

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of:)
) Docket No. 50-255-LA-2
ENTERGY NUCLEAR OPERATIONS, INC.,)
) August 20, 2015
(Palisades Nuclear Plant))

**SIERRA CLUB'S REPLY TO ENTERGY'S ANSWER TO MOTION TO FILE
AMICUS BRIEF**

Comes now the Sierra Club and for its Reply to Entergy's Answer to the Motion for Permission to File Amicus Brief, states to the Commission as follows:

**AN AMICUS BRIEF IS APPROPRIATE IN AN APPEAL BROUGHT
PURSUANT TO 10 C.F.R. § 2.311**

The Sierra Club's motion to file an amicus brief is based on 10 C.F.R. § 2.315(d). It is clear from the overall context and structure of that rule that § 2.315 is a procedural rule of general applicability, including for requests for hearings. Beyond that, the heading of Subpart C of Part 2 of the Commission's rules, which includes § 2.315, reads in part: "Rules of General Applicability: Hearing Requests," In addition, § 2.300 states:

The provisions of this subpart apply to all adjudications conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR Part 2, unless specifically stated otherwise in this subpart.

Therefore, Sierra Club's Motion for Permission to File Amicus Brief is appropriate under § 2.315(d) unless there is a specific statement in the rules to the contrary.

Entergy argues that § 2.315(d), by its terms, applies only to matters taken up by the Commission under § 2.341. But the rule only says that if a matter is taken up by the Commission under § 341 a party may file an amicus brief in the discretion of the Commission. The rule does not say that an amicus brief cannot be filed in any other circumstance.

For example, NRC case law indicates that although the Commission's rules do not explicitly authorize amicus curiae briefs before a licensing board, such briefs may be permitted. See, e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 (2010)(observing that petitioners appealing a licensing board's denial of its intervention petition have the opportunity to participate, as appropriate, as amicus curiae to protect their interests); Gen. Pub. Utils. Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 161 (1996)(providing petitioner an opportunity to "appear as amicus curiae and file a pleading providing the Board with its views on the legal issue" where petitioner failed to otherwise demonstrate standing); Pub. Serv. Co. of New

Hampshire (Seabrook Station, Units 1 and 2), ALAB-862, 25
NRC 144, 150-51 (1987)(authorizing the participation of a
state Senator, who the Appeal Board opined would "make a
worthwhile contribution at this early stage of the
deliberative process," as amicus curiae in the proceedings
before the licensing board).

Therefore, nothing in § 2.315(d) precludes the
Commission granting Sierra Club permission to file an
amicus curiae brief.

**THE SIERRA CLUB'S AMICUS BRIEF WILL ASSIST THE COMMISSION
IN DETERMINING THE PROPER SCOPE OF THIS PROCEEDING AND IN
UNDERSTANDING THE LEGAL AND FACTUAL IMPACT OF ITS DECISION.**

Entergy contends that the Sierra Club's amicus brief
does not contribute any value to the Commission's
consideration of the issues presented in Entergy's appeal.
The Sierra Club respectfully disagrees.

The amicus brief focuses the Commission's attention on
what the Sierra Club believes is the real issue before the
Commission. That issue is the standard for admissibility of
contentions. As described in the amicus brief, Entergy is
attempting to treat the question of admissibility of a
contention as if the Commission were being asked to address
the merits of the contention. It is entirely appropriate
for an amicus brief to redirect the focus of the appeal to
the actual issue at hand.

The amicus brief also directs the Commission to the implications and consequences of its decision. That is an entirely appropriate function of an amicus brief. The Commission's decision will set a precedent that will impact how this same issue will be addressed at other aging nuclear plants that have embrittlement issues.

It has been stated that an amicus brief should properly serve one or more of the following purposes:

1. to examine policy issues;
2. to provide a more attractive advocate [not applicable here to be sure];
3. to support the grant of discretionary review;
4. to supplement a party's brief;
5. to endorse a particular position;
6. to correct a decision; or
7. to seek to limit the effect of an unfavorable or unexpected decision.

Reagan William Simpson and Mary R. Vasaly, The Amicus Brief: How to be a Good Friend of the Court (2004). The Sierra Club's amicus brief fulfills at least 3 of the above purposes: to examine policy issues, to supplement a party's brief, and to endorse a particular position.

Entergy contends that the Sierra Club's amicus brief relies on authorities that predate current contention

admissibility standards. But Entergy overstates the scope and significance of the current standards. The Commission should not be misled by Entergy's argument.

Finally, Entergy complains that Sierra Club's amicus brief is in the nature of an argument. Any brief worthy of the name is an argument stating the party's position. Therefore, Entergy's complaint rings hollow.

CONCLUSION

Based on the foregoing, the Commission should allow the Sierra Club to file its amicus curiae brief, and the Sierra Club respectfully requests that the Commission consider the comments made in the brief.

/s/ *Wallace L. Taylor*

WALLACE L. TAYLOR
Law Offices of Wallace L. Taylor
118 3rd Ave. S.E., Suite 326
Cedar Rapids, Iowa 52401
319-366-2428; (Fax) 319-366-3886
e-mail: wtaylorlaw@aol.com

ATTORNEY FOR SIERRA CLUB

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on August 20, 2015, copies of Sierra Club's Reply to Entergy's Answer to the Motion for Permission to File Amicus Brief were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above-captioned proceeding.

/s/ *Wallace L. Taylor*

WALLACE L. TAYLOR