components affected by [flow-accelerated corrosion (FAC)] is deficient because it does not provide sufficient details (e.g., inspection method and frequency, criteria for component repair or replacement) to demonstrate that the intended functions of the applicable components will be maintained during the extended period of operation; and
- (2) Entergy's program relies on the results from CHECWORKS without benchmarking or a track record of performance at [the Indian Point Energy Center's] power uprate levels.³⁸

On November 4, 2010, we denied Riverkeeper's motion to compel disclosure of documentation concerning the implementation of the CHECWORKS computer code at Indian Point, which related to RK-TC-2.³⁹ Our denial of that motion was partially predicated on Entergy's representation that it (1) had provided and/or agreed to provide to Riverkeeper all CHECWORKS documentation prepared for Indian Point since 1999 that was in its custody and control and (2) could not have relied on any pre-1999 CHECWORKS documentation in its License Renewal Application's (LRA's) AMPs concerning FAC because it lacked access to such documentation.⁴⁰

Riverkeeper's Motion in Limine seeks to exclude portions of (1) the testimony of Entergy's witnesses Ian D. Mew, Nelson F. Azevedo, and Robert M. Aleksick, and (2) Entergy's

³⁸ LBP-08-13, 68 NRC 43, 177 (2008).

³⁹ Licensing Board Order (Ruling on Riverkeeper's Motion to Compel) (Nov. 4, 2010) (unpublished) [hereinafter Nov. 4, 2010 Order]. That same day, we also denied Entergy's motion for summary disposition of RK-TC-2. Licensing Board Memorandum and Order (Ruling on Entergy's Motion for Summary Disposition of Riverkeeper TC-2 (Flow-Accelerated Corrosion)) (Nov. 4, 2010) (unpublished).

⁴⁰ See Nov. 4, 2010 Order at 3-5.

statement of position for RK-TC-2.⁴¹ According to Riverkeeper, given that the Board's November 4, 2010 order stated that Entergy's LRA could not have relied on CHECWORKS information predating information from the late-1990s and that Riverkeeper's expert could not have reviewed this information when preparing his testimony, Entergy's proffered statements relating to CHECWORKS information at Indian Point arising before 2000 must be stricken as irrelevant, immaterial, and/or unreliable.⁴²

Entergy objects to Riverkeeper's Motion.⁴³ Entergy interprets the Board's November 4, 2010 order as both precluding Entergy from relying on documents that have not been disclosed to Riverkeeper and allowing Entergy to describe the CHECWORKS model in its testimony and statement of position.⁴⁴ Entergy represents that the proffered evidence at issue covers documents that have been disclosed to Riverkeeper in the past and that Entergy has, as of March 28, 2012, delivered to Riverkeeper all documents cited in Entergy's testimony relating to CHECWORKS.⁴⁵ Therefore, Entergy reasons, because all documents that Entergy has relied on in its testimony have been provided, its testimony and statements of position should not be

⁴¹ See Riverkeeper Motion at 2, 5-6. The pre-filed testimony at issue is on pages 93-94 of a document titled "Testimony of Entergy Witnesses Ian D. Mew, Alan B. Cox, Nelson F. Azevedo, Jeffrey S. Horowitz, and Robert M. Aleksick Regarding Contention RK-TC-2 (Flow-Accelerated Corrosion)," which is marked for identification as ENT000029 and was filed on March 28, 2012. The statement of position at issue is on pages 31-32 of a document titled "Entergy's Statement of Position Regarding Contention RK-TC-2 (Flow-Accelerated Corrosion)," which is marked for identification as ENT000028 and was filed on March 28, 2012.

⁴² See Riverkeeper Motion at 2-6.

⁴³ Entergy Answer to Riverkeeper Motion at 10.

⁴⁴ Id. at 8-9.

⁴⁵ Id. at 4-6, 8-9 & n.36. We take note that March 28, 2012 was the day Entergy provided its evidentiary submission on RK-TC-2 (as well as other contentions) and that over sixteen months have passed since we issued our order denying Riverkeeper's motion to compel relating to RK-TC-2.

excluded. Moreover, Entergy points out that Riverkeeper has the opportunity to respond to any of Entergy's recently disclosed documents in Riverkeeper's rebuttal testimony.⁴⁶

A central feature of RK-TC-2 is the benchmarking and historical performance of CHECWORKS in relation to FAC at Indian Point.⁴⁷ Our November 4, 2010 order relied in part on Entergy's representations that Entergy lacked the requested documentation of past CHECWORKS performance at Indian Point. After the intervening sixteen months and after Riverkeeper provided its evidentiary submission on RK-TC-2, Entergy apparently has discovered previously unavailable information that would appear directly responsive to Riverkeeper's earlier motion to compel.

We agree with Entergy that Riverkeeper has the opportunity to respond to this now-disclosed information in its rebuttal testimony, but we refrain at this juncture from ruling on Riverkeeper's Motion in Limine. Because the relationship of the past use of CHECWORKS to Entergy's LRA's AMP for FAC is directly relevant to RK-TC-2, we will probe at the oral stage of the evidentiary hearing how this information was relied on by Entergy in preparing its LRA. During the evidentiary hearing we will also inquire into the origin of Entergy's "recently discovered" documents. After this factual record is more fully developed, we will be better supplied with information to understand the history of Entergy's CHECWORKS benchmarking and to resolve Riverkeeper's Motion in Limine.

For the foregoing reasons, we hold Riverkeeper's Motion in Limine in abeyance.

⁴⁶ Id. at 8-10 & n.40.

⁴⁷ See LBP-08-13, 68 NRC at 176-77.

IV. CONCLUSION

We deny New York's Motion in Limine regarding NYS-17B and NYS-37. We hold Riverkeeper's Motion in Limine in abeyance.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 1, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying New York's Motion in Limine and Holding Riverkeeper's Motion in Limine in Abeyance)** have been served upon the following persons by Electronic Information Exchange.

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ORDER (Denying New York's Motion in Limine and Holding Riverkeeper's Motion in Limine in Abeyance)

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ORDER (Denying New York's Motion in Limine and Holding Riverkeeper's Motion in Limine in Abeyance)

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 1st day of June 2012