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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)	)	
	)	April 8, 2011

PETITIONERS' OPPOSITION TO ENTERGY'S MOTION TO STRIKE

Pursuant to 10 C.F.R. § 2.323(c), Hudson River Sloop Clearwater, Inc. ("Clearwater") respectfully submits this joint opposition to Entergy Nuclear Operations, Inc.'s ("Entergy") Motion to Strike, dated March 29, 2011.[1]

PRELIMINARY STATEMENT

Entergy claims that Clearwater has attempted to improperly add to the basis of two parts of its environmental justice contention by submitting two additional declarations on reply. The first concerns Entergy's attempts to induce community groups to comment favorably upon relicensing. The second addresses the need to assess disparate impacts in accident scenarios caused by differential access to transport as well as assessing such impacts upon institutionalized environmental justice populations. Entergy's claims are incorrect. In fact, the first declaration, by Mr. Stephen Filler, merely amplifies and extends arguments made in the original Petition, as is permissible.[2] The second declaration, by Ms. Drew Claxton, was part of the material submitted with the reply that broadened the scope of the initial contention, now termed 3a, based

[1] *See* Applicant's Motion to Strike Portions of Hudson River Sloop Clearwater, Inc.'s Reply and Associated Declarations (March 29, 2011) ("Applicant's Motion to Strike") (not yet available on ADAMS).
[2] *See* Motion for Leave to Amend and Extend Contention EC-3 Regarding Environmental Justice and Petition to Do So (February 3, 2011) ("Petition"), *available at* ADAMS Accession No. ML110410369.

TEMPLATE = SECY 041 DS 03

upon the events at the Fukushima Daiichi reactor in Japan.[3] Notably, Entergy does not object to the main support for this broadening, which is that on March 16, 2011, the Nuclear Regulatory Commission recommended that a 50- mile evacuation zone from the stricken Japanese reactors would be appropriate. The expansion of contention 3a based upon the aftermath of the accident was timely and proper because it was done within 30 days of the triggering event.

Since March 21, 2011, when the reply was filed, there has been intense debate about the extent to which the nation should prepare for 50-mile evacuations. That debate is relevant to contention 3a, even though it does not deal with emergency preparedness, but deals instead with assessment of disparate impacts pursuant to NEPA. Over 17 million people live within 50 miles of Indian Point, no planning has been done for evacuation of the zone from 10 to 50 miles from the reactors, and neither the NRC nor Entergy know if such an evacuation is possible. Because there are large environmental justice populations in the 50 mile radius, disparate impacts are likely in the absence of any planning. Clearwater is therefore contending that because an accident leading to a 50-mile evacuation is a foreseeable consequence of license renewal, the NRC must at least assess whether such an accident would have disparate impacts upon environmental justice communities. If so, the NRC must then analyze how to mitigate those disparate impacts.

Finally, although Entergy alleges that Clearwater is too late to allege that differential access to transportation in non-institutionalized populations in the 0 to 10 mile radius would contribute to such disparate impact, this issue is of critical importance and therefore should not be excluded from this proceeding based upon a mere pleading technicality. The Atomic Safety and Licensing Board (the "Board") should therefore deny Entergy's motion. Moreover, even if

[3] *See* Combined Reply to NRC Staff and Entergy's Answers in Opposition to Clearwater's Motion for Leave and Petition to Amend Contention EC-3 (March 21, 2011) ("Reply") (not yet available on ADAMS).

the Board grant's Entergy motion, it may take judicial notice of the key facts that support the expansion of contention 3a to include the environmental justice communities within 50 miles of Indian Point. Therefore, the Board should admit the complete environmental justice contention so that the public is offered the opportunity to be fully informed about the complex environmental justice issues raised by the proposed license renewal.

ARGUMENT

I. LEGAL STANDARDS

At this early stage of the proceeding, Petitioners need not submit admissible evidence to support their contentions; rather, they should "provide a brief explanation of the basis for the contention," 10 C.F.R. § 2.309 (f)(1)(ii), and "provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position . . . along together with references to the specific sources and documents on which the requestor/petitioner intends to rely." 10 C.F.R. § 2.309 (f)(1)(v). These requirements "ensure that full adjudicatory hearings are triggered only by those able to proffer at least some factual and legal foundation in support of their contentions." *In the Matter of Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, 49 N.R.C. 328, 334 (1999). They are "*not* designed to erect an onerous evidentiary hurdle." *In the Matter of Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, ADAMS Accession No. ML060580677 at 44-45 n.33 (Feb. 27, 2006) (emphasis in original).

A. Legitimate Amplification of Argument Is Permissible

It is well established that a reply is an opportunity to refute and respond to arguments presented in the opposing parties' answers and to legitimately amplify issues presented in the initial petition. *La Energy Svcs., LP. (Nat'l Enrichment Facility)*, 60 N.R.C. 223, 224 (2004). "It is . . . appropriate [for the Board] to take into account any information from a reply that

legitimately amplifies issues presented in the original petition." *In the Matter of Northern States Power Co. (Formerly Nuclear Management Co., LLC) (Prairie Island Nuclear Generating Plant, Units 1 and 2),* 68 N.R.C. 905, 919 (2008) (citing *PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2)*, 65 N.R.C. 281, 302 (2007) (noting information in Petitioner's Reply that constitutes "legitimate amplification" is appropriate)); *see also In the Matter of Nuclear Mgmt. Co., LLC (Monticello Nuclear Generating Plant)*, 62 N.R.C. 735, 742 (2005) (denying motion to strike because reply legitimately amplifies issues first raised in petition). "Further, it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, so long as new issues are not raised." *Id.* (citation omitted); *see also In the Matter of Nuclear Mgmt. Co., LLC (Palisades Nuclear Plant)*, 63 N.R.C. 314, 372 (2006) (explaining that replies should focus on "the legal or factual arguments first presented in the original petition or raised in the answers to it.").

B. New Issues May Be Raised On a Timely Basis

While, generally, a reply may not expand the scope of a contention, it may do so if the expansion was based upon materially different new information or other good cause. *In the Matter of Nuclear Mgmt. Co., LLC (Palisades Nuclear Plant)*, 63 N.R.C. 727, 732 (2006). Commission regulations allow for contentions to be expanded after the initial filing 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)(i) – (iii). These criteria allow a petitioner to introduce in the reply information that was not available to it during the timeframe for filing initial contentions. *Palisades Nuclear Plant*, 63 N.R.C. at 732.

Further, the regulations also include a means to admit new or expanded contentions that are not necessarily based on new information, but that Petitioner had good cause to initially omit. The Commission will allow untimely contentions upon a balancing of the following eight factors, to the extent that they apply:

> (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.

10 C.F.R. § 2.309(c)(1). Of these factors, good cause is the most critical. *Commonwealth Edison Co., (Braidwood Nuclear Power Station, Units 1 and 2)*, CLI-86-8, 23 N.R.C. 241, 244 (1986). As long as petitioners meet the criteria set forth in 10 C.F.R. §§ 2.309(c) or (f)(2), new bases for contentions may be introduced in a reply. *Palisades Nuclear Plant*, 63 N.R.C. at 732.

In addition, Petitioners may add new documentary support, if new documents become available. *In the Matter of Crow Butte Resources, Inc., (North Trend Expansion Project)*, 67 N.R.C. 241, 259 (May 21, 2008). "[A] petitioner need not introduce at the contention phase

every document on which it will rely in a hearing." *Palisades Nuclear Plant*, 63 N.R.C. at 732. Moreover, the Commission recognizes that new documentary evidence may become available after the initial contentions have been filed. In *Crow Butte*, where petitioners' counsel received a new document containing "fairly extensive original analysis" on the eve of oral argument, the Board found under 10 C.F.R. § 2.309(f)(2) "that the document was not 'previously available' to Petitioners in any reasonable sense," that it contained materially different information than was previously available, and that it was submitted in a timely fashion based on when it became available to Petitioners. *Crow Butte*, 67 N.R.C. at 259. The Board alternatively found that the document should be considered under 10 C.F.R. § 2.309(c) because Petitioners had good cause for its untimely submission, and none of the other seven factors mitigated against considering the document. *Id.* at 259-60.

C. Technicalities in Pleading Should Not Be Permitted to Exclude Valid Issues

"Technical perfection is not an essential element of contention pleading." *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, 53 N.R.C. 84, 99 (2001). The Licensing Board would be reluctant to deny intervention on the basis of skill of pleading where it appears that the petitioner has identified interests, which may be affected by a proceeding. *Houston Lighting and Power Company (South Texas Project, Units 1 and 2)*, 9 N.R.C. 644, 650 (1979). It is neither Congressional nor Commission policy to exclude parties because the niceties of pleading were imperfectly observed. *See Sequoyah Fuels Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Funding)*, 39 N.R.C. 116, 118 (1994) (pleading "niceties" should not be used to exclude parties who have a clear interest in the proceeding and have identified bona fide issues). Sounder practice is to decide issues on their merits, not to avoid them on technicalities. *Consumers Power Co. (Palisades Nuclear Plant)*, 10 N.R.C. 108,

116-17 (1979); *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station),* 25 N.R.C. 838, 860 (1987), *aff'd in part on other grounds*, 26 N.R.C. 13 (1987), *reconsid. denied on other grounds*, 26 N.R.C. 277 (1987).

Pro se intervenors are not held in NRC proceedings to a high degree of technical compliance with legal requirements and, accordingly, as long as parties are sufficiently put on notice as to what has to be defended against or opposed, specificity requirements will generally be considered satisfied. *See Crow Butte*, 67 N.R.C. at 278 ("Longstanding agency precedent instructs us that, as a rule, pro se petitioners are not held to the same standard of pleading as those represented by counsel.") (citation omitted). Pro se intervenors are afforded this leniency because "the participation of intervenors in licensing proceedings can furnish valuable assistance to the adjudicatory process." *Id.* at 277 (citing *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, 6 AEC 631, 633 (1973)). However, that is not to suggest that a sound basis for each contention is not required to assure that the proposed issues are proper for adjudication. *Consolidated Edison Co. of N.Y. (Indian Point, Unit 2)* and *Power Authority of the State of N.Y. (Indian Point, Unit 3)*, 17 N.R.C. 134, 136 (1983). Rather, although "strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons who have real interests at stake and who seek resolution of concrete issues" is critical, "it is not necessary to the attainment of that goal that interested persons be rebuffed by the inflexible application of procedural requirements." *Crow Butte*, 67 N.R.C. at 277-78 (quoting *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, 6 AEC 631, 633-34 (1973)).

In pleading for the admission of a contention, an intervenor is not required to prove the contention, but must allege at least some credible foundation for the contention. *Pacific Gas and*

Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 26 N.R.C. 449, 457 (1987), *remanded*, Sierra Club v. N.R.C., 862 F.2d 222 (9th Cir. 1988); *Connecticut Yankee Atomic Power Co. (Haddam Neck Plant)*, 54 N.R.C. 33, 47-48 (2001). A basis for a contention is set forth with reasonable specificity if the applicants are sufficiently put on notice so that they will know, at least generally, what they will have to defend against or oppose, and if there has been sufficient foundation assigned to warrant further exploration of the proposed contention. *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1)*, 19 N.R.C. 29, 34 (1984) (citing *Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, 8 AEC 13, 20-21 (1974)); *Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2)*, 21 N.R.C. 1732, 1742 (1985), *rev'd and remanded on other grounds*, 23 N.R.C. 241

D. The Board may Take Judicial Notice of Facts That Are Beyond Dispute or Are Known To The Commission

Commission regulations allow the Board to take judicial notice of facts that are beyond dispute or are known to the Commission. 10 C.F.R. § 2.337 allows for the Commission or the presiding officer to take official notice of any fact of which a court of the United States may take judicial notice. 10 C.F.R. § 2.337(f)(1). Courts may take judicial notice of adjudicative facts that are either generally known within the territorial jurisdiction of the trial court, or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. F.R.E. 201. 10 C.F.R. § 2.337 goes a step further and also allows the Commission or presiding officer to also take official notice of "any technical or scientific fact within the knowledge of the Commission as an expert body." § 2.337(f)(1).

In one proceeding, the Board took judicial notice of information from a website that contained historical facts about a reactor site. *In the Matter of Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site)*, 69 N.R.C. 613 (2009). Further, in another proceeding,

where intervenors argued the Olympic Games constituted a special circumstance that would bring a terrorism-related Commission regulation into play, the Board took official notice of the recent occurrence of other random terrorist incidents directed at public facilities. *In the Matter of Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, GA)*, 41 N.R.C. 281, 295 (1995), *vacated in part on other grounds, In the Matter of Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, GA)*, 42 N.R.C. 1 (1995). *C.f. In the Matter of Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, 7 A.E.C. 659, 668 (1974) (declining to take official notice of articles containing opinions about issues that remained in controversy among the parties and were the subject of a sharp difference of opinion in the scientific community).

II. THE FILLER DECLARATION AMPLIFIES THE INITIAL PETITION

The Filler Declaration, its associated exhibits, and related portions of the reply should be admitted because they present no new issues. In its Motion to Strike, Entergy argues that the Filler Declaration should be stricken because it "improperly adds additional factual detail" and constitutes "impermissible new supporting material." Motion to Strike at 6. The Declaration of Stephen Filler does not present new issues or legal arguments; rather, it legitimately amplifies arguments made and facts presented in the original Petition.

The original Petition discussed Clearwater's theory that legitimate community groups as well as organizations that were founded and have been subsidized by Entergy had been encouraged, sometimes with financial support, to submit comments on the DSEIS. Petition at 4-6. The Petition named specific groups and noted that the Staff did not adequately respond to their comments on the DSEIS regarding the no-action alternative. *Id.* at 5-8. Entergy's Answer states that Clearwater "questions the veracity" and "disparage[s]" these comments, and fails to

demonstrate that the comments or the NRC's response supports the admission of the amended contention. Applicant's Answer at 11.

In its Reply, Clearwater directly responded to these statements by clarifying and amplifying its position on the comments. Reply at 12-15. Clearwater pointed out that it was not disparaging the comments, it was asking for a proper assessment of the comments by the NRC. As Entergy seemed to have missed Clearwater's point that if Entergy were truly concerned about environmental justice it would have demanded a more satisfactory response by the Staff to the comments raised at Entergy's behest, Clearwater used the Reply to clarify and legitimately amplify its original argument. It did this by showing that Entergy has made considerable efforts to induce environmental justice groups to comment favorably upon the relicensing through the use of paid consultants and front groups, such as New York AREA. It remains puzzling why Entergy has gone to such lengths to get groups to make comments about the effects of the no-action alternative, but is now resisting full assessment of those comments. The logical consequence of getting groups to comment about environmental justice is a fuller assessment of environmental justice, but it now appears this was not Entergy's goal. Moreover, Entergy strenuously asserted that its role in encouraging the comments in this area was irrelevant. It is therefore unclear why Entergy has now asked this Board to adjudicate a Motion to Strike to exclude facts it does not believe are relevant to Clearwater's contention.

Although Petitioners are not required to introduce at the contention phase every document on which they intend to rely at the hearing, *Palisades Nuclear Plant*, 63 N.R.C. at 732, Clearwater included the Filler Declaration and the associated exhibits in its Reply to demonstrate the extensive factual support behind its argument initially raised in the original Petition. The Filler Declaration, its associated exhibits, and related portions of the reply should not be struck

because they constitute legitimate amplification of issues Petitioners initially raised in their Petition. Moreover, Entergy can hardly claim to have been prejudiced by the submission of these facts. Entergy knows far better than Clearwater exactly what it did to work through front groups and paid public relations consultants to induce groups to comment on the DSEIS.

III. THE CLAXTON DECLARATION SHOULD BE ADMITTED

A. For the 10 to 50 Mile Zone the Claxton Declaration Was Timely

Clearwater's argument that the staff must evaluate the disparate impacts of the proposed action upon institutionalized and other environmental justice populations within 50 miles is based on the new and materially different information arising out of the recent nuclear disaster in Japan. Both the Reply and the Claxton Declaration reference the events in Japan, where the nuclear emergency has led the NRC to recommend that populations within 50 miles of the Fukushima reactor complex be evacuated.[4] This new information regarding the 50-mile evacuation satisfies 10 C.F.R. § 2.309(f)(2) because the information only became available on March 16, 2011; the information is based on materially different information than previously available; and the new information has been submitted in a timely fashion because the Reply was filed on March 21, 2011, just five days after this new information became available. The information also satisfies the criterion for late-filed contentions because the fact that information about the disaster in Japan and the NRC's 50-mile evacuation recommendation was not previously known constitutes good cause for not raising it earlier, and none of the other 10 C.F.R. § 2.309(c)(1) factors mitigates this good cause.

B. For the 0 to 10 Mile Zone the Claxton Declaration States Facts That NRC Must Take Into Account In Its Environmental Justice Assessment

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

Entergy's Motion to Strike contends that Clearwater's Reply impermissibly attempts to expand Contention EC-3 to cover broader elements of the general population that have reduced access to private transportation. Applicant's Motion to Strike at 5. However, the NRC must consider the disparate impacts of proposed actions on minority and low-income populations outside any specific institutionalized populations, irrespective of Clearwater's timeliness in raising the issue, in order to meet both its statutory NEPA obligations and its own Environmental Justice Guidelines.

Environmental Justice assessment is a statutory obligation that the NRC must fulfill under NEPA, and in this regard the Commission has stated that its 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." *Clairborne Enrichment Center*, 47 N.R.C. 77, 102 (1998). In its Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, issued August 24, 2004, the Commission acknowledges 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.

For the Commission to fulfill these obligations, it must consider the issues raised in the Claxton declaration. These critical issues should not be excluded from the proceeding due to a procedurally imperfect pleading filed by a pro-se intervenor. It would be manifestly unjust for this Board to allow the NRC to shirk its obligations to undertake a thorough review of environmental justice issues in the 0 to 10 mile zone on this basis. Moreover, the Commission

has never held pro-se litigants to a standard of technical perfection, and it should certainly not allow its Staff to avoid its statutory obligations on account of Clearwater's imperfect pleading. The Claxton declaration and portions of the Reply relating to it should be admitted in their entirety because they raise issues that the Staff had an independent obligation to consider under NEPA and Commission policy.

IV. Additional Facts the Board Should Recognize Are Beyond Dispute Or Known to the Commission

The Board should take official notice of additional facts relating to the recent and unfolding events in Japan. As demonstrated by the Reply, the Commission has recommended that United States citizens within 50 miles of the Fukushima reactor complex in Japan should evacuate. Reply at 18-19. It is also known to the Commission that at least 17 million people live within 50 miles of Indian Point, many of them in such well-known environmental justice communities like Harlem, the Bronx, Queens, and parts of Brooklyn, as well as Beacon, Newburgh and Yonkers. Indeed, U.S. Energy Secretary and Nobel laureate in Physics Steven Chu recently expressed doubt about the safety and feasibility of evacuation at Indian Point, stating on Fox News Sunday, "we're going to have to look at whether this reactor should remain."[5] He also stated that the review of U.S. reactors currently underway as a direct result of Japan's nuclear disaster would consider whether future reactors should be constructed in less populous locations and that the adequacy of evacuation plans at Indian Point would be scrutinized.[6] Additionally, New York Attorney General Eric Schneiderman recently sent a letter to the Commission expressing his concerns about Indian Point's vulnerability to seismic activity and potential to experience catastrophic failure, noting, "the Indian Point nuclear power station

[5] *Nuclear Commission Launches Review of U.S. Reactors After Japan Crisis*, published March 21, 2011, *available at* http://www.foxnews.com/politics/2011/03/21/nuclear-commission-examine-safety-reactors-wake-japan-crisis/ (last visited April 8, 2011).
[6] *Id.*

in Buchanan, New York sits 24 miles from New York City. Of all the power reactors in the United States, the two operating Indian Point reactors have the highest surrounding population both within a 50-mile radius and a 10-mile radius. Seventeen million people live within 50 miles of these reactors."[7]

Local officials also voiced similar concerns. Robert P. Astorino, the top elected official in New York's Westchester County, sent a letter to an NRC official last Friday seeking clarification on what the commission's recommendation for a 50-mile evacuation in Japan meant for his community.[8] Thus, the Board should take official notice of the Commission's recommendation for evacuation of Americans living within 50 miles of the Fukushima plant, that 17 million people, many of them in environmental justice communities, live within 50 miles of Indian Point, and that the NRC currently has no requirement for the evacuation plans for Indian Point to go beyond 10 miles around the plant. Based on the catastrophic events unfolding in Japan, these are matters known to the Commission, and show that a severe accident could have disparate impacts upon environmental justice communities, up to 50 miles from Indian Point.

Entergy cannot claim it is unaware of these issues. According to the New York Times, in a session with Westchester County Legislators, Entergy officials admitted that they had not done any planning for evacuation beyond 10 miles and they did not know if such an evacuation would be feasible:

> Despite the advice the federal regulators gave to people in Japan, the Entergy executives expressed doubt that the evacuation zone would be expanded to reach as far as New York City. Asked if a feasible plan to evacuate much or all of the city could be drawn up, Entergy's director of emergency planning, Michael J. Slobodien, said neither he nor the federal regulators knew. 'We really don't

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[7] March 18, 2011 Letter from Eric T. Schneiderman to Chairman Jaczko and Commissioners Svinicki, Apostokalis, Magwood, and Ostendorff, re: Seismic Risk at Indian Point Nuclear Generating Station, *available at* http://www.ag.ny.gov/media_center/2011/mar/mar18a_11.html (last visited April 7, 2011).

[8] Daniel Gilbert, *Plants Face New Worries*, WALL ST. J., March 24, 2011, at A3.

> have enough information to begin to answer that question,' Mr. Slobodien said. He said the idea that regulators would demand an evacuation plan for an area beyond 10 miles was 'rank speculation.'[9]

The Board should take official notice of the fact that Entergy does not have evacuation plans beyond ten miles and is not sure if people within a 50-mile radius could be evacuated. This admission, made by Entergy's director of emergency planning to Westchester County Legislators, is both beyond dispute and readily verifiable. It confirms that there exists a major potential for disparate impact on environmental justice communities if a severe accident occurs. This issue must therefore be fully assessed prior to any decision on relicensing.

Despite Entergy's lack of knowledge as to whether adequate evacuation plans could feasibly be made, Entergy has continued its ongoing efforts to mislead the public. Entergy recently took out a full page ad in the New York Times promoting the safety of Indian Point, dismissing intervenors' legitimate concerns as attempts to "escalate the fears of the public," and stressing selective comments made by Secretary Chu despite his aforementioned doubts about the plant.[10] Entergy spokesman Jerry Nappi said that the emergency plans the plant has in place are effective and added that "the industry always plans for the worst-case scenario."[11] In light of the 50-mile evacuation in Japan and Entergy's knowledge that it lacks plans for a similar evacuation, these statements are simply false. They continue Entergy's pattern of using public relations to obscure the issues surrounding the relicensing of Indian Point.

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[9] Patrick McGeehan, *Indian Point Operators Dismiss Need for 50-Mile Evacuation Plan*, NY TIMES, March 21, 2011, at A23.

[10] Advertisement by Entergy Nuclear, NY TIMES, March 22, 2011, at A21.

[11] Steve Hargreaves, *Closing NY nuclear power plant would hike bills 6%*, CNNMoney.com, March 28, 2011, *available at* http://money.cnn.com/2011/03/28/news/economy/nuclear_indian_point/ (last visited April 7, 2011).

It is therefore essential that the Board admit Clearwater's environmental justice contention in its entirety so that the public and the Commission can be fully informed about the environmental justice impacts of the proposed action.

CONCLUSION

For the foregoing reasons, this Board should deny Entergy's Motion to Strike in its entirety and take account of the additional facts that further show that the proposed action could have disparate impacts on environmental justice communities within 50 miles of Indian Point that have not been addressed by the FSEIS.

Respectfully submitted,

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ENTERGY NUCLEAR OPERATIONS, INC.	)	
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(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	April 8, 2011

CERTIFICATE OF SERVICE

Petitioner certifies that on April 8, 2011 copies of the enclosed "HUDSON RIVER SLOOP CLEARWATER'S OPPOSITION TO ENTERGY'S MOTION TO STRIKE," plus attachments, were served on the following list by first-class mail and e-mail.

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