

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	
	January 30, 2012

**ENTERGY'S MOTION IN LIMINE TO EXCLUDE PORTIONS OF PRE-FILED
TESTIMONY AND EXHIBITS FOR CONTENTION RK-EC-3/CW-EC-1
(SPENT FUEL POOL LEAKS)**

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I. INTRODUCTION

In accordance with 10 C.F.R. §§ 2.319, 2.323, 2.337, 2.1204, the Atomic Safety and Licensing Board’s (“Board”) Scheduling Order of July 1, 2010, and subsequent Order dated November 17, 2011,¹ Entergy Nuclear Operations, Inc. (“Entergy”) hereby moves to exclude from the hearing record certain evidence proffered by Riverkeeper, Inc. (“Riverkeeper”) and Hudson River Sloop Clearwater, Inc. (“Clearwater”) (collectively referred to as “Intervenors”) on December 22, 2011, in support of the Consolidated Contention RK-EC-3/CW-EC-1. Specifically, portions of both the expert testimony of Mr. Arnold Gunderson (RIV000060)² and Dr. Gillian Stewart (RIV000061),³ as well as certain of Intervenors’ exhibits are inadmissible in this proceeding and should be excluded pursuant to 10 C.F.R. § 2.337(a) because:

(1) Mr. Gunderson and Dr. Stewart each lacks expertise in certain areas covered by their

¹ Licensing Board Initial Scheduling Order (July 1, 2010) (unpublished); Licensing Board Order (Granting Unopposed Motion by the State of New York and Riverkeeper, Inc. to Amend Scheduling Order) (Nov. 17, 2011) (unpublished).

² Exh. RIV000060, Pre-filed Written Testimony of Arnold Gunderson on Consolidated Contention RK-EC-3/CW-EC-1 (Spent Fuel Pool Leaks) (Dec. 22, 2011) (“Gunderson Testimony”).

³ Exh. RIV000061, Pre-filed Written Testimony of Gillian Stewart Regarding Contention RK-EC-3/CW-EC-1 (Spent Fuel Pool Leaks) (Dec. 22, 2011) (“Stewart Testimony”).

testimony; (2) releases from non-spent fuel pool (“SFP”) systems, structures, and components (“SSCs”) are outside the scope of RK-EC-3/CW-EC-1; (3) aging management programs (“AMPs”) are outside the scope of RK-EC-3/CW-EC-1; (4) site remediation decisions for existing contamination are outside the scope of RK-EC-3/CW-EC-1; (5) challenges to dose and reporting regulations are prohibited; (6) the Draft Generic Environmental Impact Statement (“GEIS”) for License Renewal is the subject of rulemaking and thus beyond the scope of this proceeding; (7) Mr. Gundersen’s statements concerning Indian Point Unit 1 (“IP1”) are beyond the scope of this proceeding; and (8) Mr. Gundersen’s statements concerning Vermont Yankee, Entergy’s purported motives for conducting groundwater investigations, and maintenance funding are irrelevant. Attachment 1 to this Motion identifies the specific evidence that should be excluded, including a description of the evidence and the reason(s) for exclusion.

II. LEGAL STANDARDS

U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) regulations governing the admissibility of evidence provide that “[o]nly relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.”⁴ Thus, pursuant to 10 C.F.R. § 2.319(d), the Board may “strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative,” and under Section 2.319(e) the Board may restrict evidence or arguments for the same reasons.

Because only relevant and material evidence is admissible, the Board may exclude or accord no weight to testimony and exhibits that are outside the admitted contention’s scope or

⁴ 10 C.F.R. § 2.337(a).

that raise issues that were not properly presented in earlier pleadings.⁵ Similarly, it may exclude testimony and supporting evidence that is outside the scope of this license renewal proceeding,⁶ or, in accordance with 10 C.F.R. § 2.335(a), evidence attacking the validity of NRC regulations.

Recent Commission decisions explicitly hold that Intervenors are not permitted to change the scope of a contention as admitted by the Board. In the *Vogtle* proceeding, the Commission upheld a Board ruling excluding testimony at hearing that strayed beyond the scope of the bases as pled and admitted, which “defined the scope of the . . . contention.”⁷ The Commission emphasized that the scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases.⁸

Similarly, in the recent *Pilgrim* decision, the Commission reiterated that longstanding precedent requires a Board to look back at the bases to determine the scope of a contention, because the “reach of a contention *necessarily* hinges upon its terms *coupled* with its stated

⁵ See, e.g., *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Licensing Board Memorandum and Order (Ruling on In Limine Motions) at 3-7 (Jan. 26, 2009) (unpublished) (granting in part motion to exclude testimony and exhibits outside the scope of the admitted contentions); *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), Licensing Board Order (Ruling on Pending Matters and Addressing Preparation of Exhibits for Hearing) at 2 (Mar. 24, 2008) (unpublished) (granting in part motions to exclude testimony on topics outside the scope of a license renewal proceeding, because such issues “do not relate to aging and/or because they are addressed as part of ongoing regulatory processes”); *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) at 1-2 (Aug. 9, 2007) (unpublished) (granting in part motion to exclude evidence on topics outside scope of contention and license renewal proceeding); *La. Energy Servs., L.P.* (National Enrichment Facility), Licensing Board Memorandum and Order (Ruling on In Limine Motions and Providing Administrative Directives) at 4-10 (Jan. 21, 2005) (unpublished) (granting in part motions to exclude testimony on topics outside the scope of the admitted contention, including topics raised and rejected at the pleadings stage).

⁶ See cases cited *supra* note 6.

⁷ *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-05, 71 NRC 90, 101 (2010). Thus, to the extent Intervenors may seek to argue, based on *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 147 (2006) and *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004), that it may freely add bases after the contention pleading stage, the Board should reject this argument. These rulings interpreted the contention admissibility rule, not the question of whether testimony at hearing that strayed beyond the stated bases of an admitted contention was admissible.

⁸ *Vogtle*, CLI-10-05, 71 NRC at 100.

bases.”⁹ A key reason for this requirement is to provide notice to the opposing parties of the issues they will need to defend against.¹⁰ Because of this principle:

Intervenors therefore may not “freely change the focus of an admitted contention at will” to add a host of new issues and objections that could have been raised at the outset. Where warranted we allow for amendment of admitted contentions, but do not allow distinctly new complaints to be added at will as litigation progresses, stretching the scope of admitted contentions beyond their *reasonably inferred* bounds.¹¹

Based on this standard, the Commission affirmed a Board decision to exclude allegations related to “health costs” from a contention challenging the input data on “economic consequences” in a SAMA evaluation, because the stated *bases* did not include such costs.¹² The Commission stressed that “NRC adjudicatory proceedings would prove endless if parties were free . . . to introduce entirely new claims which they either originally opted not to make or which simply did not occur to them at the outset.”¹³

Furthermore, an expert’s opinion is admissible only if it is offered by a witness who has demonstrated his or her qualification to provide expert testimony on the specific technical subject at issue.¹⁴ An expert’s opinion is admissible “only if the factual basis for that opinion is

⁹ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis added) (citing *Pub. Serv. Co. of N. H.* (Seabrook Station, Units 1 & 2), ALAB-899, 28 NRC 93, 97 (1988)).

¹⁰ *See id.*

¹¹ *Id.* at 308-309 (emphasis added) (citations omitted).

¹² *See id.* at 309-10.

¹³ *Id.* at 311 (quoting *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-05-28, 62 NRC 721, 727-28 (2005)).

¹⁴ *See Entergy Nuclear Vt. Yankee* (Vermont Yankee Nuclear Power Station), Licensing Board Order (Ruling on Motions to Strike and Motions in Limine) at 7-8 (July 16, 2008) (unpublished) (granting in part motion to exclude opinion testimony proffered by an individual outside of demonstrated expertise); 10 C.F.R. § 2.319(d); *see also Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 475 (1982) (upholding Licensing Board conclusion that witness lacked sufficient expertise to testify).

adequately stated and explained in the affidavit.”¹⁵ “A witness may qualify as an expert by knowledge, skill, experience, training, or education to testify [i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.”¹⁶ Similarly, opinion testimony is only admissible if it is based on the “methods and procedures of science,” rather than on “subjective belief or unsupported speculation.”¹⁷

When the qualifications of an expert witness are challenged, the party sponsoring the witness has the burden of demonstrating that the witness is qualified.¹⁸

III. ARGUMENT

A. Scope of Proceeding and of Contention RK-EC-3/CW-EC-1

This proceeding concerns Entergy’s application to renew the operating licenses for Indian Point Nuclear Generating Units 2 and 3 (“IP2” and “IP3,” respectively, and collectively “Indian Point”). As initially proposed, Riverkeeper Contention RK-EC-3 alleged that Entergy’s Environmental Report (“ER”) “does not adequately assess new and significant information regarding the *environmental impacts* of radioactive water leaks from the Indian Point 1 and Indian Point 2 *spent fuel pools* on groundwater and the Hudson River ecosystem.”¹⁹ Similarly,

¹⁵ *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-4, 61 NRC 71, 81 (2005) (citing *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1st Cir. 1990); *United States v. Various Slot Machs. on Guam*, 658 F.2d. 697, 700 (9th Cir. 1981)). Thus, Licensing Boards may look to federal cases and the Federal Rules of Evidence as sources of authority for evaluating the admissibility of expert witness testimony. See also Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2187 (Jan. 14, 2004) (“Although the Commission has not required the application of the Federal Rules of Evidence in NRC adjudicatory proceedings, presiding officers and Licensing Boards have always looked to the Federal Rules for guidance in appropriate circumstances.”).

¹⁶ *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-21, 60 NRC 21, 27-28 (2004) (alternation in original omitted) (internal quotation marks omitted).

¹⁷ *Savannah River*, LBP-05-4, 61 NRC at 98-99 (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589-90 (1993)) (disqualifying expert for certain purposes).

¹⁸ *Catawba*, CLI-04-21, 60 NRC at 27; *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1405 (1977).

¹⁹ Riverkeeper, Inc.’s Request for Hearing and Petition to Intervene in the License Renewal Proceeding for the Indian Point Nuclear Power Plant at 74 (Nov. 30, 2007) (“Riverkeeper Petition”), available at ADAMS Accession No. ML073410093.

Clearwater Contention CW-EC-1 originally alleged the ER “fails to adequately assess ‘new and significant’ information concerning *environmental impacts* of radioactive substances that are leaking from *spent fuel pools*.”²⁰

At the initial contention stage, the Board admitted RK-EC-3 and CW-EC-1, and unambiguously stated that it was admitting RK-EC-3 “as it relates to the *environmental impacts* from the *spent fuel pool leaks*”²¹ and CW-EC-1 to the extent it “raised a genuine dispute regarding the significance of the *environmental impacts* from the *spent fuel pool leaks*.”²² In accordance with the Board’s direction, Riverkeeper and Clearwater subsequently conferred and submitted Consolidated Contention RK-EC-3/CW-EC-1, which alleged the ER “fails to adequately analyze the *environmental impacts* of *spent fuel pool leaks* as required by the National Environmental Policy Act (NEPA) and NRC regulations.”²³ Consolidated RK-EC-3/CW-EC-1 identifies three main environmental issues related to the SFP leaks: (1) human health impacts; (2) groundwater quality impacts; and (3) impacts to the Hudson River ecosystem.²⁴

The Intervenors have since requested that the Board recognize that RK-EC-3/CW-EC-1 applies to the NRC Staff’s Draft and Final Supplemental Environmental Impact Statements.²⁵

²⁰ Hudson River Sloop Clearwater Inc’s Petition to Intervene and Request for Hearing at 18 (Dec. 10, 2007) (“Clearwater Petition”) (emphasis added), *available at* ADAMS Accession No. ML073520042.

²¹ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), LBP-08-13, 68 NRC 43, 190 (2008) (emphasis added).

²² *Id.* at 193 (emphasis added).

²³ Consolidated Contention of Petitioners Riverkeeper, Inc. (EC-3) and Hudson River Sloop Clearwater, Inc. (EC-1)-Spent Fuel Pool Leaks at 2 (Aug. 21, 2008) (“Consolidated Contention”), *available at* ADAMS Accession No. ML082420284.

²⁴ *Id.* at 2-4.

²⁵ Riverkeeper, Inc. and Clearwater, Inc. Challenge to NRC Staff’s Assessment of Impacts of Spent Fuel Pool Leaks in the Final Supplemental Environmental Impact Statement at 3 (Feb. 3, 2011), *available at* ADAMS Accession No. ML110410362; Riverkeeper, Inc.’s Challenge to NRC Staff’s Assessment of Impacts of Spent Fuel Pool Leaks in the Draft Supplemental Environmental Impact Statement at 3 (Feb. 27, 2009), *available at* ADAMS Accession No. ML090820633.

These requests, which the Board granted, made no substantive changes to the contention's scope.²⁶ Thus, the only issue within RK-EC-3/CW-EC-1, as admitted, is whether the FSEIS and ER sufficiently analyze the environmental significance of Indian Point SFP leaks.

In admitting RK-EC-3/CW-EC-1, the Board made clear it would not allow the Intervenor to challenge the NRC's dose regulations. Specifically, the Board explained that while "there is still the question as to whether the maximum groundwater impact (and, in turn, the maximum dose) has been determined for the site," it was not allowing "an impermissible challenge to Commission regulations."²⁷ This restriction is consistent with Commission case law and the Board's emphasis on a license renewal proceeding's limited scope.²⁸

NRC regulations in Table B-1, Appendix B to Subpart A of 10 C.F.R. Part 51 ("Table B-1") list human health impacts from radiation exposures as a generic, Category 1 issue with SMALL significance. In defining the term SMALL, Table B-1 establishes that "[f]or the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table." Thus, while the Board apparently has left open the question of whether, as a result of the SFP leaks, Indian Point complies with applicable NRC dose regulations, the Intervenor has not sought and the Board has not granted a waiver of the Table B-1 determination equating compliance with those regulations with SMALL impacts to human health. Accordingly, the scope of RK-EC-3/CW-EC-1 excludes examination of human health

²⁶ Licensing Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) at 38 (July 6, 2011) (unpublished); Licensing Board Order (Applying Consolidated Contention Riverkeeper EC-3/Clearwater EC-1 to the NRC Staff's Draft Supplemental Environmental Impact Statement) at 1-2 (May 28, 2009) (unpublished).

²⁷ *Indian Point*, LBP-08-13, 68 NRC at 194.

²⁸ *See id.* at 67.

impacts that turn on contesting, explicitly or implicitly, the conclusion that SMALL effects will occur absent a violation of NRC dose regulations.

B. Portions of Mr. Gundersen’s Testimony Should Be Excluded Because He Lacks Relevant Expertise, Raises Numerous Issues Outside the Scope of RK-EC-3/CW-EC-1 and This Proceeding, and Casts Aspersions Based on Unfounded and Irrelevant Testimony

Intervenors seek to have Mr. Arnold Gundersen testify on “the adequacy of the evaluation by Entergy and the NRC Staff of spent fuel pool leaks and groundwater contamination.”²⁹ Mr. Gundersen provides testimony on the following issues: (1) IP2 SFP leaks; (2) contamination from past IP1 SFPs leaks; (3) leaks, spills, and other releases from other Indian Point non-SFP SSCs; (4) the significance of groundwater contamination; (5) groundwater contamination impacts on the Hudson River, including impacts to aquatic ecology, recreational swimmers, and drinking water sources; and (6) mitigation measures to ostensibly minimize groundwater contamination impacts. For the following reasons, portions of Mr. Gundersen’s testimony should be excluded, as identified in Attachment 1.

1. Mr. Gundersen Has Not Demonstrated Expertise in Hydrogeology, Ecological Impact Assessment, or Human Health Impacts

The Board should exclude portions of Mr. Gundersen’s testimony because the Intervenors have failed to meet their burden to demonstrate that he is an expert in all areas on which he opines.³⁰ Mr. Gundersen states that he is a nuclear engineer with experience in, among other things, nuclear power operations, nuclear safety assessment, radiological assessment, and dose assessment.³¹ However, as discussed below, the Intervenors do not demonstrate that

²⁹ Exh. RIV000060, Gunderson Testimony at 4.

³⁰ *Diablo Canyon*, ALAB-410, 5 NRC at 1405.

³¹ Exh. RIV000060, Gunderson Testimony at 1-2.

Mr. Gundersen has the requisite expertise to provide an expert opinion on matters concerning: (1) hydrogeology; (2) ecological impact assessments; or (3) human health impacts.

First, Mr. Gundersen seeks to testify about the Indian Point hydrogeology, including the likelihood that the IP1 and IP2 groundwater plumes will co-mingle and the likely long-term plume trends.³² However, nothing in Mr. Gundersen’s resume or testimony indicates that he has the requisite expertise to opine on groundwater plume migration, such as any education, knowledge, or experience in the fields of hydrology, geology, or geotechnical engineering. In fact, in the *Finestone* case, a federal Court found that Mr. Gundersen “has no qualifications to testify as to soil or water movement” and accordingly excluded his expert report.³³

Second, Mr. Gundersen offers opinions about potential impacts to the Hudson River aquatic ecosystem.³⁴ Again, nothing in Mr. Gundersen’s resume or testimony indicates that he has appropriate expertise, such as in the fields of aquatic biology, radioecology, or aquatic risk estimation, to testify on such topics.

Moreover, even if he has appropriate qualifications, Mr. Gundersen simply speculates that Sr-90 from Indian Point might adversely impact the Hudson River aquatic ecosystem. In doing so, he provides no factual support for his supposition that observed very low-levels of Sr-90 in the environment are attributable to Indian Point. Nor does he include any discussion of methods for assessing ecological risk or dose to aquatic biota. Instead, Mr. Gundersen relies on nothing other than “subjective belief” and “unsupported speculation.”³⁵

³² *Id.* at 6:4-5; 12:19-20; 15:26 to 16:1; 19:14-20; 20:21 to 21:5; 30:4.

³³ *Finestone v. Fla. Power & Light Co.*, 2006 WL 267330, 12 (S.D. Fla. Jan. 6, 2006) (unpublished), *aff’d* 272 Fed. Appx. 761, 2008 WL 863894 (11th Cir. 2008) (per curiam) (unpublished).

³⁴ Exh. RIV000060, Gunderson Testimony at 23:10 to 24:9; 30:8.

³⁵ *Savannah River*, LBP-05-04, 61 NRC at 98-99 (*quoting Daubert*, 509 U.S. at 589-90) (disqualifying expert for certain purposes).

Finally, Mr. Gundersen opines on the human health impacts from groundwater releases to the Hudson River.³⁶ As noted above, Mr. Gundersen purports to have experience in radiological and dose assessments.³⁷ However, in the *Finestone* case, in excluding his expert report, the Court found that Mr. Gundersen’s “dose calculations are belied by the NRC and the [state agency].”³⁸ In affirming that decision, the U.S. Court of Appeals for Eleventh Circuit found Mr. Gundersen’s dose assessments were the “kind of scientifically unsupported ‘leap of faith’ which is condemned by *Daubert*.”³⁹ So too here, where Mr. Gundersen has failed to discuss actual doses from Indian Point—let alone perform his own independent dose calculations. Thus, Mr. Gundersen’s opinion concerning human health impacts from groundwater releases is unreliable because it is supported by no data, no analysis, or, in the words of the Eleventh Circuit, “no evidence.”⁴⁰

In summary, the Intervenors have failed to demonstrate that Mr. Gundersen is qualified to testify on these issues and, even if qualified in certain respects, have failed to demonstrate that he bases his opinion on an appropriate expert methodology or on reliable underlying information. Thus, the Board should exclude all such evidence identified in Attachment 1.

2. Leaks, Spills, and Other Releases From Non-SFP SSCs Are Outside the Scope of RK-EC-3/CW-EC-1

As noted above, RK-EC-3/CW-EC-1 concerns only the “environmental impacts of *spent fuel pool leaks*.”⁴¹ Despite this clear and unambiguous direction, Mr. Gundersen’s testimony

³⁶ Exh. RIV000060, Gunderson Testimony at 24:11 to 24:23; 25:11 to 25:13.

³⁷ *Id.* at 1-2.

³⁸ *Finestone*, 2006 WL 267330 at 12.

³⁹ *Finestone*, 2008 WL 863894 at 7.

⁴⁰ *Id.*

⁴¹ Consolidated Contention at 2 (emphasis added); *see also Indian Point*, LBP-08-13, 68 NRC at 190, 193.

addresses—at length—releases from *non-SFP* SSCs.⁴² Mr. Gundersen’s testimony includes an entire section entitled, “Ongoing and Future Leaks From Other Systems, Structures and Components at Indian Point.”⁴³ In this section, Mr. Gundersen testifies concerning the alleged impacts associated with leaks and spills from underground piping and other systems,⁴⁴ as well as storm drain and airborne releases (including what Mr. Gundersen refers to as “washout”).⁴⁵ These releases are unrelated to SFP leaks and should be excluded.

According to the Intervenors, such issues are within the scope of RK-EC-3/CW-EC-1 because Clearwater’s initial Petition to Intervene and Reply mentioned “*other* accidental leaks and releases that have previously occurred at Indian Point, as well as the high likelihood of future leaks . . . as components at the plant continue to age and degrade.”⁴⁶ However, after Clearwater filed these initial pleadings, the Board made clear that it was admitting Clearwater’s contention only to the extent it “raised a genuine dispute regarding the significance of the environmental impacts from the *spent fuel pool leaks*.”⁴⁷ Thus, the Board did not admit RK-EC-3/CW-EC-1 as a broad-ranging inquiry into leaks, spills, and discharges from other sources.

The Intervenors’ consolidated contention submitted *after* the Board issued its ruling further demonstrates that the admitted contention was limited to SFP leaks. Notwithstanding Clearwater’s earlier passing reference to other releases,⁴⁸ when the Intervenors were given the

⁴² Exh. RIV000060, Gunderson Testimony at 6:6-7; 13:1 to 19:10; 21:18, from “and other likely future” to “Indian Point”; 30:2-4.

⁴³ *Id.* at 13:2 to 19:10.

⁴⁴ *Id.* at 13:2 to 14:4; 15:26 to 19:10.

⁴⁵ *Id.* at 14:6 to 15:24.

⁴⁶ Exh. RIV000059, Riverkeeper and Clearwater Initial Statement of Position Regarding Consolidated Contention RK-EC-3/CW-EC-1 (Spent Fuel Pool Leaks) at 3 (Dec. 22, 2011) (“Position Statement”).

⁴⁷ *Indian Point*, LBP-08-13, 68 NRC at 193 (emphasis added).

⁴⁸ A single footnote in Clearwater’s Petition to Intervene stated “[i]n addition to the leaks, Clearwater is extremely concerned about the many and wide ranging radioactive releases—some planned and some unplanned—that have plagued and will continue to plague Indian Point.” Clearwater Petition at 20 n.1.

opportunity to confer and submit a consolidated version of their contention, they failed to include any language putting the Board or the other parties on notice that consolidated RK-EC-3/CW-EC-1 covered any other SSC besides the SFPs.⁴⁹

The Intervenor also argue these non-SFP releases should be considered as part of RK-EC-3/CW-EC-1 because the NRC must consider this issue as part of its NEPA cumulative impacts evaluation.⁵⁰ As the Commission held in the *Vogtle* proceeding, such an argument ignores the distinction between an admitted contention’s scope in a contested NRC proceeding and the scope of the NEPA in general as “[t]here is a difference between what . . . the NRC must look at in order to evaluate cumulative impacts under NEPA—regardless of any contentions that may be filed by a party—and the scope of a particular . . . contention.”⁵¹ Consistent with Commission precedent and the Board’s earlier decision admitting the contention, releases unrelated to SFP leaks are outside the scope of RK-EC-3/CW-EC-1 and the evidence identified in Attachment 1 should be excluded as irrelevant.

3. Aging Management Programs Are Outside the Scope of RK-EC-3/CW-EC-1

Mr. Gundersen’s testimony contains an extensive discussion of AMPs⁵² and he directly challenges the adequacy of Entergy’s Buried Piping AMP, which is the subject of a separate

Except for a vague reference to prior leaks at Indian Point, the remainder of this footnote focused on routine releases of airborne and liquid effluents. Even if the Board—and subsequently the Intervenor in their consolidated contention filing—had not clarified that the scope of the contention was limited to SFP leaks, such a vague, passing reference to a “concern” about other releases could not transform the scope of RK-EC-3/CW-EC-1 to cover the issues now raised in Mr. Gundersen’s testimony. See *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 389-90 (2001) (holding that an intervenor cannot later transform vague references made at the contention admissibility stage into litigable contentions).

⁴⁹ See *Indian Point*, LBP-08-13, 68 NRC at 220.

⁵⁰ Exh. RIV000059, Position Statement at 40.

⁵¹ *Vogtle*, CLI-10-05, 71 NRC at 103.

⁵² Exh. RIV000060, Gunderson Testimony at 6:6-7; 13:1 to 19:10; 21:18, from “and other likely future” to “Indian Point”; 30:2-4.

safety contention.⁵³ Mr. Gundersen’s discussion of these issues is unrelated to environmental impacts of SFP leaks and should be excluded.

The Board made clear that it was admitting RK-EC-3/CW-EC-1 only to the extent it challenged compliance with NRC’s NEPA regulations in 10 C.F.R. Part 51.⁵⁴ The Board decision on RK-EC-3/CW-EC-1 made no mention of 10 C.F.R. Part 54, which addresses the NRC’s AMP requirements. While Clearwater’s initial contention admissibility Reply mentioned “aging of the *fuel pools* and other components of the system,”⁵⁵ a vague, passing reference in a reply brief cannot expand a NEPA-based contention to also cover AMPs or any other safety issues.⁵⁶ And, again, when the Intervenors were given the opportunity to confer and submit a consolidated version of their contention, they failed to include any language putting the Board or the other parties on notice that consolidated RK-EC-3/CW-EC-1 sought to challenge the Buried Piping AMP or any other AMP in Entergy’s License Renewal Application (“LRA”).⁵⁷ Accordingly, such issues are outside the scope of RK-EC-3/CW-EC-1 and the evidence identified in Attachment 1 should be excluded as irrelevant.

4. Site Remediation Decisions Are Outside the Scope of RK-EC-3/CW-EC-1 and the Proceeding

The Board should exclude portions of Mr. Gundersen’s testimony concerning Entergy’s decision to implement, and NRC’s approval of, the monitored natural attenuation (“MNA”) remediation approach to groundwater contamination during the *current term* of the IP2 and IP3

⁵³ *Id.* at 10:32 to 11:4 through “not less”; 13:7-8 from “Aging components” through “issues”; 16:12 from “Entergy’s (undated)” to 19:10; 29:18, “aging components.”

⁵⁴ *Indian Point*, LBP-08-13, 68 NRC at 193-194.

⁵⁵ Clearwater Reply at 4 (emphasis added).

⁵⁶ See note 49, *supra*; see also *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) (“It is well established in NRC proceedings that a reply cannot expand the scope of the arguments set forth in the original hearing request.”).

⁵⁷ See Consolidated Contention at 2.

operating licenses,⁵⁸ including testimony concerning possible alternative remediation options.⁵⁹

Mr. Gundersen's testimony calling for a broad inquiry into current term, NRC-approved remediation decisions is outside the scope of the contention and this proceeding, and thus irrelevant.

Indeed, the appropriateness of this earlier NRC-approved remediation decision could not be in the scope of RK-EC-3/CW-EC-1, because this proceeding concerns only the IP2 and IP3 license *renewal*. Plainly it is not appropriate to litigate here a decision on a matter outside the scope of this proceeding, approved by NRC under Entergy's existing operating licenses.⁶⁰

In addition, to the extent Mr. Gundersen raises issues concerning the need to implement alternative remediation options such as extraction,⁶¹ such issues are currently under active Commission review as part of a potential NRC rulemaking.⁶² Commission precedent dictates that a contention that raises a matter that is, or is about to become, the subject of a rulemaking, is outside a licensing proceeding's scope and therefore irrelevant.⁶³ Accordingly, the portions of Mr. Gundersen's testimony identified in Attachment 1 as raising issues related to remediation options should be excluded.

⁵⁸ Exh. RIV000060, Gunderson Testimony at 25:5 to 25:14.

⁵⁹ *Id.* at 6:12-14; 25:16 to 29:24; 30:10-13.

⁶⁰ *See* Final Rule, Decommissioning Planning, 76 Fed. Reg. 35,512, 35,535 (June 17, 2011) (indicating that ongoing NRC oversight process confirmed the adequacy and acceptability of MNA at Indian Point).

⁶¹ Exh. RIV000060, Gunderson Testimony at 6:12-14; 25:16 to 29:24; 30:10-13.

⁶² *See* Consideration of Rulemaking to Address Prompt Remediation of Residual Radioactivity During Operations, 76 Fed. Reg. 42,074 (July 18, 2011).

⁶³ *Indian Point*, CLI-10-19, 78 NRC at 100; *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 345 (1999) (holding that while the topic petitioners sought to raise was not governed by a current rule, the issuance of an SRM for the NRC Staff to initiate a rulemaking on the topic was sufficient to preclude the topic from litigation in individual licensing proceedings) (*citing Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 85 (1974)).

5. Challenges to NRC Dose and Reporting Regulations Are Prohibited

Under 10 C.F.R. § 2.335(a), a party may not, absent a waiver, submit evidence or otherwise attack the validity of an NRC regulation in an adjudicatory proceeding. The Intervenors have not sought a waiver but, nonetheless, Mr. Gundersen presents arguments challenging NRC dose and reporting regulations.

First, Mr. Gundersen references the National Research Council “BEIR VII” report (RIV000093), and states that it “reaffirmed the conclusion of the prior report that every exposure to radiation, regardless of how small, produces a corresponding increase in the likelihood of cancer.”⁶⁴ Mr. Gundersen then asserts that the BEIR VII report means that any release from Indian Point into the Hudson River “could increase the incidence of cancer to those exposed through recreational activities, such as swimming.”⁶⁵ This claim amounts to an impermissible challenge to the NRC’s regulations. Mr. Gundersen is essentially arguing that even if Indian Point releases comply with NRC dose limits, impacts to human health may be something other than SMALL. This is contrary to Table B-1 of Part 51, which establishes that radiological releases that are within the permissible levels specified in NRC regulations have a SMALL impact on human health.⁶⁶

Second, in discussing potential mitigation measures, Mr. Gundersen argues that Entergy should be required to disclose Indian Point “radiological monitoring results and publish them on

⁶⁴ Exh. RIV000060, Gunderson Testimony at 24. This theory is referred to as the linear-no-threshold hypothesis and forms the basis for NRC’s radiation protection regulations 10 C.F.R. Part 20. *See* Final Rule, Standards for Protection Against Radiation, 56 Fed. Reg. 23,360, 23,360-61 (May 21, 1991); *see also* Denial of Petition for Rulemaking, 72 Fed. Reg. 71,083, 71,084-85 (Dec. 14, 2007).

⁶⁵ Exh. RIV000060, Gunderson Testimony at 24; 25:11 to 25:13.

⁶⁶ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 364 (2001) (“If the Petitioners are objecting to all possible routine adjustments in effluent releases, then their claim amounts to an impermissible general attack on our regulations governing public doses at operating nuclear plants.”); *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 315 (2006) (refusing to allow litigation on contention argument suggesting “doses *not in violation* of NRC regulations might be harmful to health”).

a monthly basis in an accessible online database in order to keep the public fully informed of the ongoing radiological contamination.”⁶⁷ NRC regulations already establish requirements for Entergy to submit reports that document radiological releases and provide the calculated doses attributable to those releases.⁶⁸ Despite Mr. Gundersen’s attempt to cloak this disclosure requirement as a “mitigation measure,” it still amounts to a challenge to current NRC reporting regulations. Accordingly, the portions of Mr. Gundersen’s testimony identified in Attachment 1 as raising issues precluded by 10 C.F.R. § 2.335(a) should be excluded as irrelevant.

6. The Draft GEIS Revision Is the Subject of Rulemaking And Thus Beyond this Proceeding’s Scope

The Board also should exclude Exhibit RIV000064, an excerpt from the Draft Revision to NRC’s GEIS for License Renewal, and Mr. Gundersen’s associated reference to that document,⁶⁹ because the proposed revision to the GEIS is currently the subject of an NRC rulemaking.⁷⁰ Commission precedent dictates that issues concerning matters that are the subject of a rulemaking are outside the scope of a licensing proceeding,⁷¹ and accordingly, this exhibit and the corresponding reference in Mr. Gundersen’s testimony that are identified in Attachment 1 should be excluded as irrelevant.

7. Mr. Gundersen’s Statements Concerning IP1 Are Beyond the Scope of this Proceeding

The Board should exclude portions of Mr. Gundersen’s testimony concerning contamination from the IP1 SFPs as beyond the scope of this proceeding. This proceeding

⁶⁷ Exh. RIV000060, Gunderson Testimony at 29.

⁶⁸ See 10 C.F.R. § 50.36a(a)(2); see also 10 C.F.R. Part 50, App. I, § IV(A).

⁶⁹ Exh. RIV000060, Gunderson Testimony at 31.

⁷⁰ Proposed Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 74 Fed. Reg. 38,117 (July 31, 2009). Riverkeeper in fact participated in a recent Commission briefing on the ongoing Part 51 rulemaking and proposed changes to the GEIS. See Sunshine Federal Register Notice, 77 Fed. Reg. 1521 (Jan. 10, 2012).

⁷¹ *Indian Point*, CLI-10-19, 78 NRC at 100; *Oconee*, CLI-99-11, 49 NRC at 345.

concerns only Entergy's LRA for IP2 and IP3, and does *not* concern the decommissioning of the IP1 SFP, which, in any event, Mr. Gundersen concedes is now empty and drained and cannot contribute to any further groundwater contamination.⁷² Nonetheless, Mr. Gundersen asserts "a substantial amount of contamination from the Unit 1 pools remains stored in structures associated with the Unit 1 pools" and "contamination from these structures will continue to periodically release to the groundwater, until the entire Indian Point site is *decommissioned*."⁷³ Because there is no nexus between the proposed license renewal of IP2 and IP3—the *sole* focus of this proceeding—and the future decommissioning process for IP1, the Board should exclude as irrelevant the evidence identified in Attachment 1.

8. Mr. Gundersen's Statements Concerning Other Nuclear Plants, Motives, and Maintenance Funding Are Irrelevant

The Board also should exclude as irrelevant Mr. Gundersen's testimony concerning Vermont Yankee nuclear plant, Entergy's motives for conducting Indian Point groundwater investigations, and alleged insufficient maintenance funding. In particular, Mr. Gundersen's reference to a Vermont Yankee investigation report,⁷⁴ the supposed influence of media and public pressure on Entergy,⁷⁵ and purportedly inadequate maintenance funding for non-safety systems⁷⁶ say absolutely nothing about the environmental impacts of SFP leaks—the only relevant issue within the scope of RK-EC-3/CW-EC-1. Accordingly, Mr. Gundersen's irrelevant testimony identified in Attachment 1 should be excluded.

⁷² Exh. RIV000060, Gunderson Testimony at 12.

⁷³ *Id.* (emphasis added).

⁷⁴ Exh. RIV000060, Gunderson Testimony at 3 n.2.

⁷⁵ *Id.* at 18:15-19.

⁷⁶ *Id.* at 18:25 to 19:5.

C. Portions of Dr. Stewart’s Testimony Should Be Excluded Because She Lacks Relevant Expertise and Raises Issues Outside the Scope of RK-EC-3/CW-EC-1

Intervenors seek to have Dr. Gillian Stewart, a professor of Environmental Science at Queens College in New York, testify about radionuclide impacts to Hudson River aquatic ecology and a potential drinking water pathway involving a proposed desalination facility.⁷⁷ For the following reasons, portions of Dr. Stewart’s testimony should be excluded, as identified in Attachment 1.

1. Dr. Stewart Has Not Demonstrated the Requisite Expertise in NRC Dose Regulations to Offer an Opinion on Potential Human Health Impacts

The Board should exclude portions of Dr. Stewart’s testimony because the Intervenors have failed to meet their burden to demonstrate that Dr. Stewart is an expert in all areas on which she offers an opinion.⁷⁸ As noted above, because Table B-1 of Part 51 equates NRC dose regulation compliance with SMALL impacts to human health, a prerequisite for offering expert testimony on such impacts is NRC dose limit expertise. Dr. Stewart indicates that her expertise primarily concerns radiochemistry and radioecology.⁷⁹ Nevertheless, she seeks to testify about the potential for human health impacts attributable to radiological releases from Indian Point through a potential drinking water pathway involving a proposed desalination facility.⁸⁰ Nothing in her resume or testimony indicates that she has the necessary expertise to provide such testimony, such as any education, knowledge, or experience in performing an assessment of compliance with NRC dose limits.

Further, while Dr. Stewart concludes that “high” ranges of radioactivity detected in desalination-related sampling by United Water is “likely due to leaks or flows via groundwater

⁷⁷ Exh. RIV000061, Stewart Testimony at 2:25 to 2:28.

⁷⁸ See *Diablo Canyon*, ALAB-410, 5 NRC at 1405.

⁷⁹ Exh. RIV000061, Stewart Testimony at 2:2 to 2:5.

⁸⁰ *Id.* at 2:25 to 2:28; 3:29 to 7:16.

effluent into the Hudson River,”⁸¹ she provides nothing other than “subjective belief or unsupported speculation”⁸² that these results are attributable to Indian Point. Nor does she discuss any “methods and procedures of science”⁸³ used to assess whether such levels would impact compliance with NRC dose limits. Accordingly, the Board should exclude all such testimony identified in Attachment 1 as outside her professed expertise in radiochemistry and radioecology, or even if within her expertise, as nevertheless lacking a reliable basis.⁸⁴

2. Challenges to NRC Dose Regulations Are Prohibited

As noted above, under 10 C.F.R. § 2.335(a), a party may not submit evidence attacking the validity of an NRC regulation. Nonetheless, Dr. Stewart challenges NRC regulations by arguing that even low-level exposures of radionuclides may cause adverse human health impacts. In particular, Dr. Stewart discusses the linear-no-threshold hypothesis and argues “[l]ow levels of exposure to these radionuclides via drinking water or contaminated seafood have the potential to cause cancer in humans.”⁸⁵ Such an argument amounts to an impermissible challenge to NRC’s regulations because, as explained above, Table B-1 of Part 51 establishes that radiological releases that are within the permissible levels specified in NRC regulations have a SMALL impact on human health.⁸⁶ Accordingly, the portions of Dr. Stewart’s testimony identified in Attachment 1 as raising issues precluded by 10 C.F.R. § 2.335(a) should be excluded as irrelevant.

⁸¹ *Id.* at 4:10 to 4:12.

⁸² *Savannah River*, LBP-05-04, 61 NRC at 98-99 (*quoting Daubert*, 509 U.S. at 589-90) (disqualifying expert for certain purposes).

⁸³ *Id.*

⁸⁴ Exh. RIV000061, Stewart Testimony at 2.

⁸⁵ *Id.* at 7:11-13; *see also id.* at 3:12-19.

⁸⁶ *See supra* note 68.

D. Portions of Intervenors' Position Statement Addressing Excluded Evidence Should Also Be Excluded and Accorded No Weight

The Intervenors also discuss the preceding testimony and supporting evidence in their Position Statement on this contention.⁸⁷ Those portions of the Intervenors' Position Statement that rely on inadmissible evidence or otherwise raise excluded issues may be stricken.⁸⁸ Therefore, to the extent the Board grants this Motion and excludes evidence identified in Attachment 1 to this Motion, the associated discussions in the Position Statement should be excluded and accorded no weight in the Board's decision on RK-EC-3/CW-EC-1.

IV. CONCLUSION

For the foregoing reasons, the Board should exclude the portions of Intervenors' pre-field testimony and exhibits discussed above and identified in Attachment 1 to this Motion.

⁸⁷ Exh. RIV000059, Position Statement at 38-49; 51-55; 67-74.

⁸⁸ See *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order (Ruling on Motions in Limine and Motion for Clarification) at 2 (Aug. 9, 2007) (unpublished); *Entergy Nuclear Vt. Yankee* (Vt. Yankee Nuclear Power Station), Licensing Board Order (Ruling on Motions to Strike and Motions in Limine) at 2-3 (July 16, 2008) (unpublished). *But see Calvert Cliffs 3 Nuclear Project, LLC* (Combined License Application for Calvert Cliffs Unit 3), Licensing Board Order (Granting in Part and Denying in Part NRC Staff's Motion in Limine) at 5 (Jan. 17, 2012) (unpublished) ("We need not rule on the admissibility of statements of position because they will not be admitted as evidence, but will only be considered by the Board in its merits ruling to the extent they are based on admitted evidence.").

Respectfully submitted,

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Dated in Washington, D.C.
this 30th day of January 2012

Entergy Attachment 1 to Motion In Limine to Exclude Portions of Intervenors' Pre-Filed Testimony and Exhibits for Contention RK-EC-3/CW-EC-1 (Spent Fuel Pool Leaks)

Location of Information to Be Excluded	Basis for Exclusion
<i>RIV000060: Gunderson Testimony</i>	
Page 6:4-5, exclude entirety.	Gunderson has not demonstrated requisite qualifications to offer an opinion on hydrogeology.
Page 12:19-20, exclude the sentence "This contamination will remain in the groundwater . . . for decades."	
Pages 15:26 to 16:1, exclude the section beginning "Q. Please describe the impact of . . ." to the end of the sentence ending ". . . well samples."	
Page 19:14-20, exclude the section beginning "Q. Please assess Entergy's . . ." through ". . . persistence of the plumes"	
Pages 20:21 to 21:5, exclude the sentence "Levels of radionuclides . . ." to the end of the sentence ending ". . . status of the plumes."	
Page 30:4, exclude entirety.	
Pages 23:10 through 24:9, exclude entirety.	Gunderson has not demonstrated requisite qualifications to offer an opinion on impacts to the Hudson River aquatic ecosystem.
Page 30:8, exclude "including impacts to aquatic ecology"	Gunderson has not demonstrated requisite qualifications to offer an opinion on human health impacts from groundwater releases.
Page 24:11-23, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: releases from non-SFP SSCs.
Page 25:11-13, exclude entire sentence beginning "As I stated previously. . ."	This portion of the Gunderson testimony raises issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs.
Page 6:6-7, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Pages 13:1 through 19:10, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Page 21:18, exclude "and other likely future leaks from aging components at Indian Point"	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Page 30:2-4, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Page 6:6-7, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Pages 10:32 through page 11:4, exclude entire section through end of sentence ending ". . . not less."	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Page 13:7-8: exclude sentence "Aging components . . . issues."	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Pages 16:12 through 19:10, exclude from sentence beginning "Entergy's (undated)" through	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).
Pages 16:12 through 19:10, exclude from sentence beginning "Entergy's (undated)" through	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: aging management programs (buried piping).

Location of Information to Be Excluded	Basis for Exclusion
end of sentence ending “. . . detection by Entergy.”	3/CW-EC-1: aging management programs.
Page 21:18, exclude “and other likely future leaks from aging components at Indian Point”	
Page 29:18-19, exclude entirety.	
Page 30:2-4, exclude entirety.	
Page 6:12-14, exclude entirety.	These portions of the Gunderson testimony raise issues beyond the scope of RK-EC-3/CW-EC-1: remediation.
Page 25:5-14, exclude entirety.	
Pages 25:16 through 29:24, exclude entirety.	
Page 30:10-13, exclude entirety.	
Page 24:11-23, exclude entirety.	These portions of the Gunderson testimony challenge NRC dose regulations.
Page 25:11-13, exclude sentence “As I stated. . .health effects.” in entirety.	
Page 29:20-24, exclude entirety.	This portion of the Gunderson testimony challenges NRC reporting regulations.
Page 31, references 1, 2, 3, 4, exclude entirety.	This portion of the Gunderson testimony raises issues subject to rulemaking proceedings.
Page 12:14-26, exclude entirety.	This portion of the Gunderson testimony raises issues beyond the scope of RK-EC-3/CW-EC-1: historical contamination and decommissioning of IP1.
Page 3:16-17, exclude “which Entergy executives. . .about.”; n.2.	This portion of the Gunderson testimony raises issues beyond the scope of RK-EC-3/CW-EC-1: Vermont Yankee.
Page 18:15-19, exclude entire sentence “Various other. . .at Indian Point.”	This portion of the Gunderson testimony raises issues beyond the scope of RK-EC-3/CW-EC-1: purported outside “influence”.
Pages 18:25 through 19:5, exclude entirety.	This portion of the Gunderson testimony raises issues beyond the scope of RK-EC-3/CW-EC-1: non-safety maintenance funding.
<i>RIV000061: Stewart Testimony</i>	
Page 2:26-28, exclude entire section beginning at “and a failure to consider . . . Indian Point.”	Dr. Stewart has not demonstrated requisite qualifications to offer an opinion on potential human health impacts.
Pages 3:29 through 7:16, exclude entirety.	
Page 4:10-12, exclude entire sentence “These high ranges. . .the Hudson River.”	These portions of Dr. Stewart’s testimony are not supported by reliable evidence.
Page 7:11-13, exclude entire sentence “Low levels of. . .in humans.”	These portions of Dr. Stewart’s testimony challenge NRC dose regulations.

Location of Information to Be Excluded	Basis for Exclusion
Page 3:12-19, exclude from sentence beginning “Current research indicates...” through end of sentence ending “. . . blood cancers.”	
<i>RIV000064: NUREG-1437, Revision 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (July 2009) Draft Report for Comment</i>	
Exclude entire exhibit.	Relied upon to raise issues that are subject to rulemaking proceedings.
<i>RIV000079: Annie Correal, Indian Pt. Broken Pipe Spurs Safety Worries, The New York Times (March 1, 2009)</i>	
Exclude entire exhibit.	Relied upon to raise issues that are beyond the scope of RK-EC-3/CW-EC-1: non-SFP SSCs and aging management programs; and to challenge NRC dose regulations. <i>See</i> Exh. RIV000060, Gundersen Testimony at 13:2-11; 17:8-16.
<i>RIV000088: Supplemental Report of the Public Oversight Panel Regarding the Comprehensive Reliability Assessment of the Vermont Yankee Nuclear Power Plant, July 20, 2010</i>	
Exclude entire exhibit.	Relied upon to raise an issue that is beyond the scope of RK-EC-3/CW-EC-1: Vermont Yankee. <i>See</i> Exh. RIV000060, Gundersen Testimony at 18:25 through 19:5.
<i>RIV000089: GAO Report to Congressional Requesters, Nuclear Regulatory Commission, Oversight of Underground Piping Systems Commensurate with Risk, but Proactive Measures Could Help Address Future Leaks, GAO-11-563 (June 2011)</i>	
Exclude entire exhibit.	Relied upon to raise issues that are beyond the scope of RK-EC-3/CW-EC-1: non-SFP SSCs and aging management programs. <i>See</i> Exh. RIV000060, Gundersen Testimony at 17:18-23.
<i>RIV000093: National Research Council, Health Risks from Exposure to Low Levels of Ionizing Radiation: BEIR VII – Phase 2 (2006)</i>	
Exclude entire exhibit.	Relied upon to challenge NRC dose regulations. <i>See</i> Exh. RIV000060, Gundersen Testimony at 24:16-23.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-247-LR and
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	
	January 30, 2012

MOTION CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this Motion, and to resolve those issues, and he certifies that his efforts have been unsuccessful. The NRC Staff does not oppose this Motion and anticipates filing an answer.

Signed (electronically) by Paul M. Bessette

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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
ENTERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	
	January 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2012, a copy of the “Entergy’s Motion in Limine to Exclude Portions of Intervenor’s Pre-filed Testimony and Exhibits for Contention RK-EC-3/CW-EC-1 (Spent Fuel Pool Leaks)” was served electronically via the Electronic Information Exchange on the following recipients:

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