

**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 NYS-37
(ENERGY ALTERNATIVES)**

William C. Dennis, Esq.
ENTERGY NUCLEAR OPERATIONS, INC.
440 Hamilton Avenue
White Plains, NY 10601
Phone: (914) 272-3202
Fax: (914) 272-3205
E-mail: wdennis@entergy.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com

Martin J. O'Neill, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street
Suite 4000
Houston, TX 77002
Phone: (713) 890-5710
Fax: (713) 890-5001
E-mail: martin.oneill@morganlewis.com

COUNSEL FOR ENTERGY NUCLEAR
OPERATIONS, INC.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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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 New York State (“NYS”) on December 14, 2011, in support of Contention NYS-37. Specifically, portions of the testimony of Messrs. David Schlissel (NYS000046),² Peter Lanzalotta (NYS000047),³ and Peter Bradford (NYS000048),⁴ as well as certain other NYS exhibits are inadmissible in this proceeding and should be excluded pursuant to 10 C.F.R. § 2.337(a) because the need for power from Indian

¹ Licensing Board Initial Scheduling Order (July 1, 2010) (unpublished); Licensing Board Order (Granting Unopposed Motion by the State of New York and Riverkeeper, Inc. to Amend the Scheduling Order) (Nov. 17, 2011) (unpublished).

² Exh. NYS000046, Pre-filed Written Testimony of David A. Schlissel (Dec. 14, 2011) (“Schlissel Testimony”).

³ Exh. NYS000047, Pre-filed Written Testimony of Peter J. Lanzalotta (Dec. 14, 2011) (“Lanzalotta Testimony”).

⁴ Exh. NYS000048, Pre-filed Written Testimony of Peter A. Bradford (Dec. 14, 2011) (“Bradford Testimony”).

Point and related issues of grid reliability and stability are outside the scope of NYS-37.⁵

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.”⁶ 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 that raise issues that were not properly presented in earlier pleadings.⁷ Similarly, it may exclude

⁵ Entergy does not concede—and should not be deemed by virtue of this Motion to be conceding—that NYS’s arguments concerning the need for IP2 and IP3 have merit.

⁶ 10 C.F.R. § 2.337(a).

⁷ *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).

testimony and supporting evidence that is outside the scope of this license renewal proceeding,⁸ 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 hearing testimony that strayed beyond the bases as pled and admitted, which “defined the scope of the . . . contention.”⁹ 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.¹⁰

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 bases.”¹¹ A key reason for this requirement is to provide notice to the opposing parties of the issues they will need to defend against.¹² 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.¹³

⁸ See cases cited *supra* note 7.

⁹ *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 101 (2010).

¹⁰ *Id.* at 100.

¹¹ *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)).

¹² See *id.*

¹³ *Id.* (emphasis added) (citations omitted).

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.¹⁴ 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.”¹⁵

III. ARGUMENT

A. Scope of Proceeding and of Contention NYS-37

This proceeding concerns Entergy’s license renewal application (“LRA”) for Indian Point Nuclear Generating Units 2 and 3 (“IP2” and “IP3,” respectively, and collectively “Indian Point”). As initially admitted by the Board, NYS-9 alleged Entergy’s Environmental Report (“ER”) analysis of the “no-action” alternative should have considered the extent to which the denial of the LRA would lead to energy conservation and any associated environmental impacts.¹⁶

After the NRC Staff issued its Draft Supplemental Environmental Impact Statement (“DSEIS”), NYS submitted NYS-33, which updated NYS-9, to also challenge the DSEIS analysis of “the viability of renewable energy resources, energy transmission capacity, and possible combinations of different energy sources” under the no-action alternative.¹⁷ In

¹⁴ See *id.* at 309-10.

¹⁵ *Id.* at 311 (quoting *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-05-28, 62 NRC 721, 727-28 (2005)).

¹⁶ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), LBP-08-13, 68 NRC 43, 93 (2008).

¹⁷ Licensing Board Memorandum and Order (Ruling on New York State’s New and Amended Contentions) at 9 (June 16, 2009) (unpublished) (“June 16, 2009 Order”); see also State of New York Contentions Concerning NRC Staff’s Draft Supplemental Environmental Impact Statement at 20-21 (Feb. 27, 2009), available at ADAMS Accession No. ML090690303.

admitting NYS-33, the Board found that NYS alleged that the DSEIS “incorrectly assumed that ‘energy conservation would only result in a savings of 800 MW,’” and “that wind power or other renewable energy sources could only provide 200 to 400 MW of energy to replace either or both Indian Point units, and whether the two combination alternatives analyzed in the [DSEIS] were ‘artificially narrow and arbitrary.’”¹⁸ The Board consolidated NYS-33 with NYS-9.¹⁹

Following the Staff’s Final Supplemental Environmental Impact Statement (“FSEIS”), NYS submitted NYS-37, which updated consolidated NYS-9/33 to apply to the FSEIS. NYS-37 also argued that Indian Point was not needed and urged the NRC to undertake detailed analysis of New York energy markets.²⁰ The Board admitted NYS-37 to the extent that it updated NYS-9/33 and consolidated all three contentions as NYS-37.²¹ The Board, however, made clear it was “not authorizing a broad-ranged inquiry into alternative scenarios and the need for power which would be precluded by Commission regulations, and which [the Board had] previously excluded.”²² Thus, the Board admitted NYS-37 with this express limitation.²³

The Board’s narrowing of the scope of NYS-37 is wholly consistent with Commission regulations. Specifically, 10 C.F.R. § 51.95(c)(2) provides:

The supplemental environmental impact statement for license renewal is *not required to include discussion of need for power* or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential for a determination regarding

¹⁸ June 16, 2009 Order at 13.

¹⁹ *Id.*

²⁰ State of New York Contention Concerning NRC Staff’s Final Supplemental Environmental Impact Statement at 9, 15 (Feb. 3, 2011), *available at* ADAMS Accession No. ML 110680290 (asserting that the FSEIS “assumes a need for too much power,” which “distorts the analysis of the amount, location, and timing, of new and/or alternative sources of necessary to replace the power supplied by Indian Point.”).

²¹ *See* Licensing Board Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) at 34, 71 (July 6, 2011) (“July 6, 2011 Order”) (unpublished).

²² *Id.* at 35 (citation omitted).

²³ *Id.* at 35, 71.

the inclusion of an alternative in the range of alternatives considered or relevant to mitigation.

As the regulation indicates, need for power is per se outside the scope of license renewal National Environmental Policy Act (“NEPA”) reviews.²⁴ In promulgating this regulation, the Commission clearly stated that “the NRC will neither perform analyses of the need for power nor draw any conclusions about the need for generating capacity in a license renewal review.”²⁵

Accordingly, such issues are not within the scope of NYS-37 or this license renewal proceeding.

B. The Board Should Exclude Evidence Directly Challenging the Need for IP2 and IP3 Power

NYS offers the testimony of David A. Schlissel, Peter A. Bradford, and Peter J. Lanzalotta, their previously submitted reports and declarations, and various other exhibits challenging the FSEIS no-action alternative evaluation. Their testimony overlaps on many energy planning-related issues. However, Mr. Schlissel focuses primarily on demand-side management, energy efficiency, and alternative generation sources; Mr. Lanzalotta on transmission grid issues; and Mr. Bradford on the need for power from Indian Point and assessing the no-action alternative’s economic costs and benefits.²⁶

²⁴ Section 51.95(c)(2) provides that economic benefits and costs may be considered for a limited purpose in license renewal proceedings. No similar exception allows for consideration of the need for power.

²⁵ Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,472 (June 5, 1996); *see also id.* at 28,484 (“The Commission has concluded that, for license renewal, the issues of need for power and utility economics should be reserved for State and utility officials to decide.”).

²⁶ Mr. Bradford’s testimony includes a sweeping challenge to NRC’s historic NEPA need for power approach. *See e.g.*, Exh. NYS000048, Bradford Testimony at 8:16 to 8:23 (“[T]he shortcomings of the FSEIS are consistent with fundamental flaws in the NRC’s approach to analyzing alternatives, including the no-action alternative, to nuclear construction and operation over many years, flaws that have produced what should be an embarrassing record of dramatic overestimation of demand for nuclear units whose subsequent cancellation or early closure has had no adverse effect on the nation’s electric reliability.”); *id.* at 31:9 to 32:1 (The NRC’s “approach to assessing alternatives to the construction and operation of nuclear power plants has been deficient since the agency was created in 1975. In particular, the NRC has been ineffective in assessing the role that energy efficiency can play (and has played) in displacing nuclear power plants.”).

As noted above, Commission regulations and the Board’s orders establish that issues concerning the need for power from Indian Point are outside the scope of NYS-37.²⁷ Despite this clear and unambiguous direction, the NYS testimony first incorrectly asserts that the FSEIS includes a need for power analysis and then proceeds to argue that this non-existent analysis—which, in any event, is expressly outside NYS-37’s scope—is somehow flawed.²⁸ Messrs. Schlissel, Lanzalotta, and Bradford, for example, all claim to identify “deficiencies” in the FSEIS consideration of the “need for power” from IP2 and IP3.²⁹ To support these claims, all three NYS witnesses provide extensive testimony concerning regional energy sales, load growth, demand, capacity, and associated forecasts.³⁰ Such evidence is proffered solely to further the NYS assertion that the FSEIS no-action alternatives analysis “significantly overestimates future demand”³¹ and thus “assumes a need for too much power.”³²

NYS makes no attempt to cloak its direct need for power challenges. According to NYS, such issues are within the contention’s scope because of the NRC “Staff’s reliance on an *implicit* ‘need for power’ analysis to select, or dismiss, generation alternatives [to Indian Point] in the FSEIS.”³³ NYS also argues that need for power issues should be considered because the NRC’s NEPA evaluation must consider such issues.³⁴ These arguments fail for two reasons.

²⁷ See July 6, 2011 Order at 35; 10 C.F.R. § 51.95(c)(2); Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,472, 28,484.

²⁸ See, e.g., Exh. NYS000046, Schlissel Testimony at 5:9-14; 7:11-16; 12:12-17; 33:4-6; Exh. NYS000047, Lanzalotta Testimony at 3:14-18; 12:9-11; Exh. NYS000048, Bradford Testimony at 5:7-12; 13:18-22, 14:6-8.

²⁹ Exh. NYS000046, Schlissel Testimony at 5:9-14; Exh. NYS000047, Lanzalotta Testimony at 3:14-18; Exh. NYS000048, Bradford Testimony at 5:7-12.

³⁰ See, e.g., Exh. NYS000046, Schlissel Testimony at 11:6 to 11:16; 11:23 to 12:17; 47:3 to 47:6; Exh. NYS000047, Lanzalotta Testimony at 12:9 to 13:9; Exh. NYS000048, Bradford Testimony at 9:21 to 9:22.

³¹ Exh. NYS000045, State of New York Initial Statement of Position Contention NYS-9/33/37 (“NYS-37”) at 51 (Dec. 14, 2011) (“Position Statement”).

³² *Id.* at 36.

³³ *Id.* at 37 n.57 (emphasis added).

³⁴ See *id.* at 37-38.

First, NYS ignores that, *after* Staff issued the FSEIS and NYS-37 was filed, the Board held that it was “not authorizing a broad-ranged inquiry into alternative scenarios *and the need for power.*”³⁵ As the Commission held in the *Vogtle* proceeding, “[t]here is a difference between what . . . the NRC must look at in order to evaluate . . . impacts under NEPA—regardless of any contentions that may be filed by a party—and the scope of a particular . . . contention.”³⁶ Here, the “particular contention” excludes the need for power.

Second, NYS ignores the limited scope of NRC’s license renewal NEPA review as provided through Commission regulations. As noted earlier, the Commission, in 10 C.F.R. § 51.95(c)(2), has set reasonable limits regarding the issues the Commission will address under NEPA during a license renewal proceeding. As the Commission explained, this regulation neither permits the NRC to “perform analyses of the need for power nor draw any conclusions about the need for generating capacity in a license renewal review.”³⁷ Nor may NYS use this particular license renewal proceeding as a back-door to challenge that earlier rulemaking determination. NYS must make its challenge within the rule’s bounds.³⁸ It has not. Accordingly, consistent with the Commission’s regulations and this Board’s admissibility decision, the evidence identified in Attachment 1 should be excluded as irrelevant to any issues properly before the Board.

³⁵ July 6, 2011 Order at 35 (emphasis added).

³⁶ *Vogtle*, CLI-10-05, 71 NRC at 103.

³⁷ Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,472; *see also id.* at 28,484 (“The Commission has concluded that, for license renewal, the issues of need for power and utility economics should be reserved for State and utility officials to decide.”).

³⁸ *See* 10 C.F.R. § 2.335(a) (“[N]o rule or regulation of the Commission . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding . . .”).

C. The Board Should Also Exclude Grid Reliability and Stability Evidence

Messrs. Schlissel’s, Lanzalotta’s, and Bradford’s testimony on electric grid reliability and grid stability³⁹ merely addresses a different facet of the need-for-power issue. “Need for power” encompasses not only resource adequacy (*i.e.*, are there enough megawatts of energy generated to supply consumer needs?) but also thermal, voltage, and stability considerations that go to whether the grid is stable and capable of supporting the delivery of such energy to customers.⁴⁰ As presented by the witnesses here, grid reliability and stability address whether generation and transmission resources would be able to meet forecasted load requirements, inclusive of the required electricity reserve margin, as well as all other reliability and operating rules, requirements, protocols, and procedures, without Indian Point.⁴¹ In short, whether IP2 and IP3 are *needed* to help stabilize the power grid and increase reliability and whether the FSEIS appropriately addresses such issues⁴² is just another way of asking whether there is a need for power from Indian Point—an inquiry already soundly rejected as outside of the scope of the issues properly before the Board.

As noted above, in accordance with 10 C.F.R. 51.95(c)(2), the Board has held that in admitting NYS-37, it was “not authorizing a broad-ranged inquiry into alternative scenarios and

³⁹ See Exh. NYS000046, Schlissel Testimony at 36:16 to 37:3; 46:3 to 46:17; Exh. NYS000047, Lanzalotta Testimony at 14:10 to 15:3; 15:11 to 19:21; 20:4 to 20:9; Exh. NYS000048, Bradford Testimony at 8:16 to 8:23; 11:17 to 12:19; 16:2 to 16:10.

⁴⁰ See *Tenn. Valley Auth.* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B), ALAB-367, 5 NRC 92, 98 (1977) (finding it appropriate for a need for power evaluation to consider “projected demand for power plus a reserve margin to guarantee system reliability”); *Niagara Mohawk Power Corp.* (Nine Mile Point, Unit 2), ALAB-264, 1 NRC 347, 358 (1975) (explaining that reserve margin used in need for power analysis “represents the minimum needed to insure the utility’s ability to provide reliable and satisfactory service during maintenance, unexpected forced outages and partial deratings of its generating equipment”).

⁴¹ See, *e.g.*, Exh. NYS000064, NYISO Reliability Summary 2009-2018 at 5; Exh. NYS000108, NYISO, Power Trends 2010: New York’s Emerging Energy Crossroads (April 2010) at 4.

⁴² See, *e.g.*, Exh. NYS000047, Lanzalotta Testimony at 21:21-22.

the need for power.”⁴³ Because, as posed by NYS, grid reliability and stability issues are essentially need for power concerns by another name, such issues are outside the scope of NYS-37.⁴⁴ Accordingly, the evidence identified in Attachment 1 should be excluded as irrelevant.

D. Portions of NYS’s Position Statement Addressing Excluded Evidence Should Also Be Excluded and Accorded No Weight

NYS also discusses the preceding testimony and supporting evidence in their Position Statement on this contention.⁴⁵ Those portions of NYS’s Position Statement that rely on inadmissible evidence or otherwise raise excluded issues may be stricken.⁴⁶ 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 also should be excluded and accorded no weight in the Board’s decision on NYS-37.

IV. CONCLUSION

For the foregoing reasons, the Board should exclude the portions of NYS’s pre-filed testimony and exhibits discussed above and identified in Attachment 1 to this Motion on the grounds that it falls outside of the scope of NYS-37 as expressly established by the Board in its earlier rulings.

⁴³ July 6, 2011 Order at 35; *see also* Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,484 (“The Commission has concluded that, for license renewal, the issues of need for power and utility economics should be reserved for State and utility officials to decide.”).

⁴⁴ *See id.*

⁴⁵ *See, e.g.*, Exh. NYS000045, Position Statement at 2, 27, 31, 39.

⁴⁶ *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,

Signed (electronically) by Paul M. Bessette

Kathryn M. Sutton, Esq.

Paul M. Bessette, Esq.

Martin J. O'Neill, Esq.

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Phone: (202) 739-3000

Fax: (202) 739-3001

E-mail: ksutton@morganlewis.com

E-mail: pbessette@morganlewis.com

E-mail: martin.oneill@morganlewis.com

William C. Dennis, Esq.

ENTERGY NUCLEAR OPERATIONS, INC.

440 Hamilton Avenue

White Plains, NY 10601

Phone: (914) 272-3202

Fax: (914) 272-3205

E-mail: wdennis@entergy.com

Counsel for Entergy Nuclear Operations, Inc.

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

Energy Attachment 1 to Motion In Limine to Exclude Portions of New York State’s Pre-Filed Testimony and Exhibits for Contention NYS-37 (Energy Alternatives)

Location of Information to Be Excluded	Basis for Exclusion
<i>NYS000046: Schlissel Testimony</i>	
Page 5:13, exclude “and the need for power.”	These portions of the Schlissel Testimony concern need for power.
Page 7:11-16, exclude entire sentence “These reduced energy . . . energy alternative”	
Page 11:6-16, exclude from sentence beginning “This recession . . .” through end of line 16.	
Pages 11:23 through 12:17, exclude entire section beginning at “NRC’s staff’s impact . . .”	
Pages 16:8 through 17:6, exclude entirety.	
Pages 17:20 through 18:21, exclude entirety.	
Pages 19:7 through 20:2, exclude entirety.	
Pages 20:21 through 22:12, exclude entirety, beginning at “If the same percentages . . .”	
Page 33:3-6, exclude phrase “and my 2011 . . . to New Yorkers.”	
Pages 34:22 through 35:4, exclude entirety.	
Page 35:16-19, exclude entirety.	
Pages 36:16 through 37:3, exclude entire portion beginning at “One project . . .”	
Page 39:1-7, exclude entirety.	
Page 46:12-13, exclude “transmission congestion, reliability.”	
Page 47:3-6, 13-23, exclude entirety.	
Page 48:1-12, exclude entirety.	
<i>NYS000048: Bradford Testimony</i>	
Page 5:8-12, exclude entire portion beginning “and identified . . . no-action alternative”	These portions of the Bradford Testimony concern need for power.
Page 9:21-22, exclude entirety.	
Page 10:1-3; 10:6-9; 10:12-13, exclude entirety.	
Pages 12:20 through 13:22, exclude entirety.	
Page 14:4-22, exclude entirety.	
Page 16:2-10, exclude entire section beginning “For example . . . no-action alternative.”	
Page 26:1-12, exclude entirety.	These portions of the Bradford Testimony concern NRC’s historic NEPA approach to need for power.
Page 8:16-23, exclude entirety.	
Page 11:13 through 12:19, exclude entirety.	
Pages 31:9 through end of 32:1, exclude entirety	
Page 32:2-14, exclude entirety.	
<i>NYS000047: Lanzalotta Testimony</i>	
Page 3:17, exclude “and the need for power.”	These portions of the Lanzalotta Testimony

Location of Information to Be Excluded	Basis for Exclusion
Pages 12:9 through 14:9, exclude entirety Pages 14:10 through 15:3, exclude entirety. Pages 15:8 through 19:21, exclude entirety. Page 20:1-9, exclude entirety. Pages 20:15 through 21:18, exclude entirety. Page 21:20-23, exclude from “conclusion that . . . through “. . . are retired”	concern need for power.
<i>NYS000045: Position Statement</i>	
Page 36, exclude “the impact of the recession on short and long term energy and demand forecasts”. Page 37, exclude the two paragraphs beginning “The State’s expert...” through the end of “. . . adverse environmental effects.” Pages 38 through 39, exclude entire paragraph beginning “Contrary to this obligation. . .” Page 51, exclude from sentence beginning “As identified in the State’s prior comments. . .” through end of sentence ending “. . .are too large.”	These portions of the Position Statement concern need for power.
<i>NYS000071: GE Financial Services, New Jersey’s and New York City’s Electricity Systems Now Talking to Each Other, Thanks to GE’s Smart Grid Technology & Smart Capital, Press Release (Dec. 8, 2009)</i>	
Exclude entire exhibit.	Relied upon to raise an issue that is beyond the scope of NYS-37: grid reliability. <i>See</i> Exh. NYS000046, Schlissel Testimony at 37:3.
<i>NYS000118: SMUD’s History: 1990: Moving Into Leadership on Green Energy, Conservation</i>	
Exclude entire exhibit.	Relied upon to raise an issue that is beyond the scope of NYS-37: California efforts to meet need for power. <i>See</i> Exh. NYS000048, Bradford Testimony at 32:13-14.
<i>NYS000119: Energy Choices Revisited: An Examination of the Costs and Benefits of Maine’s Energy Policy, a study for Mainewatch Institute by Economic Research Associates, the American Council for an Energy Efficient Economy and the Tellus Institute (1994) Excerpted: Executive Summary</i>	
Exclude entire exhibit.	Relied upon to raise an issue that is beyond the scope of NYS-37: Maine efforts to meet need for power.
<i>NYS000120: Goldman, C., J. Eto, and G. Barbose, California customer load reductions during the electricity crisis: did they help to keep the lights on? (LBNL49733) (May 2002)</i>	
Exclude entire exhibit.	Relied upon to raise an issue that is beyond the scope of NYS-37: California efforts to meet need for power.

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))	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

Paul M. Bessette, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
E-mail: pbessette@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.

**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))	
)	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 New York State’s Pre-filed Testimony and Exhibits for Contention NYS-37 (Energy Alternatives)” was served electronically via the Electronic Information Exchange on the following recipients:

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Lawrence.McDade@nrc.gov)

Administrative Judge
Dr. Kaye D. Lathrop
Atomic Safety and Licensing Board Panel
190 Cedar Lane E.
Ridgway, CO 81432
(E-mail: Kaye.Lathrop@nrc.gov)

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Richard.Wardwell@nrc.gov)

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: hearingdocket@nrc.gov)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-7H4M
Washington, DC 20555-0001
(E-mail: ocaamail.resource@nrc.gov)

Josh Kirstein, Law Clerk
Anne Siarnacki, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Josh.Kirstein@nrc.gov)
(E-mail: Anne.Siarnacki@nrc.gov)

Sherwin E. Turk, Esq.
Edward L. Williamson, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian G. Harris, Esq.
Mary B. Spencer, Esq.
Anita Ghosh, Esq.
Brian Newell, Paralegal
Office of the General Counsel
Mail Stop: O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Sherwin.Turk@nrc.gov)
(E-mail: Edward.Williamson@nrc.gov)
(E-mail: Beth.Mizuno@nrc.gov)
(E-mail: David.Roth@nrc.gov)
(E-mail: Brian.Harris@nrc.gov)
(E-mail: Mary.Spencer@nrc.gov)
(E-mail: Anita.Ghosh@nrc.gov)
(E-mail: Brian.Newell@nrc.gov)

Manna Jo Greene
Karla Raimundi
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
(E-mail: mannaajo@clearwater.org)
(E-mail: karla@clearwater.org)
(E-mail: stephenfiller@gmail.com)

Joan Leary Matthews, Esq.
Associate Commissioner
Hearings and Mediation Services
New York State Department of
Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1500
(E-mail: jlmatthe@gw.dec.state.ny.us)

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
(E-mail: MJR1@westchestergov.com)

Daniel Riesel, Esq.
Victoria Shiah, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
(E-mail: driesel@sprlaw.com)
(E-mail: vshiah@sprlaw.com)

John Louis Parker, Esq.
Office of General Counsel, Region 3
NYS Dept. of Environmental Conservation
21 S. Putt Corners Road
New Paltz, New York 12561-1620
(E-mail: jlparker@gw.dec.state.ny.us)

John J. Sipos, Esq.
Charlie Donaldson Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
The Capitol
Albany, NY 12224-0341
(E-mail: John.Sipos@ag.ny.gov)

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(E-mail: phillip@riverkeeper.org)
(E-mail: dbrancato@riverkeeper.org)

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(E-mail: Robert.Snook@po.state.ct.us)

Michael J. Delaney, Esq.
Vice President -Energy Department
New York City Economic Development
Corporation (NYCDEC)
110 William Street New York, NY 10038
mdelaney@nycedc.com

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
(E-mail: vob@bestweb.net)
(E-mail: smurray@villageofbuchanan.com)

Janice A. Dean, Esq.
Assistant Attorney General
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
(E-mail: Janice.Dean@ag.ny.gov)

Signed (electronically) by Paul M. Bessette

Paul M. Bessette, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
E-mail: pbessette@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.