

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

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NRC STAFF'S ANSWER IN SUPPORT OF ENTERGY'S PETITION FOR INTERLOCUTORY  
REVIEW OF ATOMIC SAFETY AND LICENSING BOARD DECISION  
ADMITTING CONSOLIDATED CONTENTION  
RIVERKEEPER EC-3/CLEARWATER EC-1

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January 21, 2009

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.341(f)(2) and 10 C.F.R. § 2.341(b)(3), the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby answers Entergy Nuclear Operations, Inc.'s ("Entergy") January 7, 2009, "Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision Admitting Consolidated Contention Riverkeeper EC-3/Clearwater EC-1" ("Petition"). For the reasons set forth herein, the Staff submits the Petition should be granted and the Atomic Safety and Licensing Board's ("Board") decision in *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC \_\_\_, (July 31, 2008) ("LBP-08-13") should be reversed insofar as it admitted the Consolidated Contention. In this regard, the Staff submits that the Consolidated Contention should have been denied admission in that (1) the Indian Point Unit 1 ("IP1") Spent Fuel Pool ("SFP") is beyond the scope of the license renewal application ("LRA") for Indian Point Unit 2 ("IP2" and Indian Point Unit 3 ("IP3"); (2) the Environmental Protection Agency's ("EPA") drinking water standard, for the regulation of

public water systems, is inapplicable; and (3) the NRC's "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" ("GEIS")<sup>1</sup> fully addresses the impact of spent fuel storage during the license renewal term. The Board's admission of the Consolidated Contention on the basis of these issues incorrectly would allow the Intervenor to attack the Commission's regulations on a Category 1 issue considered in the GEIS and promulgated through 10 C.F.R. § 51.53 and Part 51, Subpt. A, App. B.

### BACKGROUND<sup>2</sup>

This matter arises from the LRA filed by Entergy on April 23, 2007, to renew the operating licenses for Indian Point Units 2 ("IP2") and 3 ("IP3") for an additional twenty-year period.<sup>3</sup> On November 30, 2007, Riverkeeper filed a petition to intervene in this matter.<sup>4</sup> Similarly, on December 10, 2007, Clearwater filed a petition to intervene.<sup>5</sup> Riverkeeper and Clearwater, *inter alia*, submitted two similar contentions for consideration by the Board, which were consolidated into a single contention in the Board's ruling on contentions, issued on July 31, 2008.<sup>6</sup> The bases for these contentions were set forth in Riverkeeper's and Clearwater's

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<sup>1</sup> NUREG-1437 Vols. 1 and 2, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996).

<sup>2</sup> A more complete summary of the procedural background of this proceeding is contained in the Petition at 6-10 (Jan. 7, 2009).

<sup>3</sup> The IP1 spent fuel pool is not a part of the license renewal application. See License Renewal Application ("LRA") at 2.2-24 to 2.2-26, Table 2.2-4.

<sup>4</sup> Request for Hearing and Petition to Intervene by Riverkeeper, Inc. (Nov. 30, 2007) ("Riverkeeper Petition").

<sup>5</sup> Request for Hearing and Petition to Intervene by Hudson River Sloop Clearwater, Inc. (Dec. 10, 2007) ("Clearwater Petition").

<sup>6</sup> LBP-08-13 at 187-88, 191-92, 228.

respective petitions. On August 21, 2008, Riverkeeper and Clearwater revised and submitted their Consolidated Contention, which states:

Entergy's Environmental Report fails to adequately analyze the environmental impacts of spent fuel pool leaks as required by the National Environmental Policy Act (NEPA) and NRC regulations.<sup>7</sup>

Entergy opposed the admission of Riverkeeper's EC-3 and Clearwater's EC-1 contentions on various grounds, including: (1) the Environmental Protection Agency's ("EPA") drinking water standards are not applicable in this licensing process because IP2 and IP3 are not public water systems, (2) the IP1 SFP is outside the scope of the current license renewal proceeding for IP2 and IP3 because IP1 SFP is not included in the LRA, and (3) the dose resulting from groundwater contamination is within the applicable NRC prescribed limits, is considered a Category 1 issue in the GEIS, and the Intervenor had not submitted *significant* new information to warrant consideration of this issue under 10 C.F.R. § 51.53(c)(3)(iv).<sup>8</sup> The Staff made similar arguments opposing the admission of Riverkeeper's EC-3 and Clearwater's EC-1 contentions.<sup>9</sup> The Board's decision to admit the Consolidated Contention did not explicitly address these considerations in detail (see LBP-08-13, slip op. at 187-88 and 192). On August

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<sup>7</sup> Consolidated Contention of Petitioners Riverkeeper, Inc. (EC-3) and Hudson River Sloop Clearwater, Inc. (EC-1)—Spent Fuel Pool Leaks (Aug. 21, 2008) at 2 ("Consolidated Contention of Petitioners").

<sup>8</sup> Answer of Entergy Nuclear Operations, Inc. Opposing Riverkeeper, Inc.'s Request for Hearing and Petition to Intervene (Jan. 22, 2008) at 139-51 ("Entergy's Riverkeeper Answer"); Answer of Entergy Nuclear Operations, Inc. Opposing Hudson River Sloop Clearwater, Inc.'s Petition to Intervene and Request for Hearing (Jan. 22, 2008) at 32-49 (Entergy's Clearwater Answer).

<sup>9</sup> NRC Staff's Response to Petitions to Intervene filed by (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed to Relicensing of Indian Point, and Nancy Burton, (3) Hudson River Sloop Clearwater, Inc., (4) the State of New York, (5) Riverkeeper, Inc., (6) The Town of Cortlandt, and (7) Westchester County (Jan. 22, 2008) at 79-81, 89-92, and 112-115.

11, 2008, Entergy filed a motion for reconsideration of the Board's admission of the Consolidated Contention;<sup>10</sup> on August 21, 2008, the Staff filed an answer in support of Entergy's motion, stating that (1) the Consolidated Contention had no basis in law because the EPA's regulations are immaterial and no showing had been made that NRC regulatory standards were not being met; (2) the contention lacked adequate factual or expert support for the contention; and (3) the IP1 SFP was beyond the scope of the LRA and this proceeding.<sup>11</sup> The Board denied Entergy's Motion for Reconsideration on December 18, 2008.<sup>12</sup> On January 7, 2009, Entergy timely filed its petition for interlocutory review.<sup>13</sup>

### DISCUSSION

#### I. Legal Standard for Review

Under 10 C.F.R. § 2.341(f)(2), Entergy may be granted interlocutory review at the Commission's discretion if the Board's decision:

- (i) [t]hreatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or
- (ii) [a]ffects the basic structure of the proceeding in a pervasive or unusual manner.

10 C.F.R. § 2.341(f)(2). While interlocutory review of a decision admitting or rejecting a

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<sup>10</sup> Applicant's Motion for Reconsideration of the Board's Decision to Admit Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 (August 11, 2008) ("Entergy Motion for Reconsideration").

<sup>11</sup> NRC Staff's Response in Support of Entergy's Motion for Reconsideration of the Board's Decision to Admit Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 (Aug. 21, 2008).

<sup>12</sup> Memorandum and Order (Authorizing Interested Governmental Entities to Participate in this Proceeding) . . . [and] (Denying Entergy's Motion for Reconsideration of the Board's Decision to Admit Riverkeeper Contention EC-3 and Clearwater Contention EC-1) (Dec. 18, 2008) at 16.

<sup>13</sup> Entergy's Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision Admitting Consolidated Riverkeeper EC-3/Clearwater EC-1 (Jan. 7, 2009).

contention is disfavored, interlocutory review may be justified by a Board's decision "mandating duplicative or unnecessary litigation steps,"<sup>14</sup> or imposing "exceptional delays or expense."<sup>15</sup>

## II. Pervasive Effect on the License Renewal Proceeding

The Board's decision to admit the Consolidated Contention adversely affects this license renewal proceeding in a pervasive and unusual manner, in that it would allow a party to attack the Commission's regulations adopting the GEIS.<sup>16</sup> Further, the Consolidated Contention imports issues not properly before the Board under the license renewal application for IP2 and IP3, including Category 1 issues that are fully addressed by the GEIS.<sup>17</sup> Thus, the admission of the Consolidated Contention places the cart before the horse as the Intervenor is now given an impermissible opportunity to challenge the Commission's regulations in 10 C.F.R. § 51.53(c)(3)(i).

The structure of the proceeding will be pervasively changed if the Board's decision is not reversed because the Consolidated Contention reopens settled generic determination as to

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<sup>14</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Facility), CLI-98-7, 47 NRC 307, 310 (1998).

<sup>15</sup> *Commonwealth Edison Co.* (Zion's Station, Units 1 & 2), ALAB-116, 6 AEC 258, 259 (1973).

<sup>16</sup> 10 C.F.R. Part 51, Subpt. A, App. B.

<sup>17</sup> Category 1 issues apply to all plants during license renewal proceedings. The Commission determined that Category 1 issues need not be included in the Applicant's Environmental Report or addressed in a site specific manner. *Id.* at n.2. See also 10 C.F.R. § 51.53(c). In 10 C.F.R. Part 51, Subpt. A, App. B., the Commission determined that on-site spent fuel storage is a Category 1 issue with a small effect. As such, the Commission determined that mitigation is unwarranted because measures are "likely not to be sufficiently beneficial to warrant implementation." *Id.* at n. 2. "Within the context of a license renewal review and determination, the Commission finds that there is ample basis to conclude that continued storage of existing spent fuel and storage of spent fuel generated during the license renewal period can be accomplished safely and without significant environmental impact." NUREG 1437 Vol. 1 § 6.4.6.7 at 6-85.



Category 1 issues in the GEIS.<sup>18</sup> The Board's decision sets an unwarranted precedent that the findings by the Commission in its GEIS may be challenged in licensing proceedings. These challenges result in unnecessary litigation and delay to the LRA proceedings. Further, the Intervenor's reliance on a speculative assertion that a site would be remediated if the license renewal was not granted is unsupported.<sup>19</sup> This reopening of settled regulatory issues is sufficient to grant the petition for review.<sup>20</sup> The Board's admission of the Consolidated Contention as it relates to IP1 SFP will result in "truly exceptional delay [and] expense" in order to resolve issues pertaining to historical leakage regarding a reactor facility that is not the subject of the license renewal application for IP2 and IP3. The impact of storing spent fuel during the license renewal term and after the term expires has been fully addressed by the GEIS, including radiological impacts resulting from the normal operation of the SFP.<sup>21</sup>

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<sup>18</sup> See 10 C.F.R. §51.53(c).

<sup>19</sup> Riverkeeper, Inc.'s Reply to Entergy's and NRC Staff's Responses to Hearing Request and Petition to Intervene (Feb. 15, 2008) at 63-64. Riverkeeper states that "[SFP] of Indian Point 1's operation falls squarely within the scope of license renewal, simply because, if not for Entergy's application to renew the licenses of Indian Point 2 and 3, Indian Point 1 would likely be fully decommissioned and the site eventually restored to unrestricted use ...." Riverkeeper, Inc. Response to Application's Motion for Reconsideration of the Board's Decision to Admit Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 (Aug. 21, 2008) at 7. This assertion lacked any factual or legal basis and should have been rejected. See, e.g., *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station Units 1 & 2), CLI-03-17, 58 NRC 419, 424 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 337-39 (1999)) (finding that contentions should be barred when supported only by generalized suspicions). The GEIS already addresses the storage of spent fuel on site after the termination of the license term. NUREG 1437 Vol. 1 § 6.4.6.2 at 6-79.

<sup>20</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Facility), CLI-98-7, 47 NRC 307, 310 (1998) (granting interlocutory appeal based on the establishment of a second, separate Board for security issues).

<sup>21</sup> *Commonwealth Edison Co.* (Zion's Station, Units 1 & 2), ALAB-116, 6 AEC 258, 259 (1973).

Further, the Board's acceptance of an issue based on the EPA's drinking water standards, as promulgated in 40 C.F.R. §§ 141 *et seq.*,<sup>22</sup> further undermines the Commission's regulations, which determined that a Category 1 issue with small impact is achieved by "compliance with the [NRC's] dose and release limits applicable to the activities being reviewed."<sup>23</sup> Riverkeeper's and Clearwater's application of the EPA regulations for public water systems to IP2 and IP3 is inapposite because the groundwater at the Indian Point site is not utilized for a public water system, and the NRC's regulations establish the applicable groundwater standards for the site.

II. The Board Committed Three Errors in Admitting the Consolidated Contention

Since Entergy meets the requirements for granting an interlocutory review, the Board should be reversed on review if it committed an error of law or an abuse of discretion.<sup>24</sup> The Commission has reversed Board decisions premised on a misinterpretation of statutes and regulations<sup>25</sup> and an unnecessary expansion of the proper scope of the proceedings.<sup>26</sup> The Board's decision should be reversed for the following reasons: (1) the IP1 SFP is a Category 1

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<sup>22</sup> These EPA regulations are only applicable to a public water system. IP2 and IP3 are not public water systems for purposes of the EPA regulations.

<sup>23</sup> NUREG 1437 Vol. 1 § 4.6 at 4-84.

<sup>24</sup> *AmerGen Energy Co. L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006) (citations omitted).

<sup>25</sup> *Entergy Nuclear Vermont Yankee, L.L.C., & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 385-89 (2007).

<sup>26</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-17, 56 NRC 1, 12-13 (2002). In addition, Entergy emptied and drained IP1 SFP in November 2008. Entergy's Petition at 9 n. 33. See also Entergy's Riverkeeper Answer, Exhibit M, Hydrological Site Investigation Report (Jan. 11, 2008).

issue of the GEIS, and further, is beyond the scope of the license renewal application for IP2 and IP3; (2) doses determined from the groundwater contamination were insignificant and support the application of the GEIS to the IP2 and IP3 LRA; and (3) the impact of spent fuel storage on site is addressed in the GEIS as a Category 1 issue.

The legal requirements governing the admissibility of contentions are well established, and currently are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly § 2.714(b)). Specifically, in order to be admitted, a contention must satisfy the following requirements:

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report . . .

10 C.F.R. § 2.309(f)(1)-(2).

A. The IP1 SFP is Beyond the Scope of the License Renewal Application for IP2 and IP3.

In admitting this contention, the Board stated that information on “radiological leaks from the spent fuel pools is undisputedly within the scope of the LRA proceedings.”<sup>27</sup> This admission of the Consolidated Contention fails to fully address the license renewal application’s specific exclusion of the IP1 SFP from its LRA, as authorized by 10 C.F.R § 51.53(c) and the GEIS, or address the Commission’s determination that storage of spent fuel is a Category 1 issue in the GEIS.<sup>28</sup>

Additionally, Riverkeeper and Clearwater have failed to properly petition for a waiver of the Category 1 issue of the GEIS or identify new and significant information that would cast doubt on the GEIS’ applicability to IP2’s and IP3’s LRA.<sup>29</sup> “If a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner, or supply information that is lacking.”<sup>30</sup> Intervenors have not demonstrated any information that would suggest or support that the historical leakage from IP1 SFP is of such a significant nature that the GEIS category findings are inappropriate. Thus, the Commission should reverse the Board’s admission of the Consolidated Contention.

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<sup>27</sup> LBP-08-13, slip op. at 188 (July 31, 2008) (emphasis added).

<sup>28</sup> LRA at 2.2-24 to 2.2-26, Table 2.2-4; Entergy’s Petition at 9 n. 33. See also Entergy’s Riverkeeper Answer, Exhibit M, Hydrological Site Investigation Report (Jan. 11, 2008).

<sup>29</sup> As noted in the Applicant’s Answer to Riverkeeper’s Contention EC3, the Environmental Report discussed the spent fuel pool leaks, including those associated with IP1. See Applicant’s Answer of January 22, 2008, at 147-151; Environmental Report at 5-4 – 5-6.

<sup>30</sup> LBP-08-13, slip op. at 9 (citing *Georgia Institute of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and aff’d in part*, CLI-95-10, 42 NRC 1 (1995), and CLI-95-12, 42 NRC 111 (1995)).

B. The EPA's Drinking Water Standard, Pertinent to the Regulation of Public Water Systems, is Inapplicable

In the Consolidated Contention, Riverkeeper and Clearwater have imported inapplicable EPA public water system regulatory requirements, insofar as the contention rests on the EPA's drinking water standard. The GEIS specifically addressed the impact of exposure as small as long as any releases are in "compliance with the [NRC's] dose and [the NRC's] release limits applicable to the activities being reviewed."<sup>31</sup> Both Intervenor have indicated that the EPA's drinking water standards should be applied to the groundwater contamination at IP2 and IP3.<sup>32</sup> However, the groundwater at Indian Point is not used as part of a public water system, and neither Intervenor has provided any applicable legal or factual basis showing that IP2 and IP3 are subject to the EPA's regulations for public water systems.

Riverkeeper and Clearwater seek to have the determination of the expected dose from groundwater contamination re-calculated for assessing exposure beyond the information already contained in Entergy's reports and the GEIS.<sup>33</sup> A careful reading of Entergy's submissions shows that the calculated exposure is determined to be significantly below (1/100<sup>th</sup>) the applicable NRC limits, an insignificant amount.<sup>34</sup> Further, the Staff's inspections determined that (1) there was "no detectable plant-related radioactivity in groundwater beyond the site boundary" and (2) "the current radioactive releases and associated public doses are below the

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<sup>31</sup> NUREG 1437 Vol. 1 § 4.6 at 4-84.

<sup>32</sup> Consolidated Contention of Petitioners at 3.

<sup>33</sup> *Id.* at 3-4. Compare also Entergy's Riverkeeper Answer, Exhibit M, Hydrological Site Investigation Report (Jan. 11, 2008).

<sup>34</sup> Entergy's Riverkeeper Answer at 147.

NRC radioactivity release and public dose limits.”<sup>35</sup> Significantly, the Intervenor’s have not challenged these determinations, but argue, instead, that radiological impacts to fish and shellfish must be considered. In sum, the Consolidation Contention is based on unsupported speculation that Indian Point releases may have a significant adverse impact, regardless of whether the facility meets the NRC’s regulations.<sup>36</sup> Such claims are insufficient to support the admission of a contention.

C. The GEIS Fully Addresses the Impact of Spent Fuel Storage During the License Renewal Term

In LBP-08-13, the Board stated that “there is still the question as to whether the maximum groundwater impact (and, in turn, the maximum dose) has been determined for the site.”<sup>37</sup> The intervenors, however, never disputed Entergy’s assertion that such impacts were well within regulatory standards. As promulgated in the GEIS and 10 C.F.R. § 51.53(c) & Part 51, Subpt. A, App. B, the Commission’s regulations find that the impact of spent fuel storage is small and is a Category 1 issue applicable to all plants. Intervenor’s failed to identify any new and significant information that would support the admission of a contention on this issue.

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<sup>35</sup> See “NRC Staff’s Response To Petitions For Leave To Intervene Filed By (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed To Relicensing Of Indian Point, And Nancy Burton, (3) Hudson River Sloop Clearwater, Inc., (4) The State Of New York, (5) Riverkeeper, Inc., (6) The Town Of Cortlandt, And (7) Westchester County” (January 22, 2008) at 114 n.78-80 (“NRC Answer”). See *also* NRC Staff’s Response in Support of Entergy’s Motion for Reconsideration of the Board’s Decision to Admit Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 (Aug. 21, 2008) at 5.

<sup>36</sup> NRC Answer at 14 n. 78-80.

<sup>37</sup> LBP-08-13 at 192.

In its Petition, Entergy states that the maximum dose resulting from groundwater sources at Indian Point was 1/100<sup>th</sup> of the applicable federal limits,<sup>38</sup> which supports the application of the GEIS to IP2 and IP3.<sup>39</sup> The GEIS determined the impact of the additional storage of spent fuel was small and was a Category 1 issue that is not subject to site-specific challenges. Neither Intervenor has indicated how, where, or under what legal bases the dose calculations fail to satisfy an applicant's duty under the regulations. More importantly, they failed to show how the GEIS Category 1 determinations fail to satisfy these issues. Category 1 issues may not be litigated in LRA proceedings, in the absence of new and significant information – which has not been provided here.

Finally, the Board's determination that Entergy may have failed to perform a "maximum groundwater impact" analysis requires a showing by the Intervenors that some relevant legal requirement may not be satisfied, and that there is a factual basis for such a claim.<sup>40</sup> No such showing has been identified by Riverkeeper, Clearwater, or the Board. Accordingly, the Board's decision regarding the admission of this Consolidated Contention should be reversed.

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<sup>38</sup> Petition at 8.

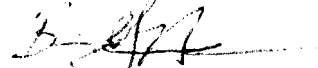
<sup>39</sup> See *also* Entergy's Riverkeeper Answer, Exhibit M, Hydrological Site Investigation Report (Jan. 11, 2008).

<sup>40</sup> 10 C.F.R. § 2.309(f)(1)(vi).

CONCLUSION

For the reasons set forth above, the Staff respectfully submits that Entergy's Petition should be granted, and the Board's decision to admit the Consolidated Contention should be reversed.

Respectfully submitted,



Brian G. Harris  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 21st day of January 2009



January 21, 2009

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER IN SUPPORT OF ENTERGY'S PETITION FOR INTERLOCUTORY REVIEW OF ATOMIC SAFETY AND LICENSING BOARD DECISION ADMITTING CONSOLIDATED CONTENTION RIVERKEEPER EC-3/CLEARWATER EC-1," dated January 21, 2009, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, with copies by electronic mail, as indicated by double asterisk, this 21<sup>st</sup> day of January, 2009:

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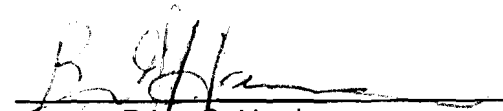
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