

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket Nos.
)	50-247-LR
Entergy Nuclear Operations, Inc.)	and 50-286-LR
(Indian Point Nuclear Generating)	
Units 2 and 3))	September 13, 2011
)	

**RIVERKEEPER, INC. AND HUDSON RIVER SLOOP
CLEARWATER, INC.’S COMBINED REPLY TO NRC STAFF AND
ENTERGY’S ANSWERS IN OPPOSITION TO MOTION TO ADMIT NEW
CONTENTION REGARDING THE FUKUSHIMA TASK FORCE REPORT**

Pursuant to 10 C.F.R. § 2.309(h)(2), Riverkeeper, Inc. (“Riverkeeper”) and Hudson River Sloop Clearwater, Inc. (“Clearwater”) (collectively “Intervenors”) hereby reply to the oppositions submitted by the applicant, Entergy Nuclear Operations, Inc. (“Entergy”)¹ and the U.S. Nuclear Regulatory Commission (“NRC”) Staff² to Intervenors’ new contention seeking consideration of the environmental implications of the Fukushima Task Force Report. Intervenors respectfully submit that the arguments by Entergy and the NRC Staff regarding the timeliness and admissibility of the contention are without merit and the contention should be admitted.

The arguments raised by Entergy and the NRC Staff in response to Intervenors’ contention are similar or identical to arguments made by applicants and staff in response to

¹ Applicant’s Answer to Riverkeeper, Inc. and Hudson River Sloop Clearwater, Inc.’s Motion to Admit New Contention Regarding the Fukushima Task Force Report (Sept. 6, 2011) (hereinafter “Applicant’s Answer”).

² NRC Staff’s Answer In Opposition to Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident (Sept. 6, 2011) (hereinafter “NRC Staff’s Answer”).

Fukushima Task Force Report-related contentions that were filed in other reactor licensing proceedings on the same day. Intervenor attach and incorporate by reference the attached Reply Memorandum, which addresses the most common arguments that are made in the responses and was prepared by counsel for intervenors in several of the cases.³ The Reply Memorandum also discusses the effect of the NRC Commissioners' recent decision regarding the Emergency Petition that was submitted by Clearwater and many other intervenors and petitioners in April 2011. *Union Electric Co., d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2) et al., CLI-11-05, __ NRC __ (Sept. 9, 2011) ("CLI-11-05").⁴

In addition, Intervenor hereby reply to arguments by NRC Staff and Entergy that Intervenor's new contention is not specific enough to the Indian Point license renewal application and associated Final Supplemental Environmental Impact Statement ("FSEIS"),⁵ and, therefore, fails to meet the NRC's standard for admissibility of contentions.⁶ This argument is incorrect. Intervenor specifically challenge the failure of the FSEIS to address the significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report.⁷ The contention also specifically identifies the finding in Appendix B to 10 C.F.R. Part 51 on which NRC Staff relies for the conclusion that the

³ The Reply Memorandum was prepared by: Diane Curran (counsel for the intervenor in the Diablo Canyon license renewal proceeding and Watts Bar operating license proceeding), Mindy Goldstein (counsel for some of the intervenors in the Vogtle and Turkey Point COL proceedings), and Jason Totoui (counsel for some of the intervenors in the Turkey Point COL proceeding).

⁴ Because Entergy and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of Intervenor's contention, Intervenor would not object to a response by Entergy and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.

⁵ NUREG-1437, Supp. 38, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Units Nos. 2 and 3, Final Report (Dec. 2010) ("FSEIS"), available at ADAMS Accession Nos. ML103350405 (Vol. 1), ML103350438 (Vol. 2), ML103360209 (Vol. 2), ML103360212 (Vol. 2), ML103350442 (Vol. 3).

⁶ See NRC Staff's Answer at 14-15; Applicant's Answer at 22-23.

⁷ Riverkeeper, Inc. and Hudson River Sloop Clearwater, Inc. New Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the NRC Fukushima Task Force Report at 4.

environmental impacts of severe accidents at Indian Point are “small” and which is called into question by the Task Force Report.⁸ In addition, the contention specifically challenges the adequacy of the NRC Staff’s SAMA analysis in the FSEIS because it fails to address the conclusions of the Task Force Report.⁹

Intervenors’ demand for consideration of the environmental implications of the Fukushima accident and the Task Force Report has yet to be satisfied in any respect. Neither the NRC nor Entergy has prepared a single document under NEPA that addresses the new and significant information revealed by the Task Force Report regarding accident risks at U.S. nuclear power plants. Unless and until the NRC or Entergy make some attempt to satisfy NEPA in this regard, Intervenors contention of omission is admissible.

CONCLUSION

For the foregoing reasons and for the reasons stated in the attached Reply Memorandum, Intervenors’ contention is admissible and should be admitted for a hearing.

⁸ *Id.* at 12, 13. Intervenors’ petition to the NRC to revoke this aspect of Appendix B is pending before the NRC Staff. *See* CLI-11-05, slip op. at 40.

⁹ *Id.* at 13.

Respectfully submitted ,

Signed (electronically) by Deborah Brancato

Deborah Brancato, Esq.
Phillip Musegaas, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(914) 478-4501
dbrancato@riverkeeper.org
phillip@riverkeeper.org

Manna Jo Greene
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave
Beacon, NY 12508
Mannajo@clearwater.org
karla@clearwater.org