

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

In the Matter of )	
Entergy Nuclear Operations, Inc. )	Docket Nos.
(Indian Point Nuclear Generating )	50-247-LR
Units 2 and 3) )	and 50-286-LR
	February 3, 2011

**RIVERKEEPER, INC. AND CLEARWATER, INC. CHALLENGE TO NRC  
STAFF’S ASSESSMENT OF IMPACTS OF SPENT FUEL POOL LEAKS IN  
THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 (“Consolidated Contention”) initially challenged Entergy Nuclear Operations, Inc.’s (“Entergy”) assessment of the current and future environmental impacts of ongoing spent fuel pool leaks and groundwater contamination.<sup>1</sup> On December 22, 2008, the Nuclear Regulatory Commission (“NRC”) Staff issued Draft Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3 (“DSEIS”), which relied upon and accepted Entergy’s arguments concerning the environmental impacts of the spent fuel pool leaks and ultimately arrived at the same conclusions as Entergy regarding the significance of the leakage.<sup>2</sup>

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<sup>1</sup> See Riverkeeper, Inc.’s Request for Hearing and Petition to Intervene in Indian Point License Renewal Proceeding, November 30, 2007, ADAMS Accession No. ML073410093 (“Riverkeeper Petition for Hearing”), at 74-86; Consolidated Contention of Petitioners Riverkeeper, Inc. (EC-3) and Hudson River Sloop Clearwater, Inc. (EC-1)-Spent Fuel Pool Leaks (August 21, 2008), ADAMS Accession No. ML082420284.

<sup>2</sup> Specifically, in the DSEIS, the NRC Staff, just like Entergy, completely focused on the findings that there were no drinking water exposure pathways affected by the contaminated groundwater and that the maximum dose to humans from consumption of aquatic foods was within regulatory limits. DSEIS at 2-107 to 2-108. To support this line of thinking, the NRC Staff pointed to a groundwater investigation performed by New York State which made the same findings. *Id.* at 2-108 to 2-109. 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 came to a conclusion identical to Entergy’s: that “while the information related to spent fuel pool leakage is new, it is not significant.” *Id.* at 2-107, 4-36, 4-49.

Since the NRC Staff's assessment in the DSEIS mirrored Entergy's evaluation of the spent fuel pool leaks, it failed to address any of the concerns raised by the Consolidated Contention. Therefore, on February 27, 2009, Riverkeeper and Clearwater (hereinafter "Riverkeeper") filed a pleading challenging the NRC Staff's assessment of groundwater contamination from spent fuel pool leaks in the DSEIS as suffering from the same deficiencies articulated in the Consolidated Contention.<sup>3</sup> Riverkeeper did not file an amended contention because the assessment and conclusions in the DSEIS did not "differ significantly" from the information Riverkeeper based the Consolidated Contention on.<sup>4</sup> However, since "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,"<sup>5</sup> Riverkeeper filed the challenge to the DSEIS to request that the Atomic Safety and Licensing Board ("ASLB") apply the Consolidated Contention against the NRC Staff's DSEIS as equally as against the applicant's assessment.<sup>6</sup> On May 27, 2009, the

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<sup>3</sup> Riverkeeper, Inc.'s Challenge to NRC Staff's Assessment of Impacts of Spent Fuel Pool Leaks in the Draft Supplemental Environmental Impact Statement (February 27, 2009), ADAMS Accession No. ML090820633. Riverkeeper's challenge incorporated all of the arguments made in the Consolidated Contention to apply not just to Entergy's assessment, but also to the NRC Staff's essentially identical analysis. *Id.* at 2.

<sup>4</sup> 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 or final environmental impact statement that "differ significantly" from the data or conclusions in the applicant's documents. In this case, there were no data or conclusions in the NRC Staff's DSEIS that "differed significantly" from Entergy's submissions. Quite the contrary, the NRC Staff's data and conclusions in the DSEIS did not present any information that differed at all, let alone significantly, from the analysis put forth by Entergy. In fact, the NRC Staff essentially adopted Entergy's assessment of groundwater contamination from spent fuel pool leaks. Accordingly, Riverkeeper did not believe it was required to burden the ASLB with an unnecessary amendment to the Consolidated Contention.

<sup>5</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). 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." *Id.*; 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.").

<sup>6</sup> Based on NRC precedent, this is entirely appropriate. 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

ASLB granted Riverkeeper's request and "recognize[d] that the Consolidated Contention now applies to the Draft SEIS."<sup>7</sup>

On December 3, 2010, NRC Staff issued the Final Supplemental Environmental Impact Statement ("FSEIS") concerning the license renewal of Indian Point. The FSEIS contains an analysis of the spent fuel pool leaks that is substantively the same (and in fact, largely verbatim) as that in the DSEIS, and arrives at the same exact conclusions as in the DSEIS.<sup>8</sup> Thus, the FSEIS now too fails to address any of the concerns raised by the Consolidated Contention. While, once again, it is not necessary for Riverkeeper to formally amend the Consolidated Contention since there is no significantly different information in the FSEIS,<sup>9</sup> Riverkeeper requests that the ASLB now recognize that the Consolidated Contention applies to the relevant analysis and conclusions in the FSEIS.

Respectfully submitted,



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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).

<sup>7</sup> Order (Applying Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 to the NRC Staff's Draft Supplemental Environmental Impact Statement), May 28, 2009, ADAMS Accession No. ML091480466.

<sup>8</sup> See FSEIS at 2-110 to 2-2-112, 4-40 to 4-42, 4-56.

<sup>9</sup> See *supra* note 4.