

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	September 21, 2011
))	

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

Pursuant to the Atomic Safety and Licensing Board’s September 20, 2011 Order,¹ Entergy Nuclear Operations, Inc. (“Entergy”) files this surreply to “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, 2011.²

As Riverkeeper and Clearwater (jointly, “Intervenors”) readily acknowledge, the core premise of their proposed New Contention is that the Near-Term Report³ prepared by the NRC’s Fukushima Task Force contains “new and significant information” within the meaning of the National Environmental Policy Act (“NEPA”) and the NRC’s 10 C.F.R. Part 51 regulations.⁴

¹ Licensing Board Order (Granting Entergy’s Motion to File Surreply) (Sept. 20, 2011) (unpublished).

² 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) (“Reply Memorandum”).

³ Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) (“Near-Term Report”) (transmitted to the Commission via SECY-11-0093, “Near-Term Report and Recommendations for Agency Actions Following the Events in Japan” (July 12, 2011), *available at* ADAMS Accession No. ML11186A950 (package).

⁴ See Reply Memorandum at 8 (“The central thrust of the contention is that the Task Force Report constitutes ‘significant new information’ under NEPA and the NEPA Documents need to be supplemented accordingly.”);

Intervenors, characterizing their New Contention as one based on “omission,” allege that the Staff’s Final Supplemental Environmental Impact Statement (“FSEIS”) does not address new and significant information purportedly contained in the Near-Term Report.⁵ Intervenors further suggest the Commission’s recent ruling in CLI-11-05⁶ supports their position and the admission of the New Contention.⁷

CLI-11-05, in fact, commands precisely the opposite result—denial of the New Contention as inadmissible under 10 C.F.R. § 2.309(f)(2). In CLI-11-05, the Commission held that the Near-Term Report does *not* contain new and significant information that would trigger the need for an immediate generic NEPA review by the NRC *or* supplementation of any final environmental impact statements (“EISs”) prepared in connection with individual licensing proceedings. The Commission’s Order is explicit:

To merit this additional [NEPA] review, information must be both “new” and “significant,” and it must bear on the proposed action or its impacts. As we have explained, “[t]he new information must present ‘a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.’” *That is not the case here, given the current state of information available to us.*⁸

Intervenors fail to acknowledge the clear import of CLI-11-05 by arguing that the Commission and its Staff have shirked their NEPA obligations to consider whether the Near-Term Report constitutes new and significant information that must be considered in individual

id. at 12 (“The contentions, however, are based upon the new and significant information contained in the Task Force Report.”).

⁵ *See id.* at 6, 8; *see also* Combined Reply at 3.

⁶ *See Union Elec. Co.* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC ___, slip op. (Sept. 9, 2011).

⁷ *See* Reply Memorandum at 2 (stating that CLI-11-05 “contains language that bears on the timeliness and admissibility of the contentions”).

⁸ CLI-11-05, slip op. at 31 (*quoting and citing Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999); *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373 (1989); *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987)) (emphasis added).

reactor licensing decisions.⁹ But that argument fails for two reasons. First, as noted above, the Commission explicitly rejected the proposition that the Near-Term Report contains new and significant information that is relevant to any generic or site-specific analysis of environmental impacts under NEPA and 10 C.F.R. Part 51.¹⁰

Second, the Commission stated unequivocally that any request to undertake a supplemental NEPA review in response to the events at Fukushima is “premature.”¹¹ The NRC continues to evaluate the Fukushima accident and its implications for U.S. facilities. As the Commission put it, “the full picture of what happened at Fukushima is still far from clear” and, as such, any related NEPA duty “does not accrue now.”¹²

Accordingly, for the reasons set forth above and in Entergy’s September 6, 2011 Answer,¹³ the Near-Term Report does not contain “new and significant” information that necessitates supplemental NEPA review by Entergy or the NRC Staff as part of this proceeding. CLI-11-05, an Order of the Commission that is binding on this Board, compels denial of the New Contention as inadmissible.

⁹ See Reply Memorandum at 4.

¹⁰ CLI-11-05, slip op. at 30-31.

¹¹ *Id.* at 30.

¹² *Id.*

¹³ 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).

Respectfully submitted,

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Dated in Washington, D.C.
this 21st day of September 2011

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NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

I certify that, on September 21, 2011, a copy of “Applicant’s 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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