

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF )  
 ) Docket No. 50-458-LR  
ENTERGY OPERATIONS, INC. )  
 ) November 27, 2017  
(River Bend Station, Unit 1) )

**SIERRA CLUB'S ANSWER IN OPPOSITION TO ENTERGY'S MOTION TO  
STRIKE PORTIONS OF REPLY**

LEGAL STANDARDS FOR REPLIES

Pursuant to 10 C.F.R. § 2.309(i) a prospective intervenor may file a reply to an answer opposing intervention. The reply "may respond C DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135 (2015). Therefore, any argument or statement that fairly responds to the allegations made in an answer may be asserted in a reply. A prospective intervenor is only prohibited from raising completely new issues for the first time in a reply. Id.

The Commission has affirmed a Board decision that a reply may legitimately amplify issues presented in a hearing petition. La. Energy Servs. (National Enrichment Facility), CLI-04-25. A reply just cannot present entirely new arguments. Id. Upon consideration of a motion for reconsideration of the decision in CLI-04-25, the Commission emphasized that "[u]nder our contention rule, intervenors are not being asked to prove their case, or to

provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal basis to support the contention, and to do so at the outset." La. Energy Servs. (National Enrichment Facility), CLI-04-35.

REPLY AS TO CONTENTION 1

Sierra Club's Contention 1 challenged the purpose and need statement in Entergy's environmental report (ER). The purpose and need statement in the ER was based on an NRC guidance document that defines the purpose and need for relicensing as providing an option for baseload power. Regulatory Guide 4.2, Supplement 1, Revision 1, Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications. Sierra Club's contention is that this statement of purpose and need is too narrow and precludes the consideration of renewable energy and energy efficiency as a source of baseload power.

In its Answer to Sierra Club's Petition to Intervene Entergy consistently referred to the statement from the guidance document that the alleged purpose and need for relicensing was to provide an option for baseload power (Entergy Answer, p. 8-9). Entergy now claims in its Motion to Strike that it was improper for Sierra Club to refer to baseload power in its Reply. It is obvious, however, that if Sierra Club is entitled to "respond to the legal or

logical arguments presented in the answers," it can respond to Entergy's reference to baseload power.

So, Sierra Club in its reference to the NRC guidance document in its statement of Contention 1, clearly raised the issue of baseload since that is an essential part of the NRC definition of purpose and need, and when Entergy referred to baseload in its Answer, Sierra Club was correct in responding.

In its Motion to Strike Entergy also complains that Sierra Club is improperly conflating Contention 1 regarding purpose and need with Contention 2 regarding analysis of alternatives. But the two issues are naturally connected because the statement of purpose and need dictates the range of alternatives that must be considered. Carmel-By-The-Sea v. U.S. Dep't. of Transp., 123 F.3d 1142 (9<sup>th</sup> Cir. 1997). Therefore, if there is no need for nuclear power because renewable energy and energy efficiency can provide sufficient power where and when it is needed, i.e., baseload, that is a proper challenge to relicensing a nuclear reactor.

So, Sierra Club's Reply does not raise any "entirely new arguments." La. Energy Servs. (National Enrichment Facility), CLI-04-25.

REPLY AS TO CONTENTION 2

Sierra Club's discussion of Contention 2 in its Petition to Intervene went into great detail in explaining why the ER did not give sufficient consideration to renewable energy and energy efficiency as alternatives to relicensing River Bend. In support of the contention Sierra Club cited the sources for its factual statements and legal authorities supporting its argument.

Just as with Contention 1, Sierra Club's Reply simply replied to Entergy's Answer and clarified the statements in Sierra Club's Petition to Intervene. That is exactly what a Reply is designed to do. Sierra Club's Reply did not bring in any new issues. Entergy's Motion would have a Reply be essentially meaningless if the Reply is not allowed to respond to the Answer.

In its Answer Entergy claimed that it had evaluated renewable energy and energy efficiency as alternatives to relicensing River Bend. Sierra Club's Reply merely explained why the discussion of renewable energy and energy efficiency in the ER was inadequate, primarily because the ER did not evaluate renewable energy and energy efficiency in combination, but rather discussed wind energy, solar energy and energy efficiency in isolation. Sierra Club's Reply was clearly an appropriate response to Entergy's

Answer. Sierra Club was just responding to Entergy's Answer and clarifying the contention.

REPLY AS TO CONTENTION 3

Just as with the previous two contentions, Sierra Club's Reply simply responded to Entergy's Answer. The Answer claimed that Sierra Club was incorrect in asserting that the license renewal application for River Bend does not include any discussion of ASR-induced degradation. Sierra Club's Reply explained that the license renewal application did not discuss ASR-induced degradation in the context of the information notice, IN 2011-20, issued by the Commission.

Further, Sierra Club's Reply explained that the ER did not make any reference to any of the technical standards referred to in the IN 2011-20, nor did the ER explain how Entergy's Structural Monitoring Program would address the issues raised in IN 2011-20.

Again, Sierra Club was entitled to respond to the arguments in Entergy's Answer. Sierra Club is not raising any new issues. A reply may legitimately amplify issues presented in a hearing petition. La. Energy Servs. (National Enrichment Facility), CLI-04-25.

CONCLUSION

Entergy's Motion to Strike is attempting to make the contention requirements more strict and difficult than they actually are. It is clear from Entergy's Answer that Entergy completely understood Sierra Club's contentions. In its Reply, Sierra Club was simply responding to Entergy's Answer.

Therefore, Entergy's Motion to Strike portions of Sierra Club's Reply should be denied.

/s/ *Wallace L. Taylor*

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the foregoing "Answer in Opposition to Entergy's Motion to Strike Portions of Reply", dated November 27, 2017, have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, on this 27<sup>th</sup> day of November, 2017.

/s/ *Wallace L. Taylor*

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