

April 4, 2016

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO RIVERKEEPER'S REQUEST FOR ADMISSION  
OF NEW ENVIRONMENTAL CONTENTION (CONTENTION RK-EC-11)

INTRODUCTION

In accordance with 10 C.F.R. § 2.309(i), the staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereby submits its answer to Riverkeeper, Inc.'s ("Riverkeeper") motion to admit a new environmental contention (Contention RK-EC-11) in this proceeding, concerning the license renewal application submitted by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") for Indian Point Units 2 and 3 ("Indian Point" or "IP2" and "IP3").<sup>1</sup> In its Motion, Riverkeeper states that it seeks the admission of a "placeholder" contention,<sup>2</sup> whose "sole purpose" is to challenge the NRC's reliance on the Continued Storage Rule ("CSR")<sup>3</sup> and Generic Environmental Impact Statement ("GEIS") for continued spent fuel storage,<sup>4</sup> which the

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<sup>1</sup> See (1) "Riverkeeper's Request for Admission of New Environmental Contention" (Mar. 8, 2016) ("Motion"); (2) Letter from Paul Gallay, Esq. (Riverkeeper) to the Board (Mar. 9, 2016).

<sup>2</sup> Motion at 1, 2.

<sup>3</sup> 10 C.F.R. § 51.23 ("Environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor"). See Final Rule, "Continued Storage of Spent Nuclear Fuel," 79 Fed. Reg. 56,238 (Sept. 19, 2014) ("Continued Storage Rule").

<sup>4</sup> NUREG-2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" (Sept. 2014) ("Continued Storage GEIS"). See "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel," 79 Fed. Reg. 56,263 (Sept. 19, 2014).

Staff cited in its Draft Supplement (Volume 5)<sup>5</sup> to the Final Supplemental Environmental Impact Statement (“FSEIS”) for license renewal of IP2 and IP3.<sup>6</sup> Further, Riverkeeper states that “it does not seek to litigate the substantive content” of its contention;<sup>7</sup> rather, it acknowledges that it has a “reasonable expectation” that [the contention] will be denied, pursuant to the Commission’s decision on virtually identical motions in other cases,<sup>8</sup> but states that it filed the contention to “ensur[e]” that any court decision on Riverkeeper’s pending appeal from the Commission’s CSR and GEIS is applied to the Indian Point license renewal proceeding.<sup>9</sup>

For the reasons set forth below, the Staff respectfully submits that Contention RK-EC-11 should be rejected, in accordance with the Commission’s rejection of substantively identical contentions in numerous other proceedings. More specifically, the Board should reject Riverkeeper’s proposed contention because (a) it challenges the Commission’s rule in 10 C.F.R. § 51.23 without having sought or obtained a waiver as required by 10 C.F.R. § 2.335(a); (b) it fails to raise a genuine dispute on a material issue of fact or law, contrary to 10 C.F.R. § 2.309(f)(vi); and (c) it is most untimely, contrary to 10 C.F.R. § 2.309(f)(2), without any showing of good cause as required by 10 C.F.R. § 2.309(c)(1).

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<sup>5</sup> “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment,” NUREG-1437, Supp. 38, Vol. 5 (Dec. 2015) (“Draft FSEIS Supplement”). See “Draft supplemental environmental impact statement; request for comment,” 80 Fed. Reg. 81,377 (Dec. 29, 2015).

<sup>6</sup> “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report,” NUREG-1437, Supp. 38, Vols. 1-3 (Dec. 2010).

<sup>7</sup> Motion at 1.

<sup>8</sup> *Id.* at 2, citing *Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-15-15, 81 NRC 803 (2015); *Union Electric Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC 546 (2015); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC 551 (2015).

<sup>9</sup> Motion at 2.

## BACKGROUND

### Procedural Background

This proceeding concerns the license renewal application (“LRA”) submitted by Entergy Nuclear Operations, Inc. (“Entergy” or “Applicant”) on April 23, 2007, in which Entergy sought to renew the operating licenses for IP2 and IP3 for an additional period of 20 years. As part of its LRA, Entergy submitted an “Environmental Report” (“ER”), as required by 10 C.F.R. §§ 51.53(c) and 54.23. On May 11, 2007, the NRC published a notice of receipt,<sup>10</sup> and on August 1, 2007, the NRC published a notice of acceptance for docketing and notice of opportunity for hearing on the LRA.<sup>11</sup> On November 30, 2007, petitions for leave to intervene were filed by various petitioners, including Riverkeeper.<sup>12</sup> On July 31, 2008, the Board ruled on the petitioners’ standing to intervene and the admissibility of their contentions, in which it, *inter alia*, granted Riverkeeper’s Petition and admitted several of its contentions.<sup>13</sup>

In December 2010, the Staff published its Final SEIS (FSEIS Volumes 1-3) for license renewal of IP2 and IP3. In June 2013, the Staff published its first Supplement to the FSEIS, addressing new information concerning aquatic impacts;<sup>14</sup> and on December 22, 2015, the Staff published its second Draft FSEIS Supplement, addressing several matters, including, *inter alia*,

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<sup>10</sup> “Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Indian Point Nuclear Generating Unit Nos. 2 and 3; Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period,” 72 Fed. Reg. 26,850 (May 11, 2007).

<sup>11</sup> “Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period,” 72 Fed. Reg. 42,134 (Aug. 1, 2007).

<sup>12</sup> “Riverkeeper, Inc.’s Request for Hearing and Petition to Intervene in the License Renewal Proceeding for the Indian Point Nuclear Power Plant” (Nov. 30, 2007).

<sup>13</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

<sup>14</sup> “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report/ Supplemental Report and Comment Responses,” NUREG-1437, Supp. 38, Vol. 4 (June 2013).

revisions to the FSEIS to account for the Commission's issuance of the Continued Storage Rule in 10 C.F.R. § 51.23 and generic findings in the GEIS for continued fuel storage, published on September 19, 2014.<sup>15</sup> On March 8, 2016 (*i.e.*, 77 days following issuance of the Draft FSEIS Supplement and 536 days after publication of the CSR and Continued Storage GEIS), Riverkeeper filed the instant Motion and Contention RK-EC-11, challenging the Draft FSEIS's reliance on the Commission's Continued Storage Rule and the GEIS for continued fuel storage.

*The Continued Storage Rule*

On August 31, 1984, the Commission issued its Waste Confidence Decision ("WCD").<sup>16</sup> Therein, the Commission made five central determinations, finding "reasonable assurance" that:

(1) Safe disposal of HLW [High Level Waste] and SNF [Spent Nuclear Fuel] in a mined geologic repository is technically feasible;

(2) One or more mined geologic repositories for commercial HLW and SNF will be available by the years 2007-2009, and sufficient repository capacity will be available within 30 years beyond the expiration of any reactor operating license to dispose of existing commercial HLW and SNF originating in such reactor and generated up to that time;

(3) HLW and SNF will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all HLW and SNF;

(4) If necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations (ISFSIs); and

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<sup>15</sup> See Draft FSEIS Supplement, Ch. 6, at 121-23 (revising and updating the Indian Point FSEIS to account for the revisions to 10 C.F.R. § 51.23 and changes to 10 C.F.R. Part 51).

<sup>16</sup> Waste Confidence Decision, 49 Fed. Reg. 34,658 (Aug. 31, 1984).

(5) Safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.<sup>17</sup>

In 1990, the Commission issued an update to the WCD, in which it revised Findings (2) and (4), finding reasonable assurance that:

(2) At least one mined geologic repository will be available within the first quarter of the 21<sup>st</sup> century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial HLW and SNF originating in such reactor and generated up to that time;

(4) If necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin, or at either onsite or offsite ISFSIs.<sup>18</sup>

In 1999, the Commission again reviewed the WCD, and left it in place without revision.<sup>19</sup>

In 2010, following its consideration of public comments on a proposed rule, the Commission adopted a second update to the WCD.<sup>20</sup> Therein, the Commission (a) reaffirmed three of its previous WCD Findings, and (b) updated WCD Findings (2) and (4), finding reasonable assurance that:

(2) Sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary.

(4) If necessary, spent fuel generated in any reactor can be stored safely without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a

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<sup>17</sup> *Id.* at 34,659-60.

<sup>18</sup> Waste Confidence Decision Review, 55 Fed. Reg. 38,474, 38,505 (Sept. 18, 1990).

<sup>19</sup> Waste Confidence Decision Review: Status, 64 Fed. Reg. 68,005, 68,006-07 (Dec. 6, 1999).

<sup>20</sup> Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010).

combination of storage in its spent fuel storage basin and either onsite or offsite independent spent fuel storage installations.<sup>21</sup>

Based on these determinations, the Commission then amended 10 C.F.R. § 51.23(a) in the Temporary Storage Rule (“TSR”).<sup>22</sup>

The Commission’s 2010 revision of 10 C.F.R. § 51.23(a) was challenged by the State of New York (“New York”) and other petitioners, in a petition filed before the U.S. Court of Appeals for the District of Columbia Circuit. On June 8, 2012, the court rendered its decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), in which it held, *inter alia*, that the Commission’s 2010 WCD Update and its revision of 10 C.F.R. § 51.23(a) were invalid. Specifically, the court found that the Commission’s evaluation of the risks of spent nuclear fuel was deficient in that: (a) the Commission’s conclusion that permanent storage will be available when necessary “did not calculate the environmental effects of failing to secure permanent storage,”<sup>23</sup> and (b) its determination that spent fuel can safely be stored at nuclear plant sites for sixty years after the expiration of the plant’s license “failed to properly examine future dangers and key consequences,”<sup>24</sup> by not properly examining “the risk of [spent fuel pool] leaks” and “the potential consequences of pool fires.”<sup>25</sup> On this basis, the court vacated the Commission’s WCD Update and Temporary Storage Rule, and remanded the matter to the Commission.<sup>26</sup>

The court’s ruling in *New York v. NRC* prompted the filing of new contentions in various NRC proceedings. As pertinent here, on July 8 and 9, 2012, Riverkeeper and the other

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<sup>21</sup> *Id.* at 81,038.

<sup>22</sup> Final Rule, “Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation,” 75 Fed. Reg. 81,032 (Dec. 23, 2010).

<sup>23</sup> *New York v. NRC*, 681 F.3d at 473; *cf. id.* at 478-79.

<sup>24</sup> *Id.* at 473; *cf. id.* at 478-79.

<sup>25</sup> *Id.* at 479; *cf. id.* at 481-82.

<sup>26</sup> *Id.* at 483.

Intervenors in this proceeding filed two new contentions (Contentions NYS-39/RK-EC-9/CW-EC-10<sup>27</sup> and CW-SC-4<sup>28</sup>), based on the decision in *New York v. NRC*. On August 7, 2012, the Commission issued CLI-12-16, in which it announced that it “will not issue licenses dependent upon the [WCD] or Temporary Storage Rule until the court’s remand is appropriately addressed.”<sup>29</sup> Further, the Commission stated that “[t]o the extent that [it] takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions” in NRC adjudications; and it directed the Boards to hold all of the newly filed waste confidence/temporary storage contentions in abeyance, pending further Commission order.<sup>30</sup> In accordance with CLI-12-16, on August 8, 2012, this Board ordered that all pleadings concerning Contentions NYS-39/RK-EC-9/ CW-EC-10 and CW-SC-4 be held in abeyance pending further order.<sup>31</sup>

On August 26, 2014, the Commission issued its decision in CLI-14-8.<sup>32</sup> Therein, the Commission lifted its suspension of final licensing decisions, based on its issuance of the GEIS for continued spent fuel storage (NUREG-2157) and a revised rule (10 C.F.R. § 51.23) codifying its generic determinations regarding the environmental impacts of continued spent fuel storage beyond a reactor’s licensed operating life. In addition, the Commission dismissed the long-term

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<sup>27</sup> See “State of New York, Riverkeeper, and Clearwater’s Joint Motion for Leave to File A New Contention Concerning the On-Site Storage of Nuclear Waste at Indian Point” (July 8, 2012); and “State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater’s Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning the On-Site Storage of Nuclear Waste at Indian Point” (July 8, 2012).

<sup>28</sup> See “Hudson River Sloop Clearwater, Inc.’s Motion for Leave to Add A New Contention Based Upon New Information and Petition to Add New Contention” (July 9, 2012).

<sup>29</sup> *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (Aug. 7, 2012).

<sup>30</sup> *Id.* at 67-69.

<sup>31</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order (Holding Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4 in Abeyance)” (Aug. 8, 2012).

<sup>32</sup> *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71 (2014).

storage/waste confidence-related contentions in seven combined license and license renewal proceedings and terminated those proceedings, and it directed the Boards in all proceedings other than *Indian Point* to reject the spent fuel storage/waste confidence contentions pending before them. The Commission directed the Board in *Indian Point*, on the other hand, to dismiss the pending waste-confidence related contentions to the extent they raised issues resolved by the Continued Storage Rule, but to assess whether they raised other admissible matters pursuant to 10 C.F.R. § 2.309.<sup>33</sup>

In accordance with CLI-14-8, on September 17, 2014, the Board directed the Intervenors to provide their views, “regarding the extent to which Contentions CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10 raise issues that have not been resolved by the Continued Storage Rule.”<sup>34</sup> On October 1, 2014, the Intervenors filed their briefs,<sup>35</sup> to which Entergy and the Staff responded on October 15, 2014.<sup>36</sup> In an Order dated November 10, 2014, the Board dismissed Contentions CW-SC-4 and NYS-39/RK-EC-9/CW-EC-10, finding that the issues raised in those contentions had been resolved by the Continued Storage Rule.<sup>37</sup>

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<sup>33</sup> *Calvert Cliffs*, CLI-14-8, 80 NRC at 79-80.

<sup>34</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order (Requesting Briefs on NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4)” (Sept. 17, 2014), at 2 (emphasis in original).

<sup>35</sup> “State of New York, Riverkeeper and Clearwater’s Brief in Response to September 17, 2014 Atomic Safety and Licensing Board Order Concerning Pending Contention NYS-39/RK-EC-9/CW-EC-10 and the On-Site Storage of Nuclear Waste At Indian Point” (Oct. 1, 2014); “Hudson River Sloop Clearwater, Inc.’s Brief Regarding Contention SC-4” (Oct. 1, 2014).

<sup>36</sup> “NRC Staff’s Response to State of New York Riverkeeper and Clearwater’s Brief Concerning Contention NYS-39/RK-EC-9/CW-EC-10 and the On-Site Storage of Nuclear Waste at Indian Point” (Oct. 15, 2014); “NRC Staff’s Response to Hudson River Sloop Clearwater, Inc.’s, Brief Regarding Contention CW-SC-4” (Oct. 15, 2014); “Entergy Answer to Hudson River Sloop Clearwater, Inc Brief re Contention CW-SC-4” (Oct. 15, 2014); “Entergy’s Answer to Intervenors Brief Regarding Proposed Contention NYS-39/RK-EC-9/CW-EC-10” (Oct. 15, 2014).

<sup>37</sup> *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3) “Order (Dismissing Contentions NYS-39/RK-EC-9/CW-EC-10 and CW-SC-4)” (Nov. 10, 2014).

On September 29, 2014, the intervenors in numerous NRC adjudicatory proceedings filed substantively identical petitions to suspend those proceedings, along with motions to admit new contentions and/or reopen the record, based on the alleged absence of safety findings regarding spent fuel disposal in the Commission's Continued Storage Rule;<sup>38</sup> four days later, Riverkeeper filed a substantively identical suspension petition in this proceeding, along with a motion to admit new Contention RK-10.<sup>39</sup> On February 26, 2015, the Commission denied those petitions and motions, and rejected the petitioners' proposed contentions.<sup>40</sup>

On December 22, 2015, the Staff issued its second Draft FSEIS Supplement in this license renewal proceeding; therein, the Staff referenced the Continued Storage Rule and GEIS, and noted that those issuances resolved, generically, all spent fuel storage issues for purposes of the license renewal environmental review.<sup>41</sup> The Staff explained that pursuant to the terms of the Continued Storage Rule (10 C.F.R. § 51.23), the findings in the Continued Storage GEIS are deemed incorporated into the FSEIS for Indian Point.<sup>42</sup> On March 8, 2016 (77 days after issuance of the Draft FSEIS Supplement), Riverkeeper filed the instant Motion, seeking to admit a "placeholder" contention challenging the applicability of the findings in the Continued Storage Rule and the Continued Storage GEIS to the Indian Point license renewal; Riverkeeper did not, however, file a petition for a waiver of the Rule.<sup>43</sup>

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<sup>38</sup> See *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-9, 80 NRC 147, 149 (2014).

<sup>39</sup> See *id.* at 149 n.2; "Riverkeeper's Consolidated Motion for Leave to File a New Contention and New Contention RK-10 Concerning the Absence of Required Waste Confidence Safety Findings" (Oct. 3, 2014); "Petition to Suspend Final Decision in Indian Point Relicensing Proceeding Pending Issuance of Waste Confidence Safety Findings (Oct. 3, 2014).

<sup>40</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221 (2015).

<sup>41</sup> Draft FSEIS Supplement at 121.

<sup>42</sup> *Id.*

<sup>43</sup> See Motion, at 1 and n.2.

## DISCUSSION

### I. Legal Standards Governing the Admission of Contentions

For a contention to be admitted, the contention must meet all of the requirements of 10 C.F.R. § 2.309(f)<sup>44</sup> and must be timely.<sup>45</sup> The requirements for an admissible contention are set out in 10 C.F.R. § 2.309(f)(1), which provides that, to be admissible, a contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]
- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute . . .

The Commission has emphasized that the 10 C.F.R. § 2.309(f)(1) contention admissibility requirements are "strict by design."<sup>46</sup> Failure to comply with any one of the

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<sup>44</sup> 10 C.F.R. § 2.309(a).

<sup>45</sup> 10 C.F.R. § 2.309(b).

<sup>46</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002).

10 C.F.R. § 2.309(f)(1) requirements is grounds for dismissing the proposed contention.<sup>47</sup>

Subsection (iii) of 10 C.F.R. § 2.309(f)(1) explicitly provides that a contention must raise an issue that is within the scope of the proceeding. Challenges to the Commission's regulations and generic determinations are beyond the scope of NRC adjudications.<sup>48</sup> A proposed contention that is otherwise inadmissible as an out-of-scope collateral attack on a Commission rule may, however, be entertained, pursuant to 10 C.F.R. § 2.335, if (1) the proponent of the contention petitions for the waiver of the rule in the particular proceeding, (2) the presiding officer determines that the waiver petition has made a *prima facie* showing that the application of the specific rule would not serve the purposes for which the rule was adopted and then certifies the matter directly to the Commission, and (3) the Commission makes a determination on the matter.<sup>49</sup> If the presiding officer determines that the petitioner has not made the required *prima facie* showing, "no evidence may be received on [the] matter and no discovery, cross examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter."<sup>50</sup> Instead, the participant may challenge the rule by filing a petition for rulemaking under 10 C.F.R. § 2.802.<sup>51</sup>

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<sup>47</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999), *citing Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

<sup>48</sup> *See Arizona Pub. Serv. Co.* (Palo Verde Nuclear Station, Units No. 1, 2, and 3), LBP-91-19, 33 NRC 397, 410 (1991), *appeal granted in part*, CLI-91-12, 34 NRC 149 (1991); *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974), *citing Florida Power & Light Co.* (Turkey Point Units No. 3 and 4), 4 AEC 787, 788 (1972) ("[A] licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process.").

<sup>49</sup> 10 C.F.R. §§ 2.335(b) and (d).

<sup>50</sup> 10 C.F.R. § 2.335(c).

<sup>51</sup> 10 C.F.R. § 2.335(e).

Contentions must also raise a genuine material issue of law or fact with the specific application at bar.<sup>52</sup> In other words, the proponent of the contention must show how resolution of the dispute would make a difference in the outcome of the licensing proceeding.<sup>53</sup> A contention that raises only a generic issue and fails to link that issue to any specific aspect of the pertinent application is inadmissible for failure to raise a genuine material issue.<sup>54</sup> While a disagreement as to the interpretation of the language of a rule may raise a genuine issue of law, a challenge to the rule itself does not.<sup>55</sup> Such a challenge fails because it does not raise a material issue of law as contemplated by the regulation.

Finally, where the original date for the filing of contentions has passed, the provisions of 10 C.F.R. § 2.309(c) apply. Section 2.309(c) provides that contentions filed after the deadline will not be entertained absent a determination by the presiding officer that the proponent of the contention has demonstrated good cause by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Whether a contention is timely filed depends in large part on when the new information became available. However, when information already available is later repeated in a Staff document, the date that controls for timeliness purposes is the date that the information first became

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<sup>52</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>53</sup> *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 354 (2006), *citing* Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (Final Rule).

<sup>54</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 609 (2011).

<sup>55</sup> *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 566, *rev'd in part on other grounds*, CLI-12-19, 76 NRC 377, 383-87 (2012).

available, not the later date when the Staff “collect[ed], summarize[d] and place[d] into context the facts supporting the contention.”<sup>56</sup>

II. Riverkeeper’s Motion Should Be Denied for Failing to Timely Proffer an Admissible Contention.

Riverkeeper’s proposed Contention RK-EC-11 states, in full, as follows:

For all of the reasons stated in Riverkeeper et al.’s Comments on the Proposed Rule and Draft GEIS, the NRC lacks a lawful basis under NEPA for re-licensing Indian Point Units 2 and 3 because it relies on the Continued Spent Fuel Storage GEIS. To summarize, the Draft SEIS for Indian Point Units 2 and 3 incorporates the Continued Spent Fuel Storage Rule, which in turn incorporates the GEIS, into the Draft SEIS.<sup>4</sup> Draft SEIS at iii, 115-123. The Continued Spent Fuel Storage GEIS is inadequate to support the re-licensing of Indian Point Units 2 and 3 because it suffers from the following failures:

- In blatant violation of NEPA and the Court’s decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by “institutional controls” for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act (“NWPA”), but it also defeats the Court’s purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.
- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule enables licensing and relicensing, and therefore it distorts the statement of purpose and need for the rule as relating solely to administrative rather than environmental concerns. As a result, the GEIS also mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.

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<sup>56</sup> *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010). See also *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 224-25 (2011).

- The GEIS' analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk, and ignores a range of causes for accidents.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.

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<sup>4</sup> 10 C.F.R. § 51.23(b) states that the Continued Spent Fuel Storage GEIS is deemed incorporated into EISs prepared under 10 C.F.R. § 51.95 (which governs preparation of draft and final supplemental EISs for reactor licensing and license renewal).<sup>57</sup>

Simply stated, Riverkeeper asserts that the NRC lacks a lawful basis under the National Environmental Policy Act of 1969, as amended (“NEPA”) for re-licensing IP2 and IP3, because of alleged inadequacies in the Commission’s Continued Storage Rule (10 C.F.R. § 51.23) and

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<sup>57</sup> Motion at 5-7; emphasis added.

the generic findings of the Continued Storage GEIS – which are incorporated in the Rule and, in turn, in the Staff’s Draft FSEIS Supplement. Riverkeeper’s contention should be rejected.

A. Contention RK-EC-11 Impermissibly Challenges a Commission Rule and Raises an Issue that Is Beyond the Scope of this Proceeding.

Riverkeeper’s proposed contention explicitly challenges the Commission’s Continued Storage Rule and the Continued Storage GEIS, whose findings are incorporated in that rule. As such, the contention impermissibly challenges a Commission rule, and raises an issue that is beyond the scope of this license renewal proceeding.<sup>58</sup> Indeed, as Riverkeeper, itself, notes, the Commission has previously rejected substantively identical contentions.<sup>59</sup> Thus, in *Callaway* and a number of other proceedings (some consolidated), the Commission rejected substantively identical proposed contentions, holding that such a “placeholder” contention is not admissible under the Commission’s rules of practice, because it impermissibly challenges an agency regulation and is therefore outside the scope of an individual licensing proceeding.<sup>60</sup>

Indeed, an examination of the proposed contention reveals that every alleged failure and violation of NEPA that Riverkeeper asserts is an alleged failure or violation of NEPA resulting from the Commission’s Continued Storage Rule or GEIS.<sup>61</sup> Riverkeeper’s only complaint regarding the Staff’s Draft FSEIS Supplement is the fact that the Staff therein updated and revised its previous FSEIS by citing the Continued Storage Rule and incorporated therein the generic environmental impacts described in the Continued Storage GEIS.<sup>62</sup>

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<sup>58</sup> See 10 C.F.R. § 2.309(f)(1)(iii).

<sup>59</sup> See Motion at 2.

<sup>60</sup> *Callaway*, CLI-15-11, 81 NRC at 549; *accord*, *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-27, 82 NRC \_\_\_ (slip op. at 1-2); *Lee*, CLI-15-15, 81 NRC at 804-05 (consolidated ruling in nine proceedings); *Fermi*, CLI-15-12, 81 NRC at 553.

<sup>61</sup> See Motion at 6-7.

<sup>62</sup> *Id.* at 6.

As discussed *supra* at 10-11, NRC regulations bar challenges to the Commission's rules. Thus, 10 C.F.R. § 2.335(a) provides that "no rule or regulation of the Commission, or any provision thereof, . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part." Contentions that challenge Commission regulations or its regulatory processes are beyond the scope of adjudicatory proceedings and have been regularly dismissed as such.<sup>63</sup> Most recently and to the point, the Commission held that substantively identical proposed contentions in *Callaway* and a number of other proceedings were inadmissible because they impermissibly challenged an agency regulation and were therefore outside the scope of individual licensing proceedings.<sup>64</sup> Further, in CLI-14-08, its previous decision regarding continued spent fuel storage, the Commission stated, "Contentions that are the subject of general rulemaking by the Commission may not be litigated in individual license proceedings."<sup>65</sup> As the Commission explained, "[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings."<sup>66</sup> For this reason, contentions that challenge the NRC's generic environmental impact statement for license renewal have been rejected in case after case.<sup>67</sup> Consistent with recent decisions in *Callaway*

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<sup>63</sup> See, e.g., *Callaway*, CLI-15-11, 81 NRC at 549; *Fermi*, CLI-15-12, 81 NRC at 553; *Palo Verde*, LBP-91-19, 33 NRC at 400, 410, *appeal granted in part*, CLI-91-12, 34 NRC 149 (1991); *Peach Bottom*, ALAB-216, 8 AEC at 20, *citing Florida Power & Light Co.* (Turkey Point Units No. 3 and 4), 4 AEC 787, 788 (1972) ("[A] licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process.").

<sup>64</sup> *Callaway*, CLI-15-11, 81 NRC at 549; *Fermi*, CLI-15-12, 81 NRC at 553.

<sup>65</sup> *Calvert Cliffs*, CLI-14-08, 80 NRC at 79 n.27, *citing Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999).

<sup>66</sup> *Calvert Cliffs*, CLI-14-08, 80 NRC at 79.

<sup>67</sup> See, e.g., *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 386 (2012), *remanding*, LBP-13-1, 77 NRC 57 (2013), *aff'g on other grounds*, CLI-13-7, 78 NRC 199 (2013); *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-03, 65 NRC 13, 20 (2007); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-12 (2001).

and a number of other proceedings, as well as CLI-14-08 and longstanding case law, the Board should reject Riverkeeper's challenge to the Continued Storage Rule and GEIS.

Notwithstanding this conclusion, the Staff notes that, in accordance with the provisions of 10 C.F.R. § 2.335, Riverkeeper could have challenged the Continued Storage Rule and GEIS in this adjudicatory proceeding if it had sought and obtained a waiver of the rule. In order to obtain such a waiver, 10 C.F.R. § 2.335(b) requires that the movant file an affidavit demonstrating that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the regulation would not serve the purposes for which the regulation was adopted. But Riverkeeper has not done this; instead, Riverkeeper frankly states that "its contention is not accompanied by a petition for a waiver," asserting that "[n]o purpose would be served by such a waiver, because Riverkeeper does not seek an adjudicatory hearing on the NRC's generic environmental findings."<sup>68</sup> Rather, Riverkeeper asserts that its "only purpose in raising its contention is to ensure that any decision by the U.S. Court of Appeals regarding the validity of the Continued Spent Fuel Storage Rule and GEIS will also be applied to this proceeding, in which the NRC relies on them."<sup>69</sup> Given that Riverkeeper's proposed contention challenges the NRC's Continued Storage Rule and GEIS, and Riverkeeper has affirmatively decided to forego filing a petition for waiver of the rule, its Motion must be denied.<sup>70</sup>

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<sup>68</sup> Motion at 2 n.2.

<sup>69</sup> *Id.*

<sup>70</sup> See *Limerick*, CLI-12-19, 76 NRC at 386-87; *Callaway*, CLI-15-11, 81 NRC at 549.

B. Contention RK-EC-11 Fails to Raise a Genuine Dispute of a Material Issue of Fact or Law.

It is well established that an admissible contention “must raise a genuine dispute with the license application” in order to demonstrate that a material issue for hearing exists.<sup>71</sup> Here, Riverkeeper asserts, without referencing any specific portions of the Indian Point LR application, that its contention “raises a genuine dispute with both the applicant and the NRC regarding whether the NRC has satisfied NEPA for the purpose of renewing the operating license for Indian Point Units 2 and 3.”<sup>72</sup> In fact, however, all that Riverkeeper disputes is the Staff’s incorporation of the Continued Storage Rule and GEIS into the Draft FSEIS Supplement.<sup>73</sup> This incorporation, however, was mandated by the Commission. Thus, the Continued Storage Rule states, in pertinent part, as follows:

(a) The Commission has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG-2157, “Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.”

(b) The environmental reports described in §§ 51.50, 51.53 [Post-construction environmental reports] and 51.61 are not required to discuss the environmental impacts of spent nuclear fuel storage in a reactor facility storage pool or an ISFSI [(Independent Spent Fuel Storage Installation)] for the period following the term of the reactor operating license . . . or ISFSI license. The impact determinations in NUREG-2157 [the Continued Storage GEIS] regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95 [Post-construction environmental impact statements] and 51.97(a). . . .<sup>74</sup>

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<sup>71</sup> *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 709 (2012).

<sup>72</sup> Motion at 8.

<sup>73</sup> *Id.* at 5-6.

<sup>74</sup> 10 C.F.R. § 51.23(a)-(b) (emphasis added).

Moreover, in accordance with the explicit language of the rule, the generic findings of the Continued Storage GEIS may be deemed to be incorporated into the Staff's FSEIS by operation of law, wholly apart from the Staff's recitation of the rule and its generic findings in the Draft FSEIS Supplement.<sup>75</sup>

Riverkeeper's proposed contention thus fails to raise a genuine dispute regarding a material issue of law or fact. As the Board in *Limerick* observed, "while a disagreement over the proper interpretation of NRC regulations may give rise to an admissible contention," an interpretation that is in direct conflict with the plain meaning of a regulation and the agency's Statements of Consideration fails "to present a genuine dispute of fact or law . . . as required by NRC regulations."<sup>76</sup> Riverkeeper's proposed contention, which is in direct conflict with the Continued Storage Rule, fails to present a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi) and should therefore be rejected.

C. The Proposed Contention Is Untimely Without Good Cause.

Riverkeeper's proposed contention could only be entertained if it was filed in a timely manner, based on the availability of previously unavailable and materially different information.<sup>77</sup> That did not occur here. Riverkeeper asserts that the Draft FSEIS Supplement became available on December 29, 2015, and that the Draft FSEIS Supplement incorporates what Riverkeeper considers to be an inadequate Continued Storage GEIS.<sup>78</sup> However, Riverkeeper does not argue that its proposed contention is timely based on new and material information in the Draft FSEIS supplement. Rather, Riverkeeper argues that its Motion is timely in that the

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<sup>75</sup> See *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535, 539 (2015) (holding that, by the terms of the plain language of 10 C.F.R. § 51.23(b), the environmental impacts in the Continued Storage GEIS have already been incorporated into the NRC's environmental evaluations in individual licensing proceedings "by operation of law").

<sup>76</sup> *Limerick*, LBP-12-8, 75 NRC at 566.

<sup>77</sup> 10 C.F.R. § 2.309(c)(1).

<sup>78</sup> Motion at 4 & 5-6.

Motion “does not depend at all on past information,” and could therefore be filed at any time before the NRC issues its license renewal decision.<sup>79</sup>

Riverkeeper’s assertions are without merit. First, the entirety of Riverkeeper’s proposed contention is a challenge to the Continued Storage Rule and GEIS;<sup>80</sup> the contention does indeed depend upon past information, in that it relies on the Continued Storage Rule and GEIS themselves, which were published in September 2014.<sup>81</sup> Riverkeeper thus had an obligation to file its contention over 16 months ago (as other intervenors did in numerous other proceedings), upon issuance of the rule or the effective date thereof, at the latest.<sup>82</sup> Moreover, although the Draft FSEIS Supplement formally adopts the findings of the Continued Storage Rule and GEIS, those findings were already applicable to Indian Point by operation of law;<sup>83</sup> for this reason, also, Riverkeeper should have filed its contention upon issuance of the CSR and Continued Storage GEIS in September 2014, not upon the Staff’s subsequent incorporation of the rule in the Draft FSEIS Supplement.

Second, even if Riverkeeper’s contention had framed a challenge to the Staff’s Draft FSEIS Supplement, the Motion should still be denied as untimely. Riverkeeper filed its Motion 77 days after the Staff notified Riverkeeper and other parties of the availability of the Draft FSEIS Supplement.<sup>84</sup> In accordance with applicable requirements in this proceeding,

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<sup>79</sup> Motion at 8-9.

<sup>80</sup> *Id.* at 6-7.

<sup>81</sup> See 79 Fed. Reg. at 56,238.

<sup>82</sup> Additionally, Riverkeeper notes that its contention is “virtually identical” to contentions filed in other proceedings a year ago or more. See Motion at 2. The fact that Riverkeeper waited this long to file a substantively identical contention in *Indian Point* only reinforces the contention’s untimeliness.

<sup>83</sup> See 10 C.F.R. § 51.23(b) (the findings of the Continued Storage GEIS are “deemed incorporated” into license renewal environmental impact statements); *Fermi 3*, CLI-15-10, 81 NRC at 539.

<sup>84</sup> See Letter from Sherwin E. Turk to the Board (Dec. 22, 2015), forwarding copies of the Draft FSEIS Supplement to the Board and parties and advising that the document is available in the NRC’s Agencywide Documents Access and Management System (“ADAMS”) at Accession No. ML15351A422).

Riverkeeper should have filed its contention no later than 30 days,<sup>85</sup> or at most, 60 days,<sup>86</sup> after the Draft FSEIS Supplement was published. It did not do so.

Finally, Riverkeeper asserts that its Motion is timely because it “depends on an event that will occur in the future,” namely, the U.S. Court of Appeals’ eventual decision on pending appeals regarding the sufficiency of the Continued Storage Rule and GEIS.<sup>87</sup> However, Riverkeeper cites no authority for its assertion that timeliness should be measured from an event that has not yet occurred. Such a theory could be used to support the endless filing of late contentions, based on a claim that some event in the future may eventually provide a basis for the filings. Riverkeeper’s assertions should be rejected as without merit, and its Motion should be rejected as untimely under 10 C.F.R. § 2.309(f)(2), without any showing of good cause as required by 10 C.F.R. § 2.309(c)(1).

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<sup>85</sup> See (1) *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Amended Scheduling Order” (June 7, 2011), at 2 (contentions to be filed no later than 30 days after issuance of SER Supplement); (2) *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Scheduling Order” (July 1, 2010), at 6 (“A motion and proposed new contention . . . shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. . .”).

<sup>86</sup> See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Order (Establishing Deadline for New and Amended Contentions)” (July 9, 2013) (new contentions to be filed within 60 days after publication of Staff’s first FSEIS Supplement), *cited in* “Entergy’s Opposition to Proposed New York State Contention NYS-40 Regarding Severe Accident Mitigation Alternatives” (Mar. 18, 2016) at 9.

<sup>87</sup> Motion at 8.

CONCLUSION

As discussed above, Riverkeeper's Motion (a) impermissibly challenges the Commission's rule in 10 C.F.R. § 51.23 without having sought or obtained a waiver as required by 10 C.F.R. § 2.335(a); (b) fails to raise a genuine dispute on a material issue of fact or law, contrary to 10 C.F.R. § 2.309(f)(vi); and (c) is untimely under 10 C.F.R. § 2.309(f)(2), without any showing of good cause as required by 10 C.F.R. § 2.309(c)(1). Accordingly, Riverkeeper's Motion should be denied, and proposed Contention RK-EC-11 should be rejected.

Respectfully submitted,

**/Signed (electronically) by/**

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Executed in Rockville, Maryland  
This 4<sup>th</sup> day of April 2016.

**Executed in accord with 10 C.F.R. § 2.304(d)**

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Executed in Rockville, Maryland  
This 4<sup>th</sup> day of April 2016.

CERTIFICATION OF COUNSEL

In accordance with the Atomic Safety and Licensing Board's "Scheduling Order" of July 1, 2010 (at 8), I hereby certify that I have made a sincere effort to make myself available to listen and respond to Riverkeeper, and to resolve the factual and legal issues raised in "Riverkeeper's Request for Admission of New Environmental Contention," and that my efforts to resolve the issues have been unsuccessful.

Executed this 4<sup>th</sup> day of April 2016.

Executed in accord with 10 C.F.R. § 2.304(d)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO RIVERKEEPER'S REQUEST FOR ADMISSION OF NEW NRC ENVIRONMENTAL CONTENTION", dated April 4th, 2016, have been served via the NRC's Electronic Information Exchange (the NRC's E-Filing System), in the above captioned proceeding, this 4th day of April 2016.

**/Signed (electronically) by/**

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