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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)	March 21, 2011

COMBINED REPLY TO NRC STAFF AND ENTERGY'S ANSWERS IN OPPOSITION TO CLEARWATER'S MOTION FOR LEAVE AND PETITION TO AMEND CONTENTON EC-3

Pursuant to 10 C.F.R. § 2.309(h)(2) Hudson River Sloop Clearwater, Inc. ("Clearwater") respectfully submits this combined reply to the U.S. Nuclear Regulatory Commission Staff ("NRC Staff") and Entergy Nuclear Operations, Inc. ("Entergy") answers to Waste Petitioners Motion for Leave and Petition to Amend Contention EC-3, dated February 3, 2011 (the "Environmental Justice Petition").

PRELIMINARY STATEMENT

Environmental Justice issues must be dealt with on a site-specific basis. Thus, prior to any decision regarding the relicensing of Indian Point, the National Environmental Policy Act ("NEPA") requires the NRC Staff to analyze and assess the environmental justice impacts of the proposed action and reasonable alternatives. Unusually, Entergy and the Staff do not object to the first part of the contention, termed 3a, that deals with the inadequacy of the environmental justice assessment for the proposed action, because neither can show that there has been any analysis of environmental justice issues for institutionalized populations, as the initial contention alleged was lacking from the Environmental Report ("ER"). Therefore, with this reply Clearwater is merely clarifying by showing

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that this contention is broader than any specific institutionalized population and indeed extends to areas where there is differential access to transportation.

With regard to the contentions regarding the no-action alternative, 3b, and the cooling tower alternative, 3c, Entergy and the NRC appear to misunderstand both the rules and the nature of Clearwater's interest. First, as usual, Entergy and the NRC Staff object to the new contentions on the grounds that they are too late. This is based on a misreading of the regulations, the nature of the contention parts, and their bases. Second, Entergy and the Staff seem to think that NEPA requires an ends-driven analysis and that Clearwater is advocating for such an analysis, but with a different end goal than the Staff and Entergy. This is wholly incorrect. Clearwater's primary interest in this proceeding is to ensure that the NEPA assessment takes a hard look at environmental justice issues and uses objective science to determine the disparate impacts of either the proposed action or the alternatives, both with and without feasible mitigation. Here, the Staff's failure to do a thorough environmental justice analysis not only violates Commission policy, it also violates NEPA.

NEPA does not require the NRC to undertake an academic exercise to reach a pre-ordained outcome. Instead it requires a genuine objective analysis of impacts and mitigation alternatives. Even before the events in Japan over the last couple of weeks, it was important for the public to be informed about whether Entergy's assertions by proxy regarding asthma, electric rates, and the impacts of cooling towers had any validity. The FSEIS's vague and inconsistent findings regarding these matters of vital public importance simply do not give the public, the state, or indeed the NRC itself, the information NEPA requires. Furthermore, the recent events in Japan underline the need to prepare meticulously for severe accidents to a radius of at least 50 miles. In particular, to minimize disparate impacts on society's most vulnerable individuals such as school children in Head Start programs, veterans in VA hospitals, homeless people in shelters, and inmates of correctional institutions, the

NRC Staff must assess the extent to which the measures that are in place to protect these individuals can be improved. So far it has failed to even attempt to carry out this obligation.

Therefore, the Atomic Safety and Licensing Board (the "Board") should grant the Petition to Amend so that environmental justice issues are fully addressed prior to any relicensing decision about Indian Point.

ARGUMENT

I. All Parts of Contention EC-3 Are Timely

There is no dispute that the first part of the contention, 3a, relating to the environmental justice analysis of the proposed action is timely. While Entergy and the NRC Staff dispute the timeliness of 3b and 3c, their objections are based upon a misreading of the rules, a misreading of Clearwater's assertions, and a desire to avoid adjudication of whether the FSEIS really is the objective hard look at environmental justice issues that NEPA requires.

A. The Text Of The Regulations Allow Parties To Base New Contentions on the Material in the FSEIS That is Different to the ER

Entergy and the NRC Staff argue that Petitioners have not satisfied the timeliness test under 10 C.F.R. § 2.309(f)(2) and should instead be scrutinized under the stricter balancing test for untimely contentions set forth in § 2.309(c). If a new contention is timely under 10 C.F.R. § 2.309(f)(2), then the eight factors specified in § 2.309(c) need not be considered. *Vermont Yankee*, 62 N.R.C. 813, 821 (2005). Furthermore, contrary to the Staff and Entergy's assertions, differences between the Environmental Report ("ER") and the Final Supplemental Environmental Impact Statement ("FSEIS") allow parties to file timely contentions after publication of the FSEIS.

With regard to timing, the regulations state:

> On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. *The petitioner may*

> *amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, . . . that differ significantly from the data or conclusions in the applicant's documents.* Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that--
>
> (i) The information upon which the amended or new contention is based was not previously available;
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10. C.F.R. § 2.309(f)(2) (emphasis added). Parsing this text shows that 10. C.F.R. § 2.309(f)(2) actually contains two tests for timeliness, not one, as the Staff and Entergy appear to believe. The first test, contained in the emphasized sentence allows timely contentions to be filed "if there are data or conclusions in the NRC *draft or final* environmental impact statement" that differ significantly from the ER. The word "otherwise" at the beginning of the next sentence shows straightforwardly that the three-part test for timeliness does not apply if intervenors are timely under the first test comparing the DSEIS or the FSEIS to the ER. Only if that is not the case, does the Board have to reach the three-part test regarding materially different information.

Here, Clearwater satisfies the first test. As shown in the Environmental Justice Petition, the applicant did not deal with environmental justice in any depth in the ER. Furthermore, the regulations allow the filing of timely NEPA contentions based upon differences between the ER and the "draft *or* final" EIS. Whether the word "or" is read conjunctively or disjunctively is irrelevant. Under either meaning of "or," the test shows that the relevant comparison for timeliness is between the ER and the NRC draft or final assessment. This shows that parties may wait until the publication of the FSEIS to add contentions that could not have been based upon the data or conclusions in the ER.

Not only is this outcome dictated by the plain text of the regulations, it is also good policy. As discussed below, this proceeding runs in parallel with the NEPA process and requiring parties to base contentions on the DSEIS would waste the valuable resources of this Board and would also require the parties to undertake duplicative filings. Moreover, as discussed in the next Section, the new contention parts are primarily based upon NRC's response to comments in the FSEIS or lack thereof. Thus, even if the Board finds for some reason that the regulations should not be given their plain meaning, it should nonetheless admit contention parts 3b and 3c into the proceeding.

B. Contention Parts Are Timely Under the Materially Different New Information Test

Even if this Board decides to disregard the plain meaning of the text of the regulations and apply the three-part test advocated by the NRC Staff and Entergy, it should find all parts of the contentions timely. Although some of the information underlying the contentions was available in the DSEIS, that does not mean that the contentions are too late. For example, in the proceeding regarding the relicensing for the Vermont Yankee reactor, the panel admitted a new contention when, as here, some of the facts had been previously raised in the proceeding. The Board held in essence that where the circumstances at the time of the original pleading were insufficient for a ripe contention, a party is not foreclosed from bringing a subsequent contention on those circumstances when later-discovered facts round-out the contention. *Entergy Nuclear Vermont Yankee L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station) LBP-06-14, 63 NRC at __ (slip op. at 13)(May 25, 2006) ("new and material information is sometimes revealed in stages, so that the foundation for the contention is not reasonably apparent until the later pieces fall into place.").

With regard to contention 3b, in response to comments, the NRC Staff added a sentence to the DSEIS. NRC Staff Br. at 12. That sentence acknowledged that some environmental justice populations could be affected by additional air emissions caused by shutdown of Indian Point. *Id.*

NRC disingenuously states that Clearwater raises no challenge to the substance of this statement. *Id.* That assertion is incorrect. Although there is very little substance to this sentence, through it the NRC Staff has acknowledged the possibility of disparate impacts. As discussed in further detail below, Commission guidance requires assessment of such impacts where the Staff concludes they could occur. 69 Fed. Reg. 52,040, 52,048 (August 24, 2004) (goal of EJ analysis is to assess environmental effects on EJ populations and thence identify disparate impacts). Here, through the addition of a single vague equivocal sentence to the FSEIS the NRC Staff has acknowledged a potential for impact on an environmental justice population, but has not reached any firm conclusion regarding the impacts or whether they would be disparate, as the commenters alleged. Moreover, the comments themselves on this issue that prompted NRC to add this sentence are also materially different new information not contained in the DSEIS.

With regard to part 3c, many commenters alleged potential environmental justice impact from closed-cycle cooling, but the NRC failed to respond with any objective analysis of this issue. *E.g.* FSEIS at A-155. NRC did not amend the FSEIS, but stuck with the vague conclusion that operational impacts from closed-cycle cooling would be "SMALL to LARGE." *Id.* at 8-12. This is not a useful assessment of the impacts. If this were permissible, NRC Staff could merely conclude every impact could be "SMALL to LARGE" without doing any analysis whatsoever. The whole purpose of the NEPA analysis is to determine whether the impacts would be small, medium, or large. Thus, part 3c is timely because it is based upon NRC's lack of response to the comments received.

C. Contentions Are Timely Under The Eight Factor Test

As Petitioners have demonstrated the new contentions are timely under 10 C.F.R. § 2.309(f)(2), the § 2.309(c) standard does not apply. However, even if the Board accepts the argument that

Petitioners' new contentions are untimely under 10 C.F.R § 2.309(f)(2), the new contentions satisfy the requirements of 10 C.F.R § 2.309(c).

Under 10 C.F.R § 2.309(c), if a filing is untimely, it may still be admitted upon the balancing of eight factors:

i) Good cause, if any, for the failure to file on time;
ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

In evaluating the admissibility of a late-filed contention, the most important of these factors is whether good cause exists. *See Commonwealth Edison Co.*, (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 N.R.C. 241, 244 (1986) ("It is well established in our case law that this first factor is a crucial element in the analysis of whether a late-filed contention should be admitted.").

Here with regard to timeliness for the two disputed contention parts 3b and 3c, Clearwater had good cause to file after the FSEIS came out. First, Clearwater could not have anticipated that Entergy would encourage various groups to make comments regarding the environmental justice impacts of the no-action alternative and the cooling tower alternative and that the NRC's response to those comments would be so inadequate. Thus, Clearwater clearly had good cause to file the new contention parts 3b and 3c after the FSEIS came out.

Furthermore, Clearwater made the reasonable assumption that the NRC Staff would remedy deficiencies in the DSEIS based upon comments received in the NEPA process, rather than through litigation in this proceeding. Under the long-established presumption of regularity, administrative agencies are assumed to fulfill their statutory duties properly and in good faith. *U.S. v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926). This principle dictates that adjudicatory bodies presume government agencies have appropriately discharged their official duties, absent clear evidence to the contrary. *Id.* The presumption of administrative regularity "perhaps is less a rule of evidence than a general working principle." *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). The presumption "supports the inference that when administrative officials purport to decide weighty issues within their domain they have conscientiously considered the issues." *Hercules v. EPA*, 598 F.2d 91, 123 (D.C. Cir. 1978) (citations omitted). *See also AR Power and Light Co.*, 6 A.E.C. 25 (Jan. 18, 1973) ("The well-recognized presumption of administrative regularity fully extends to the discharge by the [Atomic Energy Commission] staff of its responsibilities in connection with the issuance of operating licenses.").

Just as courts assume government agencies will properly fulfill their statutory obligations, parties are entitled to this same presumption. NEPA clearly imposed obligations on the NRC Staff to address Environmental Justice in minority and low-income populations and these obligations were later clarified by Commission guidance and decisions. *See System Energy Resources*, 61 N.R.C. 10 (explaining Environmental Justice requirement and finding information in Environmental Report sufficiently detailed in its description and analysis of the minority and low-income populations to satisfy NEPA).

Clearwater rationally assumed, under the presumption of administrative regularity, that the NRC Staff would adequately fulfill its statutory and regulatory obligations regarding Environmental

Justice. Clearwater participated in the administrative process by filing comments on the DSEIS regarding the no-action alternative. FSEIS at A-153-54. Clearwater assumed the Staff would likewise comply by taking all comments into account and incorporating the necessary changes in the FSEIS.

Clearwater could not have known, and should not have been expected to forecast, that the Staff's final EJ analysis would fail to adequately respond to these comments and ultimately fail to meet statutory requirements and Commission guidance. Clearwater commented on the DSEIS and assumed administrative regularity throughout the process. Clearwater's Environmental Justice Petition was necessitated in part by the Staff's failure to adequately address the comments made about the DSEIS. Clearwater was entitled to assume, under the presumption of administrative regularity, that the agency would properly fulfill its NEPA obligations in the FSEIS having received comment from the public on the DSEIS. Thus, Clearwater had yet another good cause to wait for publication of the FSEIS prior to attempting to add contention part 3b.

With regard to the other factors, all weigh in favor of admission of parts 3b and 3c, except that adding them would slightly broaden the scope of the proceeding. However, the new contention parts are closely related to the original contention and cover issues that Entergy itself has encouraged groups to raise in comments on the DSEIS. Entergy can therefore hardly complain about the slight expansion in scope because it is partly responsible for pointing out the deficiencies in the DSEIS.

Moreover, any other approach to timeliness would make these proceedings even more inefficient. This proceeding runs in parallel with the NEPA process. It is entirely pointless to require parties to file contentions regarding the DSEIS at the same time as they file comments on the same document in the NEPA process. The comments place the NRC Staff on notice that there is a concern that needs to be addressed. Parties should be able concentrate their energies on the NEPA process and then wait and see whether the Staff does actually address the issues in the FSEIS. To the extent that

the Staff fails to address the comments, it can hardly complain that it was not on notice of those deficiencies. Similarly, it would be pointless for this Board to spend its valuable time addressing contentions regarding the DSEIS that would subsequently be mooted out by further analysis in the FSEIS. Thus, even if this Board finds that contentions parts 3b and 3c are untimely, it should nonetheless admit them into the proceeding because Clearwater meets the eight factor test laid out in 10 C.F.R § 2.309(c).

II. All Parts of the Contention Raise Material Issues

Environmental Justice is a statutory obligation that the NRC must fulfill under NEPA. *See In the Matter of System Energy Resources, Inc.*, 61 N.R.C. 10, 13 (January 18, 1995) (stating Environmental Justice is "the offspring of the National Environmental Policy Act"). Executive Order 12898, issued in February, 1994, directs federal agencies to explicitly address Environmental Justice in minority and low-income populations. *Clairborne Enrichment Center*, the first case to interpret this Executive Order as applied to the NRC, emphasized that the Executive Order did not establish new rights or remedies, but instead serves to "underscore certain provision[s] of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment." 47 N.R.C. 77, 102 (April 3, 1998). Thus, E.O. 12898 reiterates that which NEPA already mandates. The Council on Environmental Quality (CEQ) has interpreted NEPA to call for "a close [] examination of a proposed project's impacts on minority and disadvantaged communities." *Id.* at 101-2. The Commission has stated, "[t]he NRC's goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities." *Id.*

In its Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, issued August 24,2004, the Commission acknowledged its "obligation to

consider and assess disproportionately high and adverse impacts on low-income or minority populations" pursuant to NEPA. 69 Fed. Reg. 52,040, 52,044 (August 24, 2004). The policy first requires the assessment of impacts peculiar to those communities and then mandates the identification of disparate impacts. 69 Fed. Reg. 52,048.

With regard to part 3b, as discussed above, the FSEIS acknowledged for the first time that there "could" be peculiar health risks on low-income or minority populations caused by the no-action alternative. NRC Br. at 12. However, the Staff failed to take the next steps required by the guidance, which is to assess what these impacts would be and determine whether they are disparate impacts. Furthermore, although the NRC claims it does not know which sentences in the FSEIS are contradictory on this subject, the relevant sentences are quoted verbatim in the Environmental Justice Petition. Specifically, in contrast to the Environmental Justice assessment, stating that plant shutdown could cause health risks to environmental justice communities, the air quality assessment states that the effects of a plant shutdown on air quality would be "SMALL." FSEIS at 8-23. Thus, part 3b alleges a material failure to follow Commission policy and to produce a consistent, scientific assessment of the environmental justice impacts of the no-action alternative.

With regard to part 3c, the NRC suggests that Clearwater has made "bare assertions" about the length of any outage required by installation of close cycle cooling. In fact, this is incorrect: Clearwater used an engineer's report to show that other power generators have sought to avoid the expense of environmental compliance by exaggerating the length of outage and the air quality impact of closed-cycle cooling. Furthermore, the Environmental Justice Petition showed that even though the FSEIS reaches no conclusions about air impacts of installing closed-cycle cooling (suggesting they are "SMALL to LARGE"), it reaches a conclusion that the environmental justice impacts would be "small." Contention part 3c is in part based upon this inconsistency. Therefore, once again, the FSEIS

analysis has fallen short of the high standards required by NEPA and the Commission Policy. These deficiencies are therefore material.

III. Entergy Has Taken Inconsistent Positions on Environmental Justice Analysis

By resisting rigorous and objective assessment of environmental justice issues, Entergy has placed itself in a contradictory position. Entergy has undertaken a broad public relations campaign advocating for the relicensing of Indian Point, alleging that its closure would disparately impact environmental justice communities, resulting in poor air quality and higher asthma rates among low-income and minority groups, and claiming that requiring closed-cycle cooling would cause Entergy to close Indian Point, resulting in similarly negative air quality and health impacts. *See* Declaration of Stephen Filler, dated March 21, 2011, attached as Exhibit 1 ("Filler Decl.") at ¶¶ 6-8. Entergy has advanced this position in its public relations and media outreach efforts, consistently characterizing Indian Point with words like "safe," "secure," "clean," "reliable," and "low-cost electricity [producer]." *See* Environmental Justice Petition at 4-5.

Entergy has direct ties to a number of community groups that promote this same message, often using the exact same language as Entergy itself. Many of these groups submitted comments on the DSEIS challenging its analysis of the no-action alternative and the closed-cycle cooling alternative. For example, an Entergy spokesperson has stated that Entergy was instrumental in founding NY Affordable Reliable Electricity Alliance (NY AREA), an astroturf organization that includes among its Board Members Jim Knubel and Norris McDonald, who both have ties to the nuclear industry. Filler Decl. at ¶¶ 9-11. NY AREA is at least partially funded by Entergy, and the Entergy spokesperson has stated, "there's no question that there's a strong association" between Entergy and NY AREA. *Id.* at ¶ 11. NY AREA representatives testified at both the afternoon and evening sessions of the Public Meeting to Discuss the Draft Supplemental Environmental Impact Statement for Proposed License

Renewable of Indian Point Nuclear Generating Unit Numbers 2 and 3, on February 12, 2009 (the "Public Meeting"), using key phrases and arguments identical to Entergy's. Arthur Kremer of NY AREA testified in the afternoon session in favor of relicensing, arguing that without Indian Point, local air quality would erode and more people would suffer. *Id.* at ¶ 9. Patrick Moore, an advisor to NY AREA, has long been a paid consultant to the nuclear industry, began working in 2006 for an organization established and funded by the Nuclear Entergy Institute, and has attended events supporting the extension of Indian Point's license alongside Entergy staffers. *Id.* at ¶¶ 12-14. Moore testified at the evening session, Adams Accession Number ML091410355 ("PM – Evening"), that "nuclear energy is reliable and affordable," and that "nuclear power is safe." *Id.*

Additionally, Norris McDonald, founder and President of the Center for Environment, Commerce and Energy ("CECE") and its outreach arm, the African American Environmentalists Association ("AAEA"), testified at the evening session that Indian Point was green and clean, expressed concerns that cooling towers would result in either permanent or temporary shutdown that would lead to an increase in inner city smog, and stated that Indian Point "provides reliable energy without contributing pollutants that exacerbate asthma." *Id.* at ¶¶ 15. Two other representatives of the AAEA gave similar testimony mimicking Entergy's arguments and phraseology. Norris McDonald and AAEA have substantial ties to the nuclear industry: McDonald is a member of the Alliance for Sound Nuclear Policy and Co-Chair of the Nuclear Fuels Reprocessing Coalition, while AAEA is a member of the nuclear astroturf groups, the Clean and Safe Energy Coalition, NY AREA and the New Jersey Affordable, Clean, Reliable Energy Coalition. *Id.* at ¶¶ 18.

Further, a representative of 100 Black Men, a community service organization based in New York, NY which lists Entergy as a 2010 Patron Supporter on its website, testified that Indian Point helps improve local air quality and provides "reliable, clean and affordable" electricity. *Id.* at 19-20.

The Executive Director of SHARE (Safe Healthy Affordable Reliable Energy), which includes Entergy and 100 Black Men among its 28 members, submitted a written statement supporting relicensing, arguing that Indian Point provides reliable, safe, and affordable power and prevents air pollution and incidents of asthma in low income communities. *Id.* at ¶¶ 21-22. The Declaration of Stephen Filler, based upon research conducted concerning Entergy's influence and relationships with certain environmental justice groups, provides even more evidence that groups with direct ties to Entergy and the nuclear industry testified or otherwise publicly espoused Entergy's arguments using Entergy's slogans and keywords. *Id.* at ¶¶ 5-22.

Based on the available information, Clearwater believes that Entergy has influenced many of these groups with help from ProActive Communications, a public relations firm with ties to the nuclear industry. James Knubel testified in favor of relicensing at the Public Hearing, stating that has was advisor on the Board of New York AREA, and that he was formerly the Chief Nuclear Officer for Indian Point 3 and at Fitzpatrick Nuclear Plant, and later a Vice President of Energy. Knubel did not mention at the hearing that he is, or was at one time, also the Program Director for ProActive Communications. *Id.* at ¶¶ 26-28. Further, ProActive's President and Founder, Mark Serrano, is also President of NY AREA, and ProActive Communications Director Paul Steidler also serves as NY AREA's media contact. *Id.* at ¶ 28. Entergy's Jim Steets has described ProActive's work for NY AREA as helpful in organizing "grassroots" support for Entergy's efforts. *Id.* at ¶ 29.

Entergy's close ties to these organizations and the relationship to ProActive illustrates the broad-based nature of Entergy's public relations campaign. Based on these organizations' significant ties to Entergy, it is reasonable to infer that the comments submitted by these groups regarding the EJ assessment of the no-action alternative and closed-cycle cooling were orchestrated and encouraged by Entergy as part of its broad-based campaign. Nevertheless, if true, the comments raised important

environmental justice issues. Specifically, the comments alleged a major flaw in the environmental analysis contained in the DSEIS, stating the analysis had failed to assess the impact of the no-action alternative on environmental justice populations in areas of New York City where fossil fuel plants are located. Regardless of the motivation behind these comments, the staff should have responded appropriately under NEPA.

The Staff's response to allegations that the no-action alternative would disproportionately affect low-income and minority populations has been equivocal and vague. In response to the groups' comments that plant closure could negatively affect air quality and increase asthma rates due to increased output at plants that burn fossil fuels, the FSEIS included the single statement, "[s]ome minority and low-income populations located in urban areas *could be* affected by reduced air quality and increased health risks . . . ." FSEIS at 8-26 (emphasis added). Far from exercising its independent judgment, the Staff makes no judgment with this new sentence at all. The words "could be" indicate that there may be impacts or there may not be impacts. The NRC Staff simply failed to take a hard look at the issues and make an objective assessment. This objective effort is necessary to comply with NEPA and the Commission's EJ Policy and also to properly give environmental justice communities the information they need to form fact-based opinions on the available alternatives.

Puzzlingly, Entergy accepts the Staff's wholly deficient response to the environmental justice concerns raised at its behest without questioning the adequacy of the analysis. If Entergy really were a champion of environmental justice and believed its own public relations messages, it should favor a thorough, objective EJ assessment. Yet, in its answer Entergy challenges Clearwater's arguments in favor of thorough analyses of issues that Entergy itself has brought to the fore of this proceeding at considerable expense. Conveniently, Entergy is satisfied with the Staff's EJ analysis because the

analyses, or rather the lack thereof, favor relicensing. However, NEPA does not allow this type of outcome-driven analysis.

Clearwater raises the issue of the Entergy-sponsored comments to demonstrate that Entergy manipulated the comment process, which led to an inadequate assessment of environmental justice. The Staff seems to have been lulled into a false sense of security with its wholly deficient environmental justice analysis because these comments, coming from purported environmental justice groups, appeared to favor relicensing.

That Entergy successfully hid its involvement from the Staff raises a material issue because it goes to the heart of Clearwater's argument, disputed by both Entergy and the Staff, that the Staff 's environmental justice assessment is not objective. By promoting comments in favor of relicensing, Entergy has tainted the NEPA process. If, however, Entergy were as concerned with environmental justice as it claims to be in its public relations campaign, it should be supportive of a thorough environmental justice review. Instead, in this proceeding Entergy is opposing Clearwater's efforts to obtain an objective analysis of these issues. This clearly demonstrates that Entergy's supposed interest in environmental justice is entirely self-serving.

IV. Other Objections Are Not Substantive

The NRC Staff and Entergy raise some other issues that are not substantive. For example, the Staff alleges its analysis of whether all of Indian Point's output could be replaced by renewable power served to show that such measures could not mitigate the potential environmental justice impact of no-action alternative. NRC Staff Ans. at 15-16. This is of course incorrect, because not all of the replacement power would be generated in environmental justice areas. Thus, mitigation of any environmental justice impacts of the no-action alternative is considerably easier than replacement of all of the power.

The NRC Staff also appear to misunderstand the nature of the contention and their obligations. As extensively briefed, the Staff is obliged to deliver an assessment of impacts and mitigation alternatives. Clearwater is not obliged to do its own competing assessment. Instead, it may point out areas where the Staff's analysis is vague, inconsistent, or lacking basis. This is precisely what Clearwater has done. For example, Clearwater has challenged the Staff's finding that plant shutdown *could* cause some health impact to environmental justice populations as impermissibly vague. In accordance with NRC guidance, the EIS should assess whether such impacts will occur and then determine if they are disparate impacts.

The Staff misconstrue Clearwater's point about Entergy's involvement in soliciting comments regarding the environmental justice impacts of the no-action alternative and the closed-cycle cooling alternative. NRC Staff Ans. at 13-14. There is no dispute that the motivation of commentators should be irrelevant to NRC. However, the point is that the NRC did not assess the issues raised by these comments adequately. Instead, in the case of comments about the no-action alternative, it merely repeated them in vague terms in a new sentence in the FSEIS. That is impermissible because it allows what should be an objective scientific process to be contaminated by applicants who have large public relations budgets and can afford to spend large sums inserting half-truths and outright myths into the EIS process by proxy.

Entergy seems to believe that the Staff can improperly assess the impact of the no-action alternative without raising a material issue. Entergy Ans. at 14. This is of course entirely incorrect, as NEPA requires the analysis of the impacts of the no-action alternative to be just as objective and thorough as that of the proposed action. Allowing the kind of results-oriented bias in the NEPA process that Entergy advocates would undermine the whole purpose of the analysis, which is to inform the agency and the public of the relative environmental impacts of various alternatives. Furthermore,

far from ignoring NRC's conclusion that environmental justice impacts of the no-action alternative could be large, as Entergy alleges, Entergy Ans. at 18, this failure to reach any conclusion about the actual impact of the no action alternative lies at the heart of Clearwater's contention part 3b. Finally, Entergy's focus on whether the Staff relied on the comments about closed-cycle cooling submitted by its proxies is misplaced. Entergy Ans. at 22. Part of the function of NEPA is to inform the public about potential impacts. By failing to take a clear position on the potential impacts of closed-cycle cooling, the FSEIS left the public misinformed on this issue.

V. Clarification of Contention 3a

Because there is some confusion about the scope of Contention 3a, Clearwater would like to clarify that it is not challenging the emergency plan, it is instead challenging the Staff's failure to identify disparate impacts upon institutionalized and other environmental justice populations within 50 miles caused by the proposed action. It is also challenging the Staff's failure to analyze mitigation for the disparate impacts of the proposed action. As discussed in the attached declaration by Ms. Drew Claxton, a local environmental justice advocate in Peekskill, N.Y., in addition to the Sing Sing correctional facility initially identified by the Board, there are many other institutionalized EJ populations, such as Head Start pre-schools, nursing homes, shelters, and hospitals. *See* Declaration of Drew Claxton, dated March 20, 2011, attached as Exhibit 2 ("Claxton Decl."). Furthermore, there are a disproportionate number of local minority or low-income residents who do not possess their own private transportation. The Claxton declaration also references recent events in Japan, where a nuclear emergency has led the NRC to recommend that populations within 50 miles be evacuated.[1] This recommendation was supported by computer modeling based on a single site producing just over 2,000

[1] http://www.nrc.gov/reading-rm/doc-collections/news/2011/11-050.pdf

Mw.[2] Thus, on this basis, the NRC should assess the disparate impacts of a severe accident on environmental justice populations that are either institutionalized or have reduced access to private transportation up to 50 miles around the plant. The NRC Staff should then examine how to mitigate those impacts in a manner somewhat similar to the requirement for the Staff to conduct the Severe Accident Mitigation Alternatives analysis under NEPA.

VI. Even if the NRC Rules Excluded the Contentions, They Would Need To Be Admitted To Ensure That The NRC Meets Its Statutory Obligations

A. The NRC Is Required To Comply With the Statues Irrespective of the Implementing Rules

Any decisions and adjudications made by the NRC must be in compliance with NEPA and the AEA. *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006); *Union of Concerned Scientists v. NRC*, 711 F. 2d 370 (D.C. Cir. 1983); and *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984). While NEPA requires the NRC to consider environmental effects of its decisions, the AEA is primarily concerned with setting minimum safety standards for the licensing and operation of nuclear facilities. *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006). The two statutes impose independent obligations, so that compliance with the AEA does not excuse the agency from its NEPA obligations. *Id.*

B. Failure to Admit All of Contention EC-3 Would Violate NEPA

Under NEPA, the NRC Staff and Entergy are required to assess all foreseeable environmental impacts of a license renewal. NEPA "places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action," and "ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision making process." *Baltimore Gals & Elec. Co. v. Natural Res. Def. Counsel, Inc.*, 462 U.S. 87, 97 (1983). Indeed, "NEPA was created to ensure that agencies will base decisions on detailed information regarding significant environmental

[2] http://www.nrc.gov/reading-rm/doc-collections/news/2011/11-050_Attchmt.pdf

impacts and that information will be available to a wide variety of concerned public and private actors." *Morongo Band of Mission Indians v. Federal Aviation Administration,* 161 F.3d 569, 575 (9th Cir. 1998) *(quoted* in *Mississippi River Basin Alliance v. Westphal,* 230 F.3d 170, 175 (5th Cir. 2000)).

Thus, the fundamental goal of a NEPA evaluation is to require the responsible government agency to undertake a careful and thorough analysis of the need for the project and its foreseeable impacts before proceeding. Agencies must consider environmentally significant aspects of a proposed action, let the public know that the agency's decision-making process includes environmental concerns, and decide whether the public benefits of the project outweigh the environmental costs. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council,* 462 U.S. 87, 971,76 L. Ed. 2d 437, 103 S. Ct. 2246 (1983); *Utahns For Better Transportation v. United States Dept. of Transp.,* 305 F.3d 1152, 1162 (10th Cir. 2002); *Illinois Commerce Com. v. Interstate Commerce Com.,* 84.8 F.2d 1246, 1259 (D.C. Cir. 1988). Importantly, one of the primary goals of an EIS is to "guarantee that the relevant information will be made available" to the public and the States. *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349 (1989).

Thus, it is critical that the NEPA process be objective and reach conclusions that are reasonably definitive. As shown above, to date the NRC's environmental justice analysis has failed to achieve either of these requirements.

CONCLUSION

For the reasons stated above and in the Environmental Justice Petition, the Board should grant the Environmental Justice Petition and admit all parts of contention EC-3.

Manna Jo Greene

Manna Jo Greene, Environmental Director
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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)	)	
	)	

March 21, 2011

DECLARATION OF DREW CLAXTON REGARDING HUDSON RIVER SLOOP CLEARWATER, INC.'S COMBINED REPLY TO NRC STAFF AND ENTERGY'S ANSWER TO AMENDED ENVIRONMENTAL JUSTICE CONTENTION

I, Drew Claxton, do hereby state as follows:

1. I reside at 601 Kissam Road, Peekskill, NY and have lived in Peekskill NY for 40 years. In 2000, I founded the Hudson Valley Chapter of Citizens for Equal Environmental Protection (CEEP), an environmental justice organization that works to ensure that low-income and minority communities in Peekskill and surrounding areas in the Hudson Valley are represented in the regional planning decisions that affect their environment, quality of life, and health. In 2001, I was elected to serve as Councilwoman on the City of Peekskill Common Council and am now serving my third term. As a City with population that is 48% Hispanic and African American and 4% other ethnic minorities, Peekskill qualifies as what the NY State Office of Environmental Justice calls a potential environmental justice area (PEJA). In addition, CEEP has found that our Peekskill community, as compared to higher income Westchester communities, shoulders a disproportionate share of environmental burdens.

Peekskill Demographics	Peekskill	NYS
Population (2000 Census)[1]	22,441	18,976,457
Ethnicity[2]		
Hispanic/Latino	22%	15%
Black/African-American	26%	16%
Non-Hispanic White	48%	68%
	96%	99%

[1] http://www.clrsearch.com/Search?query=&type=community
[2] ibid.

2. In 2001 and again in 2010, CEEP did a study of environmental and health burdens in and around Peekskill. Peekskill includes or is in close proximity to multiple pollution sources, including the Westchester County's sewage treatment plant that treats sewage for Peekskill, Cortlandt and Yorktown and for which the County is pushing to extend district boundaries to include other higher-income northern-Westchester communities (e.g., Somers), the Wheelabrator/RESCO incinerator which burns much of Westchester County's garbage, the Indian Point nuclear power plants, an ash landfill, a waster transfer stations, and a number of other industrial uses requiring hazardous waste permits. See Attachment 1-EJ Map of Westchester County. We have also found that Peekskill has what appears to be a relatively low health status, including a disproportionately high rate of low-birth weight babies and asthma hospitalizations.

3. For the past two years I have also actively served the Peekskill Environmental Justice Council as we completed the Peekskill Community-based Environmental Justice Inventory (CBEJI). Below are the findings of the CREJI for Peekskill. A rigorous Environmental Justice review for the relicensing of Indian Point would need to consider the additional impacts on low-income and minority communities in Peekskill and other communities of this proposed action.

11.1 Findings

The City of Peekskill and its surrounding area has a number of unique physical and demographic characteristics that make it highly vulnerable to the risks of climate change. Based on 2000 Census data, Peekskill is predominately a community of color consisting of multi-ethnic populations. Covering an area of approximately 4.5 square miles, Peekskill is burdened with one hazardous waste handler and two hazardous and solid waste facilities all housed in a predominantly Hispanic populated areas. This report focused on four major and minor air polluters, 17 industrial and municipal surface water pollution sources and five toxic release sites (see Table 1). The neighborhoods within a 12.5-mile radius of downtown Peekskill are home to at least:

- 2 hazardous waste handler,
- 7 hazardous waste facilities,
- 19 solid waste facilities,
- 27 major and minor air polluters,
- 87 industrial surface water sites,
- 20 municipal surface water sites,
- 15 toxic release facilities,
- 47 hazardous waste handlers, and
- 23 toxic release sites.[3]

The majority of toxic release sites, hazardous waste, solid waste facilities and wastewater facilities are located in predominantly African American communities (see Attachment 2).

[3] Data provided to Hudson River Sloop Clearwater and Skidmore GIS team by NYS DEC Office of Environmental Justice; is on file at Clearwater.

Any one of these facilities alone may cause minor impacts to surrounding communities, but collectively the impact is likely to be more significant due to cumulative and potentially synergist effects. The Westchester County Waste-to-Energy Incinerator (also called the Resource Recovery facility or RESCO) at Charles Point is a known source of dioxins, benzofurans, heavy metals and other emissions. The Frit Pit, now closed, was the disposal site for ash from the Charles Point incinerator and may cause impacts to the nearby Sprout Creek, which flows into Annsville Creek just north of Peekskill, and then into the Hudson River. The Peekskill Sanitary Sewer District (SD) Sewage Treatment Plant (STP), discharges effluent into the Hudson River and odors have been reported as a frequent problem. The NDL Hazardous Waste Site, operated by NDL Organization, is listed as a Hudson Hazardous Waste (HW) Facility, Inc. and the Karta Transfer Station, a Solid Waste Facility, are major sources of contamination to local population. The BASF Corp. Peekskill Pigments Plant on Lower South St. produces pigments consisting primarily of titanium-coated mica and iron oxide coated mica, as well as bismuth oxychloride products. This facility has a Title V permit to emit limited quantities of chemical and volatile organic compounds (VOCs). Because of these toxic releases, it is listed as both Hudson Air State Facility (ASF) and an ATV Facility.

As discussed, the Hudson River is a 200-mile PCB Superfund site. In addition, water and sediments in the Peekskill area are contaminated with low levels of tritium, strontium-90 and other radioactive isotopes that have been discharged or leaked from Indian Point Nuclear Power Facility in Buchanan. Indian Point also causes significant fish kill due to impingement and entrainment in a once-through cooling system and thermal pollution. There are also four fossil fuel power plants near Peekskill: Bowline in Haverstraw (which alternates between oil and natural gas), and the Lovett plant (which burned coal and is now closed) in Tompkins Cove; north of these are Danskammer and Roseton in the Newburgh area, causing similar impacts to fish as those from Indian Point, plus releasing carbon, particulate and other air emissions. Overall, 94 facilities in Peekskill report to EPA regarding possible or actual toxins in processing, manufacturing, handling, transportation or waste disposal.

Beyond current and historic toxic or hazardous releases to air, water and soil from industry, energy and waste facilities, there are also issues of traffic emissions, as well as releases from Sewage Treatment Plants that include pharmaceuticals, caffeine and a host of chemicals that can disrupt endocrine function in humans and aquatic species.

Health data that compares Peekskill to surrounding communities indicates that Peekskill has unusually high rates of asthma, including emergency room visits and hospitalizations, respiratory cancers, death due to cardiovascular disease, a high incidence of low birth weight babies, especially in African-American babies, and the highest infant death rate in the county. Peekskill also has a high rate of lead poisoning, with 77% of its housing stock built in the days when lead–based paint was widely used. These findings indicate that Peekskill has a low health status and that its population may be more vulnerable to additional exposure to pollutants in the environment

In addition, data gathered from the 2010 Peekskill Angler Survey shows that 49% of the respondents reported that obtaining food was at least one of the reasons they were fishing in the Hudson. As in earlier studies fish consumption limits were exceeded and contaminated species are being consumed by the most vulnerable segments of the population, children and women of childbearing age. People who are eating fish and crabs

from the Hudson do so either because they were unaware of or disregarded health advisories. [4]

4. With regard to Indian Point, I have serious concerns about the feasibility of evacuating area residents in the event of a nuclear accident or incident at Indian Point.

   - **School Districts.** The City of Peekskill has a number of pre-school, Head Start, and day care centers, which do not have their own means to transport children to safety. In addition, the Peekskill City School District (in which, based on income, 67% of all children receive free or reduced lunches) are organized based on the Princeton Plan where children of the same age, not the same neighborhood, attend the same schools. Therefore, it is often the case that children from the same family attend different elementary schools. The Princeton Plan is also in effect for public schools in the Village of Ossining, which is also a low-income and high minority community. Where the children of most Westchester school districts are transported to only one location, children from Peekskill City Schools and Ossining Village Schools are transported to different locations based on the schools that they attend. This makes it more difficult for Peekskill and Ossining parents to reunite with all of their children, and particularly hard if they do not have their own private transportation.

   - **Nursing homes, assisted-living facilities, group homes and shelters.** The City of Peekskill, includes or is in close proximity to a number of nursing homes, assisted living facilities, and low-income senior citizens housing. In addition, the City of Peekskill, as compared to higher-income communities in Westchester, have a higher proportion of physically and/or mentally disabled persons living in group homes. We are also home to the JanPeek Shelter for homeless individuals. These populations are harder to evacuate during crisis.

   - **Hospitals.** The Hudson Valley Hospital Center and FDR Veterans Administration Hospital and Nursing Home at Montrose are within 10 miles of Indian Point. As a Veteran of the U.S. Air Force myself, this concern for the safe evacuation of our veterans is near and dear to my heart.

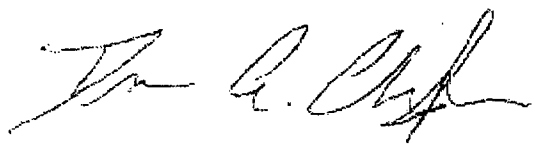
   - **Correctional facilities and jails.** Finally, within or bordering the 17.5 mile radius of the peak fatality zone around Indian Point, there are a number of local jails, the Westchester County Jail, and the Ossining Correctional Facility (Sing Sing) which house EJ populations and are near enough to Indian Point to disproportionately impacted by the inability to evacuate.

   - **Disproportionately less private transportation**. As compared to higher-income communities, the City of Peekskill has a larger percentage of residents without private transportation, who are similarly more difficult to evacuate.

[4] Peekskill Community-Based Environmental Justice Inventory, p. 120-121.

5. Given the recent disaster in Japan, the Nuclear Regulatory cannot be dismissive of potential environment justice matters, especially as they relate to human health and the environment and to evacuation of institutionalized populations.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Drew Claxton

Executed in Peekskill, New York
this 20th day of March, 2011

March 21, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Entergy Nuclear Operations, Inc.	)	Docket Nos. 50-247-LR/286-LR
	)	
Indian Point Nuclear Power Plants Units 2 and 3	)	

DECLARATION OF STEPHEN FILLER IN SUPPORT OF HUDSON RIVER SLOOP CLEARWATER, INC.'S COMBINED REPLY TO NRC STAFF AND ENTERGY'S ANSWER TO CLEARWATER'S AMENDED ENVIRONMENTAL JUSTICE CONTENTION (EC-3)

I, Stephen Filler, declare as follows:

1. My name is Stephen Filler. I am over 18-years of age.

2. I am an attorney and a member of the Board of Directors of Hudson River Sloop Clearwater, Inc ("Clearwater").

3. I earned a Bachelor's Degree from Washington University in St. Louis and my J.D. degree, with honors, from Boston University School of Law.

Introduction

4. I submit this Declaration in Support of Clearwater's Combined Reply to NRC Staff and Entergy's Answer to Amended Environmental Justice Contention (EC-3).

5. This Declaration is based upon research conducted concerning Entergy's influence and relationships with certain environmental justice groups, particularly in connection with comments presented by commenters at the Public Meeting to Discuss the Draft Supplemental Environmental Impact Statement for Proposed

License Renewable of Indian Point Nuclear Generating Unit Numbers 2 and 3, on February 12, 2009 (the "Public Meeting").

6. This research, together with supporting documentation, demonstrates a direct influence, and frequent financial connection, between Entergy and a number of organizations that hold themselves out as environmental justice organizations. The research and documentation not only undermines the independence of these organizations, but also suggests that Entergy has orchestrated a broad-based public relations campaign to influence this proceeding, the Nuclear Regulatory Commission, as well as the "court of public opinion," all in support of Entergy's efforts to obtain reclicensing of the Indian Point Nuclear plants, and to oppose closed-cycle cooling towers.

Research and Documentation

7. A number of organizations in the New York region, with financial ties to Entergy and/or the nuclear industry generally, have repeatedly supported the relicensing of Indian Point. In addition to financial connections with Entergy or the nuclear industry, members of these groups are frequently advisors, or have worked with, other similar groups.

8. Also, these groups have used similar language and almost identical arguments to what Entergy itself has used. In particular, members of these groups frequently argue and often repeat Entergy's tagline that Indian Point provides "clean, safe and affordable electricity" to the region, or that Indian Point is "Safe, Secure and Vital." See, e.g., NUREG-1437, Supplement 38, A-110. Specifically, these groups repeatedly argue that: 1) keeping Indian Point open will protect working class and low income families from rising electricity rates; and 2) closing Indian Point will result in more air emissions from fossil-fueled power plants leading to poor air quality, serious health issues, and higher asthma rates in low-income and minority communities, including African Americans and Hispanics. Id. In addition, these groups have argued that requiring Energy to use closed-cycle cooling towers will cause Entergy to close Indian Point and have adverse environmental justice impacts in the areas surrounding Indian Point.

9. For example Arthur Kremer from NY AREA testified at the afternoon session of the Public Meeting Adams Accession Number ML091410355 ("PM – Afternoon"). He testified for AREA – a group whose very name incorporates "affordable" and "reliable", terms which have figured so prominently in Entergy's reclicensing campaign – strongly in support of relicensing. He argued that without Indian Point, local air quality would erode and more people would suffer. PM –Afternoon, p. 25-28.

10. NY AREA's website provides no information about sources for its funding. See http://www.area-alliance.org/index.htm (Exhibit A hereto). However, its Advisory Board Members include Kenneth Adams, The Business Council of New York State, Jim Knubel, Board Member (discussed below) and Norris McDonald, AAEA (discussed below) each of whom also testified in support Indian Point's reclicensing at the Public Meeting.

11. Also, according to SourceWatch, Entergy was instrumental in NY AREA's founding and supports AREA financially. SourceWatch states that "Entergy spokesperson Jim Steets told PR Watch that Energy "was 'instrumental in the founding of New York AREA,' but said he didn't know 'how much of New York AREA's funding comes from Entergy.' He added, 'There's no question that there's a strong association' between Entergy and NY AREA, but as 'membership has grown, we've become just another dues-paying member.'" See http://www.sourcewatch.org/index.php?title=New_York_Affordable_Reliable_Electricity_Alliance (Exhibit B hereto) . See also Michael Risinit, "Relicensing battle brews at Indian Point," The Journal News (Westchester County, NY), March 30, 2005 (NY AREA is "funded at least partly by Entergy, Indian Point's owner").

12. Also, Patrick Moore, an advisor to NY AREA testified at the evening session of the Public Meeting held on February 12, 2009, at 7 pm, NY, Adams Accession Number ML091410355 ("PM – Evening"). Moore testified that "nuclear energy is reliable and affordable," and that "nuclear power is safe." PM - Evening, p. 78. See also Written Statement of Patrick Moore, Adams Accession No. ML091740490.

13. Moore has longstanding ties to the nuclear industry and many connections with Entergy. According to SourceWatch, Moore "began working for the Nuclear Energy

Institute front group, the Clean and Safe Energy Coalition, in 2006." See http://www.sourcewatch.org/index.php?title=Patrick_Moore (Exhibit C hereto). SourceWatch states that this "Coalition was organized and funded by the Nuclear Energy Institute, with help from the public relations firm, Hill and Knowlton that has a $8 million account with the nuclear industry." See (http://www.sourcewatch.org/index.php?title=Clean_and_Safe_Energy_Coalition (Exhibit D hereto).

14. Moore has long been associated with the relicensing efforts of Indian Point and with Entergy. According to SourceWatch, "in November 2006, Moore traveled to Yonkers, N.Y., to support extending the Indian Point nuclear power plant's license until 2035. Also appearing at this pre-Thanksgiving event were Entergy staffers, Rudy Giuliani (whose Giuliani Partners firm works for Entergy), and members of NY AREA. See http://www.prwatch.org/node/5833/print; http://www.sourcewatch.org/index.php?title=Patrick_Moore_appearances (Exhibit E hereto).

15. Norris McDonald, founder and President of the Center for Environment, Commerce and Energy ("CECE") and its outreach arm, the African American Environmentalists Association ("AAEA") also testified in support of license renewal at the Public Meeting. He claimed that Indian Point was green and clean. He also expressed concerns about cooling towers being built and concerns about smog increasing in inner cities as a result of closing Indian Point. PM - Evening, p. 83-84. He wrote that Indian Point "provides reliable energy without contributing pollutants that exacerbate asthma," and that closing the plant would result in increased fossil fuel plants that would lead to a deterioration of air quality and a "spike in the incidences of respiratory and cardiovascular diseases in the communities where these plants are based." Written Statement of Norris McDonald, Center for Environment, Commerce & Energy, February 12, 2009, p.3, Accession No. ML091740490 ("Written Statement of McDonald"). In his written statement, he wrote that requiring cooling towers would result in either a temporary or permanent shutdown of Indian Point which would lead to devastating results in African American and minority communities, where the bulk of adverse health effects would be borne,

including asthma and other respiratory diseases, cardiovascular disorders, and infant mortality. Written Statement of McDonald, p. 9. McDonald concluded that Indian Point is a "positive structure for mitigating ground level air pollution, global warming and environmental injustice." Written Statement of McDonald, p. 10.

16. Similarly, Derry Digby, Vice President of the AAEA, testified that AAEA supports relicensing because Indian Point is clean and green. Digby argued that closing Indian Point would impact the air quality in environmental justice communities. He also argued that the environmental justice impact of construction and operation of closed cycle cooling system would be substantial. PM - Evening, p. 89-90. See also, Written Statement of Derry Digby, February 12, 2009, p. 4, Adams Accession No. 091740490 (Digby Written Statement)(the EJ impacts of constructing and operating a closed cycle cooling system at Indian Point "would be devastating because we believe Entergy would shut the facility down before building cooling towers and that would lead to significantly more air pollution in minority communities that are already inundated with a disproportionate amount of pollution sites.") Digby also concluded that Indian Point "is a positive structure for mitigating ground level air pollution, global warming and environmental justice." Digby Written Statement, p. 6.

17. Also, Dan Durett, a Director of the AAEA testified strongly in support of relicensing of Indian Point, PM - Afternoon, p. 20-22, in. He argued that Indian Point is safe, that keeping Indian Point open would provide clean, emission free air to African-American communities, and that there would be adverse impacts to communities of color if Indian Point were to close.

18. CECE, AAEA and Norris McDonald have many ties to the nuclear industry. In addition to his connections with CECE and AAEA, SourceWatch states that McDonald is a member of the Alliance for Sound Nuclear Policy and Co-Chair of the Nuclear Fuels Reprocessing Coalition. See http://www.sourcewatch.org/index.php?title=Norris_McDonald (Exhibit F hereto). Also according to SourceWatch, AAEA is member of the nuclear astroturf groups, the Clean and Safe Energy Coalition, the New York AREA and the New Jersey Affordable, Clean, Reliable Energy Coalition. See

http://www.sourcewatch.org/index.php?title=African_American_Environmentalist_Association (Exhibit G hereto).

19. Reverend Jacques Degraff, Vice President of the 100 Black Men testified at the Public Meeting in support of relicensing on the basis that Indian Point helps improve local air quality and keeps electricity costs lot and results in "reliable, clean and affordable" electricity. PM – Afternoon, p. 51-54.

20. 100 Black Men, is a community service organization based in New York, NY. Entergy is listed as a 2010 Patron Supporter on its website. See http://ohbm.org/Supporters.html (Exhibit H hereto), and the Newark Journal reported that Energy Corporation provided a $25,000 grant to its New York Chapter. See http://www.tnj.com/entergy-gives-grant-100-black-men-new-york-chapter (Exhibit I hereto). It has also been reported that Entergy has provided grant money to the National Coalition of 100 Black Women. See http://blog.nola.com/tpmoney/2009/06/entergy_new_orleans_awards_gra.html (Exhibit J hereto).

21. Craig Wilson, Executive Director of SHARE (Safe Healthy Affordable Reliable Energy) submitted a written statement supporting the continued operation of "Clean, safe and secure" Indian Point on the basis that Indian Point provides reliable, clean, safe and affordable power to the region, and arguing that Indian Point avoids air pollution and asthma in low income communities. Written Statement of Craig Wilson, Share, Adams Accession No. ML091740490.

22. SHARE's website does not mention any funding sources, but according to GuideStar, SHARE's IRS 990 form for 2009 indicates membership dues of $474,000, and that Craig Wilson received compensation of $120,000. See http://www.guidestar.org/FinDocuments/2009/300/453/2009-300453721-05d80f93-9O.pdf (Exhibit K hereto). Membership or SHARE consists of 28 entities listed including Entergy, 100 Black Men of NY, and its Advisory Committee consists of individuals from 100 Black Men and the New York Coalition of 100 Black Women.

23. On the date of Public Meeting, February 12, 2009, a press release was issued by HispanicBusiness.com. See

http://hispanicenergycoalition.org/media/news/Hispanic%20Leaders%20Tout%20Indian%20Point.pdf (Exhibit L hereto). The press release states that SHARE, "a non-profit organization focused on educating and empowering disenfranchised communities on clean energy – including the importance of Indian Point," assembled a coalition of Latino Leaders to testify in support of Indian Point. This coalition included the Manhattan Hispanic Chamber of Commerce, the Brooklyn Hispanic Chamber of Commerce and the Hispanic and Business Professional Association of Westchester. The press release "touted" Indian Point for providing "clean and affordable electricity" with a "safe and secure facility."

24. SHARE's membership includes Energy and 100 Black Men of New York. See http://shareny.org/aboutus/membership, (Exhibit M hereto).

25. Rick Miranda from the Brooklyn Hispanic Chamber of Commerce (BHCC) testified in favor of Indian Point's reclicensing. BHCC's website lists SHARE NY as a partner. See http://www.brooklynhcc.org/partners.html (Exhibit N hereto) .

26. Although it's impossible to know for certain, the influence of Entergy upon many of these groups that purport to be environmental justice organizations or supportive of environmental justice may be the handiwork of James Knubel, the program director of Proactive Communication, a public relations group. See http://www.getproactive.us/ (Exhibit O hereto).

27. In fact, James Knubel, testified at the Public Hearing that has was advisor on the Board of New York AREA, and that he was formerly the Chief Nuclear Officer for Indian Point 3 and at Fitzpatrick Nuclear Plant, and later a Vice President of Energy. He testified in support of Indian Point, claiming that Indian Point was vital to region's electric needs. PM - Evening, p. 96.

28. Surprisingly (or perhaps unsurprisingly if Knubel was trying to underplay his influence), Knubel neglected to mention that he is, or was, also the Program Director for Proactive Communications. The ties between Proactive and NY AREA are strong: ProActive's President and Founder Mark Serrano, see http://www.getproactive.us/about_us.html (Exhibit P hereto), is also President of NY AREA, http://www.area-alliance.org/t7364/AboutUs.html (Exhibit Q hereto).

ProActive communications director Paul Steidler also serves as NY AREA's media contact.

29. Entergy's Jim Steets has described ProActive Communications work for NY AREA very important in organizing "grass roots" support for Entergy's efforts. Steets stated that, "If there are events or messages, things that we should attend or that people who agree with us might want to attend, ProActive is helpful in organizing the grassroots campaign that would demonstrate that there are people who subscribe to this [NY AREA's] mission. They're skilled in grassroots organizing and advocacy, very similar to what the groups who oppose us do." See generally, http://www.prwatch.org/node/5833 (Exhibit E hereto).

Conclusion

30. Many of the groups that claimed to be environmental justice groups at the Public Meeting have substantial connections with Entergy and/or the nuclear industry generally, including direct financial connections. These groups frequently have shared board and advisory board members who speak and engage the public at similar forums.

31. These connections seriously call into question the independence of these organizations. These connections also suggest that that Entergy has directed a broad-based public relations campaign to influence this proceeding, the Nuclear Regulatory Commission, as well as the "court of public opinion," to support of Entergy's efforts to relicense Indian Point, and to oppose closed-cycle cooling towers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this day, March 21, 2011 at Highland, New York.

Stephen C. Filler

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)	)	
	)	March 21, 2011

CERTIFICATE OF SERVICE

I, Manna Jo Greene, being of full age, certify that on March 21, 2011 I caused copies of the enclosed "HUDSON RIVER SLOOP CLEARWATER'S COMBINED REPLY TO NRC STAFF AND ENTERGY'S ANSWERS IN OPPOSITION TO CLEARWATER'S MOTION FOR LEAVE AND PETITION TO AMEND AND EXTEND CONTENTON EC-3," with accompanying Declarations by Drew Claxton and Steve Filler, plus attachments, were served on the following list by first-class mail and e-mail:

Lawrence G. McDade, Chair Atomic Safety and Licensing Board Panel Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: Lawrence.McDade@nrc.gov	Judge Kaye D. Lathrop 190 Cedar Lane East Ridgeway, CO 81432 E-mail: Kaye.Lathrop@nrc.gov
Richard E. Wardwell Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: Richard.Wardwell@nrc.gov	Michael J. Delaney Department of Environmental Protection 59-17 Junction Boulevard Flushing NY 11373 E-mail: mdelaney@dep.nyc.gov (718) 595-3982
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