

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	September 16, 2011

**APPLICANT’S REQUEST TO FILE A SURREPLY TO THE COMBINED REPLY  
OF RIVERKEEPER, INC. AND HUDSON RIVER SLOOP CLEARWATER, INC.**

In accordance with Section G.3 of the Atomic Safety and Licensing Board’s July 1, 2010 Scheduling Order,<sup>1</sup> Entergy Nuclear Operations, Inc. (“Entergy”) hereby requests leave to file a surreply to the “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” (“Combined Reply”) and the associated Reply Memorandum filed on September 13, 2011.<sup>2</sup> In support of this request, Entergy respectfully states as follows:

1. On August 11, 2011, Riverkeeper, Inc. (“Riverkeeper”) and Hudson River Sloop Clearwater, Inc. (“Clearwater”) (jointly, “Intervenors”) filed a Motion to admit a proposed New Contention in this proceeding purportedly based on new and significant information presented by the NRC in its report, “Recommendations for Enhancing Reactor Safety in the 21st Century: The

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<sup>1</sup> Licensing Board Scheduling Order at 7 (July 1, 2010) (unpublished).

<sup>2</sup> See Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 13, 2011).

Near-term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (July 12, 2011) (the “Task Force Report”).<sup>3</sup>

2. On September 6, 2011, Entergy and the NRC Staff each filed Answers opposing the admission of the New Contention on the grounds that it does not meet the NRC’s contention timeliness and admissibility criteria in 10 C.F.R. § 2.309.<sup>4</sup>

3. Three days later, on September 9, 2011, the Commission issued a Memorandum and Order (CLI-11-05), in which it ruled on a series of petitions filed in numerous proceedings to suspend adjudicatory, licensing, and rulemaking activities, and requesting additional related relief, in light of the March 2011 events at Fukushima.<sup>5</sup> CLI-11-05 indicates that Riverkeeper’s and Clearwater’s Rulemaking Petition (and associated suspension request) was among the many filings underlying the Commission’s ruling.<sup>6</sup>

4. Shortly thereafter, on September 13, 2011, the Intervenors filed their Combined Reply and Reply Memorandum in response to the Answers of Entergy and the NRC Staff. In the Combined Reply and Reply Memorandum, Intervenors discuss the “relevance” and “effect” of CLI-11-05 with respect to their New Contention, suggesting that it supports admission of the contention.<sup>7</sup>

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<sup>3</sup> Motion to Admit 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 (Aug. 11, 2011) (“Motion”); 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 (Aug. 11, 2011) (“New Contention”).

<sup>4</sup> See 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) (“Applicant’s Answer”); 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) (“NRC Staff’s Answer”).

<sup>5</sup> See *Union Elec. Co. d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC \_\_\_, slip op. (Sept. 9, 2011).

<sup>6</sup> See *id.*, Appendix at 18.

<sup>7</sup> Combined Reply at 2; Reply Memorandum at 1-4.

5. Unlike Riverkeeper and Clearwater, Entergy did not have an opportunity to address the implications of CLI-11-05 relative to the admissibility of the New Contention. Relevant here, a portion of the Commission’s decision addresses claims that the Fukushima events—as discussed in the Task Force Report—constitute “new and significant information” under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions.<sup>8</sup> Accordingly, Entergy submits that its inability to address the import of CLI-11-05 in its Answer, due solely to the timing of that decision, constitutes good cause for the filing of a brief surreply to address the relevance of CLI-11-5 to the proposed new contention. Indeed, the Combined Reply recognizes as much, stating that the “Intervenors would not object to a response by Entergy and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.”<sup>9</sup>

6. In accordance with 10 C.F.R. § 2.323(b), Counsel for Entergy has contacted Counsel for the NRC Staff, who stated that he does not oppose Entergy’s Motion for Leave to file a limited surreply. Intervenors noted their lack of objection in their Combined Reply.

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<sup>8</sup> See CLI-11-05, slip op. at 30-31.

<sup>9</sup> Combined Reply at 2 n.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 Intervenors’ contention, Intervenors would not object to a response by Entergy and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.”).

WHEREFORE, Entergy respectfully requests that the Board grant its Motion for Leave to file a brief surreply to the Combined Reply and Reply Memorandum on or before Tuesday, September 20, 2011.

Respectfully submitted,

*Signed (electronically) by Paul M. Bessette*

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COUNSEL FOR ENTERGY

Dated in Washington, D.C.  
this 16th day of September 2011

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**CERTIFICATE OF SERVICE**

I certify that, on September 16, 2011, a copy of “Applicant’s Request to File a Surreply to the Combined Reply of Riverkeeper, Inc. and Hudson River Sloop Clearwater, Inc.,” was served electronically with the Electronic Information Exchange on the following recipients:

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