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The End of the NRC Rubber Stamp?

By Abby Luby

On Friday, a major victory by New York State upset the Nuclear Regulatory Commission's rubber stamp process to relicense the Indian Point Nuclear Power Plant. [The historical decision](#) by the Atomic Safety and Licensing Board ruled in favor of a petition served by New York Attorney General Eric Schneiderman that argued the NRC's environmental review violated the law.

This was the first successful motion of its kind and it heralds the growing trend to battle "business as usual" when it comes to relicensing aging nuclear power plants who want to stay in business past their 40-year life expectancy. The AG alleged that the NRC and Indian Point owner Entergy violated federal regulations which allowed the utility company to omit key safety items that address accident analyses as part of their relicensing application.

The victory signals that the culture presumptive relicensing is finally beginning to change

The usual nod from the Nuclear Regulatory Commission has been the status quo for an approval that, so far at least, has been just about guaranteed. The NRC, the federal oversight agency for nuclear power plants, has never rejected a single application tendered by any utility company seeking to keep their reactors on line.

Recently, the NRC rubber-stamped two new licenses for the Salem Generating Plants in New Jersey. Owned by PSEG (Public Service Enterprise Group), the reactors are in Salem County, about 40 miles south of Philadelphia. The Salem reactors now top the list of the 66 nuclear power plants the NRC has re-licensed for another 20 years; the agency is reviewing applications for another 16 reactors.

But the days of uncontested, rubber-stamp relicensing may be drawing to an end. A new generation of legal warriors, armed with scheduled appeals and hotly debated contentions, have slowed some relicensing procedures to a glacial pace. Today, relicensing applicants may encounter committed opposition in high places they didn't bargain for.

Entergy, the utility company that owns the Indian Point Nuclear Power plants in Westchester, New York, applied for a new license in 2007 to keep their twin reactors running until 2033 and 2035. Their licenses expire in 2013 and 2015. Entergy's application incensed then Attorney General of New York, Andrew Cuomo, who claimed that a plethora of issues had been blatantly ignored. Two weeks ago, now [Governor Cuomo, met with Entergy](#) officials reiterating his fight to shutter the Indian Point.

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Cuomo now has at his back a new law that streamlines the siting of new power plants that could potentially replace electricity from Indian Point. The State has put another roadblock in the way of relicensing the plant by denying Entergy's application for a Water Quality Certification, which is required for a new operating license. The New York State Department of Environmental Conservation said [Entergy was appealing](#) the decision.

Entergy is also battling the state of Vermont who ruled last year to close their Vermont Yankee plant by 2012. Entergy, seeking to block the state decision, has filed a complaint against Vermont in US District Court, although the NRC approved the relicensing for the plant in March, 2011 for an additional 20 years. Vermont Yankee is not the only nuclear plant whose relicensing application has dragged on for years. The relicensing process for Entergy's Pilgrim Station reactor in Plymouth, Massachusetts, whose current license expires in June of 2012, has also gotten bogged down under a swelling list of contentions.

For utility companies, applying for a new license is an arduous process requiring thousands of documents for the NRC and specially formed review boards. The boards conduct public hearings -- a practice supposed to demonstrate transparency but which rarely amounts to more than a masked dog and pony show. The real, laborious reviews take place inside the NRC's administrative law process within its licensing body, the Atomic Safety and Licensing Board (ASLB). But these are tightly controlled and severely restricted in scope to one item: the safe management of the reactor's aging components. The reviews typically and glaringly omit such considerations as terrorism, health effects -- think cancer clusters near nuke plants -- safety procedures, evacuations.

When Entergy applied to renew Indian Point's license, several organizations filed contentions raising these sorts of considerations shortly after in 2008, only to be systematically turned down as irrelevant by the ASLB. It rejected former Westchester County Executive Andy Spano who argued that the NRC should hold Indian Point to the same standards as they do for newly built reactors, especially in population density.

Other hot-button contentions argued by both New York State and Riverkeeper were likewise rejected: failure of the applicant to address the risk of a terrorist attack on Indian Point's now full-to-capacity spent fuel pools and underestimating the population density around the plant and its [consequences for evacuation](#) in case of an accident or attack.

Just a few weeks ago the NRC gave Riverkeeper a "thumbs down" on two additional contentions: argued first was that Indian Point emergency preparedness was inadequate; and second, that 1500 tons of highly radioactive spent nuclear fuel sitting in dry cask storage on a tarmac next to the plant, was unsafe. (Considerably more spent fuel fills the Indian Point spent fuel pools which contain roughly [three times the radioactivity](#) of Fukushima according to the recent Bob Alvarez study from IPS).

The NRC claims that contentions concerning spent fuel are not applicable to the relicensing process because the agency already addresses radioactive waste on a regular basis.

Also dismissed was the Hudson River Sloop Clearwater's complaint that the regulatory process ignored higher-than average cancer rates in communities around Indian Point. That concern was echoed by the citizen's group Connecticut Residents Opposed to Relicensing of Indian Point (CRORIP), which claimed the renewal application didn't look at negative health effects from cumulative radiation exposure from routine and accidental accidents. Meanwhile, independent studies and investigative reporting continues to find [escalating rates of thyroid](#) cancer in and around Indian Point.

In total, over 154 contentions were filed by 15 government entities and groups against the relicensing of Indian Point - the most of any license renewal in the history of the NRC. Now, well past four years of reviews, appeals, hearings and court appearances, the ASLB has rejected contentions from the Rockland County Conservation Association, Public Health and Sustainable Energy, the Sierra Club-Atlantic Chapter, WestCAN, then Assemblyman Richard Brodsky, and many others. The original 154 contentions has been whittled down to 15.

At present, notwithstanding dismissed contentions, the NRC has found Entergy's relicensing application for Indian Point, "acceptable." A Safety Evaluation Report will be issued by August 19, 2011, which is when "intervenor" with standing in the process can file new or amended contentions, which could be addressed in a hearing as early as January, 2012. All told the filings are likely to turn the Indian Point application into the most extensive in NRC history.

"Its fair to say that Indian Point's application will be the longest we've seen," says Diane Screnci, spokesperson for the NRC. "By the time the hearing is held in early 2012, it will be nearly five years since we've received Entergy's application."

Scheiderman's win will undoubtedly stretch out Indian Point's application to the unforeseeable future. Indian Point still can operate legally past their license 2013 and 2015 expiration dates until the NRC comes to a final decision. But if that happens, it would be unprecedented, since no relicensing procedure has yet continued past expiration dates. The way Indian Point, Vermont Yankee and Pilgrim applications have departed from business as usual may mean that the rubber-stamp, foregone-conclusion culture of relicensing has begun to change. But for plants like Indian Point, the question remains: after years of legal skirmishes topped by Scheiderman's winning petition, will the massive parade of protest and contentions ultimately influence the NRC's final decision?

Abby Luby is a freelance journalist who has covered the Indian Point nuclear power plant in New York for over eight years, and the author of a forthcoming e-novel about nuclear dangers in New York. Her coverage of Indian Point appears in *The New York Daily News*, *The Westchester Guardian*, and *The North County News*. She also writes for *The Poughkeepsie Journal* and *The Stamford Advocate/Greenwich Time* and is a regular contributor to *Valley Table Magazine* and the Hearst publications *HealthyLiving*, *Living [at] Home* and *Roll Magazine*. Her subjects range from hard news, to food, health and art. Luby also teaches writing and literature at Marist College

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