

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

ENTERGY 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

April 15, 2016

MEMORANDUM AND ORDER

(Denying Riverkeeper's Request for Admission of a New Contention)

I. Background

On March 8, 2016, Riverkeeper moved for the admission of a new environmental contention, RK-EC-11.<sup>1</sup> In its motion, Riverkeeper stated that it “seeks admission of a single ‘place-holder’ contention challenging the Nuclear Regulatory Commission’s (‘NRC’s’) reliance, in proposing to re-license Indian Point Units 2 and 3, on the Continued Storage of Spent Nuclear Fuel Rule . . . and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel” (Continued Storage Rule and GEIS).<sup>2</sup> Riverkeeper specified that “while [it] seeks admission of its contention, it does not seek to litigate the substantive content of the contention in an adjudicatory hearing,” as it has “already raised its concerns” about the regulation at issue in comments on draft versions of those documents, which the NRC “has

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<sup>1</sup> Riverkeeper's Request for Admission of New Environmental Contention (Mar. 8, 2016) [hereinafter Riverkeeper Motion].

<sup>2</sup> Id. at 1.

already rejected or disregarded.”<sup>3</sup> The Continued Storage Rule and GEIS are currently on appeal to the U.S Court of Appeals for the District of Columbia Circuit.<sup>4</sup>

The NRC Staff and Entergy Nuclear Operations, Inc. (Entergy) both oppose Riverkeeper’s request,<sup>5</sup> arguing that the new contention is outside the scope of this individual licensing proceeding because it challenges an agency regulation and is therefore inadmissible.<sup>6</sup> The Staff and Entergy both also contend that the motion is untimely.<sup>7</sup> The NRC Staff further challenge the motion as failing to raise a genuine dispute of a material issue of fact or law.<sup>8</sup>

## II. Board Ruling

The Board views RK-EC-11 as an attack on the agency’s Continued Storage Rule<sup>9</sup> and GEIS.<sup>10</sup> The Commission has previously denied as inadmissible substantially similar challenges

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<sup>3</sup> Id.

<sup>4</sup> Id. at 2 (citing Beyond Nuclear v. NRC, Docket No. 14-1216 (filed Oct. 29, 2014)). This case was consolidated with several similar appeals and is now captioned New York et al. v. NRC, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed Oct. 31, 2014). Riverkeeper Motion at 2, note 1. The case has been argued and the parties await a decision. Id. at 5.

<sup>5</sup> See NRC Staff’s Answer to Riverkeeper’s Request for Admission of New Environmental Contention (Contention RK-EC-11) (Apr. 4, 2016) [hereinafter NRC Answer]; Entergy’s Opposition to Riverkeeper’s Proposed “Placeholder” Contention RK-EC-11 Concerning the Continued Storage Rule (Apr. 4, 2016) [hereinafter Entergy Answer].

<sup>6</sup> NRC Answer at 15; Entergy Answer at 6–7 (citing Union Elec. Co. (Callaway Nuclear Power Plant, Unit 1) CLI-15-11, 81 NRC 546, 549 (2015)). See also 10 C.F.R. § 2.309(f)(1)(iii) (providing that an admissible contention must “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding”).

<sup>7</sup> NRC Answer at 19; Entergy Answer at 9. In its motion, Riverkeeper argued that the filing was timely because its admissibility “depends entirely on an event that will occur in the future,” namely the ruling on the appeal before the DC Circuit. Riverkeeper Motion at 8.

<sup>8</sup> See Staff Answer at 18–19.

<sup>9</sup> See 79 Fed. Reg. 56,238 (Sept. 19, 2014).

<sup>10</sup> See Waste Confidence Directorate, Office of Nuclear Material Safety and Safeguards, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel,

in numerous separate operating license proceedings for this same reason.<sup>11</sup> Accordingly, we find that pursuant to 10 C.F.R. § 2.309(f)(1)(iii), Riverkeeper's proposed contention, a direct challenge to an NRC regulation, is outside the scope of this individual license renewal proceeding for Indian Point Units 2 and 3 and is therefore inadmissible. The motion is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell  
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 15, 2016

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NUREG-2157 (Sept. 2014) (Vol. 1, ADAMS Accession No. 14196A105) (Vol. 2, ADAMS Accession No. ML14196A107).

<sup>11</sup> See Callaway, CLI-15-11, 81 NRC at 549 (2015); DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC 551, 553–54 (2015); Duke Energy Carolinas, LLC (William States Lee III Nuclear Station, Units 1 and 2), CLI-15-15, 81 NRC 803, 804 (2015)).

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(Indian Point Nuclear Generating, )  
Units 2 and 3) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Riverkeeper's Request for Admission of a New Contention)** have been served upon the following persons by Electronic Information Exchange.

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**MEMORANDUM AND ORDER (Denying Riverkeeper's Request for Admission of a New Contention)**

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

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Dated at Rockville, Maryland  
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