

July 30, 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S MOTION IN LIMINE TO EXCLUDE PORTIONS  
OF PRE-FILED REBUTTAL TESTIMONY AND REBUTTAL EXHIBITS  
REGARDING CONTENTION CW-EC-3A (ENVIRONMENTAL JUSTICE)

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 the Board's Order (Granting Unopposed Extension of Time) of May 16, 2012, the staff of the U.S. Nuclear Regulatory Commission ("Staff") files this Motion *in Limine* to exclude portions of pre-filed rebuttal testimony and rebuttal exhibits proffered by Hudson River Sloop Clearwater, Inc. ("Clearwater") on June 28, 2012 in support of Contention CW-EC-3A. Specifically, the Staff opposes the admission of the following materials:

1. Certain portions of the rebuttal testimony of Manna Jo Greene (Exhibit ("Ex.") CLE000046), Dr. Michael Edelstein (CLE000047), and Dr. Andrew S. Kanter (CLE000048), as more specifically discussed below and in Attachment 1 hereto;<sup>1</sup>
2. Certain portions of Dr. Edelstein's rebuttal report (CLE000058), as discussed below and in Attachment 1 hereto; and
3. Exhibits CLE000050, CLE000051, CLE000052, CLE000053, CLE000054, CLE000055, CLE000056, CLE000057, and CLE000059 as discussed below and in Attachment 1 hereto.

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<sup>1</sup> Attachment 1 to this motion includes a table which identifies the evidence that should be excluded and the reasons for the exclusion.

This evidence should be excluded from the evidentiary hearing on grounds that this information is not reliable, relevant, or within the scope of this proceeding.<sup>2</sup> Accordingly, as more fully set forth below, the Staff respectfully requests that the Board exclude, in full or in part, the pre-filed rebuttal testimony and rebuttal exhibits discussed herein for the reasons and to the extent set forth below and in Attachment 1 hereto.

### DISCUSSION

#### I. Legal Standards Governing Motions in Limine

As this Board has previously recognized, in an evidentiary hearing, “[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.” Order (Granting in Part and Denying in Part Applicant’s Motions in Limine) (“Order”) (March 6, 2012), at 3, *citing* 10 C.F.R. § 2.337(a). While the “strict rules of evidence do not apply to written submissions,” the Board may “on motion or on the presiding officer’s own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative,” and may “[r]estrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments.” *Id.*, *citing* 10 C.F.R. § 2.319(d)-(e).

NRC hearings are limited to the scope of the admitted contentions. As the Board recognized in its Order of March 6, 2012, “the Commission has cautioned against allowing ‘distinctly new complaints to be added at will as litigation progresses, [and thereby] stretching the scope of admitted contentions beyond their reasonably inferred bounds.” *Id.* at 3-4, *citing*

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<sup>2</sup> In addition, portions of Ex. CLE000045, “Hudson River Sloop Clearwater, Inc. Rebuttal Statement Supporting Contention EC-3A Regarding Environmental Justice” (“Rebuttal Statement of Position”) that relate to these evidentiary materials should be disregarded.

*Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis added by the Board).

In this regard, it is well established that if a party proffers testimony or evidence outside the scope of the admitted contentions, it will be excluded. See, e.g., *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-5, 71 NRC 90, 100 (2010) (agreeing with the Staff that the licensing board had properly excluded the intervenors' testimony and exhibits that were outside the scope of the admitted contention).<sup>3</sup> As the Commission explained:

The scope of a contention is limited to issues of law and fact pled with particularity in the intervention petition, including its stated bases, unless the contention is satisfactorily amended in accordance with our rules. Otherwise, NRC adjudications quickly would lose order. Parties and licensing boards must be on notice of the issues being litigated, so that parties and boards may prepare for summary disposition or for hearing. Our procedural rules on contentions are designed to ensure focused and fair proceedings.

*Id.* at 100-01 (internal footnotes omitted). Recently, the Commission emphasized:

We have long required contention claims to be set forth “with particularity,” stressing that it “should not be necessary to speculate about what a pleading is supposed to mean.” Our proceedings would prove unmanageable—and unfair to the other parties—if an intervenor could freely change an admitted contention “at will as litigation progresses,” “stretching the scope of admitted contentions beyond their reasonably inferred bounds.” “Petitioners must raise and reasonably specify at the outset their objections to a license application.”

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<sup>3</sup> *Accord, Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 401 (2005); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), 2009 NRC LEXIS 13 (Feb. 23, 2009), at 6-7.

*Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-01, 75 NRC \_\_\_, \_\_\_ (Feb. 9, 2012) (slip op. at 22-23) (internal citations omitted).<sup>4</sup>

Further, for rebuttal testimony, the scope is more limited. In addition to being restricted to the matters raised in the contention, rebuttal testimony may be admitted only insofar as it is responsive to the other parties' statements of position and evidentiary submissions. Thus, the Board has stated that "Intervenors should not revise their entire original statements of position but rather present only responsive arguments."<sup>5</sup> Moreover, rebuttal testimony may only address matters which the party could not have raised earlier; it may not raise matters for the first time that reasonably should have been, but were not, raised in the party's case-in-chief.<sup>6</sup>

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<sup>4</sup> In addition, an expert opinion is only admissible if the witness is competent to give an expert opinion and adequately states and explains the factual basis for the expert opinion. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-04, 61 NRC 71, 81 (2005). An admissible expert opinion must be "based upon sufficient facts or data to be the product of reliable principles and methods that the witness applied to the facts of the case." *Id.* at 80. The proponent of the testimony bears the burden of demonstrating that its witness is qualified to serve as an expert. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 NRC 21, 27 (2004). "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." *Id.* at 27-28 (internal quotation marks omitted, alteration in original).

<sup>5</sup> Order (Memorializing Items Discussed at April 16, 2012 Pre-Hearing Conference) at 1 (Apr. 18, 2012). *Accord, Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-15, 63 NRC 591, 620 (2006) (reciting the Board's action striking portions of prefiled rebuttal testimony "that fell outside the scope of any admitted contention and/or the permissible scope of rebuttal testimony").

<sup>6</sup> *See, e.g., Progress Energy Florida, Inc.* (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 655 (2009) ("Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously filed initial written statement"); *Amergen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), 2007 NRC LEXIS 54 (April 17, 2007), at 9 ("Being in the nature of rebuttal, the response is not to advance any new affirmative claims or arguments that reasonably should have been, but were not, included in the party's previously-filed initial written statement"); *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), 2006 NRC LEXIS 64 (March 1, 2006), at 6 ("Being in the nature of rebuttal, the response and rebuttal testimony are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously-filed initial written statement") *Rockwell International Corp. Rocketdyne Division* (Special Material License Number SNM-21), LBP-89-27, 30 NRC 265, (1989) (permitting rebuttal testimony "only with respect to new or surprise material" included in the opposing party's submittals).

II. The Specified Portions of Clearwater's Rebuttal Evidence Should Be Excluded.

Contention CW-EC-3A as admitted by the Board, concerns whether the Staff's Final Supplemental Environmental Impact Statement ("FSEIS") and Entergy's Environmental Report ("ER") sufficiently analyze any disproportionately high and adverse environmental impacts on minority and low-income populations (including prisoners and special needs populations) in the event of a severe accident at Indian Point.<sup>7</sup> The Staff's review of Clearwater's proposed rebuttal testimony and exhibits leads it to conclude that much of that material represents a challenge to the adequacy of offsite emergency preparedness plans for the Indian Point facility. As this Board has explicitly recognized, "the adequacy of emergency planning is outside the scope of license renewal proceedings."<sup>8</sup> Accordingly, this evidence should be excluded from the hearing record as raising an issue that is outside the scope of license renewal. In addition, Clearwater has submitted evidence which seeks to impermissibly expand the scope of Contention CW-EC-3A to include non-environmental justice ("EJ") populations and evidence that is otherwise irrelevant or unreliable. For the reasons discussed below, this evidence should also be excluded from the hearing record.

The Staff recognizes that the Board has previously considered the admissibility of evidence on this contention. Thus, on March 6, 2012, the Board addressed a motion in limine that Entergy had filed concerning Clearwater's initial testimony on this contention.<sup>9</sup> In its decision, the Board observed that at evidentiary hearing "the Board is capable of distinguishing

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<sup>7</sup> See Board Order (Granting in Part and Denying in Part Applicant's Motions in Limine), at 32 (March 6, 2012); Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions), at 56 (July 6, 2011).

<sup>8</sup> See, e.g. LBP-08-13, 69 NRC at 147-50, 163-66; *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673, 687 (2010); cf. LBP-08-13, 68 NRC at 201.

<sup>9</sup> Board Order (Granting in Part and Denying in Part Applicant's Motions in Limine), at 31-35 (March 6, 2012).

between disparaging comments against Indian Point's emergency plans and Clearwater's witness' descriptions of how certain EJ populations will be adversely harmed by a severe accident compared to the general population."<sup>10</sup> Further, the Board stated that, "[t]o the extent any populations that Clearwater's witnesses describe do not fit within the definition of an EJ population and are not necessary to an EJ analysis, we will discount the weight of such evidence in ruling on the merits of the FSEIS's EJ analysis."<sup>11</sup> In addition, the Board stated, "[w]e cannot say without ruling on the merits that proffered evidence relating to non-nuclear severe accidents, the events at Fukushima, or certain populations around Indian Point are irrelevant to the question whether the NRC Staff's EJ analysis was sufficient."<sup>12</sup>

While the Staff is fully cognizant of the Board's rulings on Entergy's previous motion, the Staff respectfully submits that Clearwater's rebuttal filing seeks to introduce a substantial amount of additional testimony and exhibits that are clearly outside the scope of this contention and are otherwise irrelevant to this proceeding. Moreover, inasmuch as this evidence was submitted as part of Clearwater's rebuttal, much of it is not responsive to the testimony and exhibits proffered by the Staff and Entergy. Further, its filing as rebuttal precludes any other party from proffering evidence in rebuttal thereto. Accordingly, the Staff respectfully requests that this "rebuttal" evidence be excluded from the hearing record, rather than being admitted subject to the Board's consideration of the weight it should be afforded.

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<sup>10</sup> *Id.* at 35.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

A. Portions of Ms. Greene’s Rebuttal Testimony and Supporting Exhibits Should Be Excluded As Not Relevant, Reliable, or Within the Scope of this Proceeding.

1. Ms. Greene’s Testimony Referencing an NRC Office of New Reactors Presentation Impermissibly Expands the Scope of Contention CW-EC-3A

Ms. Greene’s testimony references a presentation given by David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, regarding potential EJ populations, including the elderly and other non-EJ populations.<sup>13</sup> The Board has previously ruled that Contention CW-EC-3A, as admitted, applies to low-income, minority, disabled, and incarcerated populations as well as “EJ populations within 50 miles of Indian Point in pre-schools, nursing homes, shelters, hospitals, and minority and low-income residents in the region who lack access to private transportation.”<sup>14</sup> Ms. Greene’s reference to the Office of New Reactors presentation would impermissibly expand the scope of Contention CW-EC-3A to include the elderly and other non-EJ populations not previously identified in the contention, as specified by the Board.<sup>15</sup> Accordingly, this portion of Ms. Greene’s testimony and her supporting exhibit should be excluded.

2. Ms. Greene’s Account of Dr. Redlener’s Presentation is Not Relevant, Reliable, or Within the Scope of Contention CW-EC-3A

Ms. Greene’s rebuttal testimony also includes an account of a presentation she attended regarding emergency planning by Dr. Irwin Redlener.<sup>16</sup> Ms. Greene’s account of Dr. Redlener’s presentation entitled “Evacuation Planning: The Achilles Heel of Disaster Readiness” describes

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<sup>13</sup> “Rebuttal Testimony of Manna Jo Greene Regarding Clearwater’s Environmental Justice Contention EC-3A,” (“Greene Rebuttal Testimony”) (Ex. CLE000046) at 2; *see also* Ex. CLE000051, David B. Matthews, Environmental Justice and the NRC: A Progression to Excellence (April 22, 2012).

<sup>14</sup> *See* Board Order (Granting in Part and Denying in Part Applicant’s Motions in Limine) at 32 (March 6, 2012); Board Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) at 56 (July 6, 2011).

<sup>15</sup> Greene Rebuttal Testimony at 2.

<sup>16</sup> *Id.* at 2-7.

Dr. Redlener's opinion on emergency planning issues such as spontaneous and shadow evacuations of the general population, evacuation challenges faced by the general population, the proportion of "vulnerable populations" nationwide, and needs for host communities who would be accommodating evacuees in the event of emergency evacuation procedures.<sup>17</sup>

Ms. Greene's testimony also describes Dr. Redlener's opinion on whether emergency planning should be "out of scope" in evaluating the relicensing of nuclear power plants.<sup>18</sup>

This portion of Ms. Greene's testimony and the accompanying exhibit should be excluded on grounds that this evidence directly challenges the adequacy of existing emergency plans for the Indian Point site, and is thus outside the scope of Contention CW-EC-3A and outside the scope of a license renewal proceeding. Moreover, this testimony should be excluded because it is not relevant to the question of whether the environmental impacts on environmental justice populations near Indian Point will experience a disproportionately high and adverse impact from a severe accident at Indian Point. Additionally, Dr. Redlener is not an expert witness in this proceeding and Clearwater has not submitted any information regarding his qualifications or experience on issues related to Contention CW-EC-3A. Thus, Ms. Greene's account of Dr. Redlener's opinions regarding emergency planning and relicensing should be excluded from the hearing record for lack of reliability. Finally, Ms. Greene's testimony should be excluded because it neither addresses nor rebuts the testimony and exhibits proffered by the Staff and Entergy.

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<sup>17</sup> *Id.* at 3-5; *see also* Ex. CLE000057, Irwin Redlener, M.D., Presentation Excerpt: Evacuation Planning: The Achilles Heel of Disaster Readiness (March 2012).

<sup>18</sup> Greene Rebuttal Testimony at 5-6.

B. Portions of Dr. Edelstein’s Rebuttal Testimony, Rebuttal Report, and Supporting Exhibits Should Be Excluded Because This Evidence is Not Relevant or Within the Scope of this Proceeding.

1. Dr. Edelstein’s Rebuttal Testimony and Exhibits Regarding Mr. Matthews’ Presentation Should be Excluded

In his rebuttal testimony, Dr. Edelstein discusses a presentation given by David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, regarding the environmental justice review for the V.C. Summer Nuclear Station combined operating license (COL).<sup>19</sup> Mr. Matthews’s presentation does not establish Commission policy or legal precedent. Further, it cannot expand the scope of this contention as admitted. Accordingly, this portion of Dr. Edelstein’s testimony and his supporting exhibit should be excluded from the hearing record.

2. Dr. Edelstein’s Rebuttal Testimony, Rebuttal Report, and Exhibits Regarding Fukushima Should be Excluded

Portions of Dr. Edelstein’s pre-filed rebuttal testimony, report, and supporting exhibits regarding disparate impacts resulting from deficiencies in Japan’s emergency response plans in the aftermath of Fukushima should be excluded from the hearing record on grounds that this evidence lacks relevance and is beyond the scope of Contention CW-EC-3A. In his testimony, Dr. Edelstein attempts to demonstrate that “examples from Fukushima should suffice to show that a nuclear emergency at Indian Point would be likely to cause serious disparate impacts [to environmental justice (EJ) populations].”<sup>20</sup> Further, Dr. Edelstein contends in his accompanying report that “[t]he Fukushima disaster illustrates that mitigations embedded in emergency response plans may fail for institutionalized populations in the midst of a nuclear disaster

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<sup>19</sup> “Rebuttal Testimony of Michael Edelstein Regarding Clearwater’s Environmental Justice Contention EC-3A,” (“Edelstein Rebuttal Testimony”) (Ex. CLE000047) at 3-6; *see also* Ex. CLE000051, David B. Matthews, Environmental Justice and the NRC: A Progression to Excellence (April 22, 2012).

<sup>20</sup> Edelstein Rebuttal Testimony at 5-6.

despite highly rated levels of anticipatory planning.”<sup>21</sup> Dr. Edelstein proffers several news articles and a Greenpeace report as evidence to demonstrate disparate impacts to certain populations including the elderly and the infirm in the aftermath of incident at Fukushima Dai-ichi nuclear power plant in Japan.<sup>22</sup> Dr. Edelstein’s testimony would impermissibly expand the scope of the contention to apply to elderly persons and other non-EJ populations.<sup>23</sup> Further, this evidence regarding Fukushima is irrelevant to this proceeding. The fact that disparate impacts were experienced by certain portions of the population in Japan in the aftermath of Fukushima could be attributed to a number of factors related to differences in Japan’s regulatory framework, infrastructure, and emergency response mechanisms. Moreover, evidence demonstrating that deficiencies in another country’s emergency response plans resulted in impacts to certain populations represents an indirect challenge to the sufficiency of offsite emergency preparedness plans for nuclear facilities, which is beyond the scope of this license renewal proceeding.<sup>24</sup> In addition, this evidence should be excluded because Dr. Edelstein fails to show how this evidence is responsive to the pre-filed testimony and exhibits filed by the Staff

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<sup>21</sup> Michael Edelstein, Ph.D Rebuttal to Respondents to Testimony on the Environmental Justice Contention Report (June 27, 2012) (“Edelstein Rebuttal Report”) (Ex. CLE000058) at 23.

<sup>22</sup> See Ex. CLE000050, Morris-Suzuki, Boilley, McNeill, and Gundersen, Greenpeace: Lessons from Fukushima (Feb. 2012); Ex. CLE000052, Robert Booth and Justin McCurry, *The Guardian*: Japanese Earthquake Takes Heavy Toll on Aging Population (March 17, 2011); Ex. CLE000053, Yuka Hyashi, *The Wall Street Journal*: Panel Says Crisis Showed Facilities’ Terrorism Risks (Feb. 29, 2012); Ex. CLE000054, Staff, Associated Press, *CNS News*: AP Enterprise: Nuke Evacuation Fatal for Old, Sick (March 10, 2012); Ex. CLE000055, *The Daily Yomiuri*: 573 Deaths Related to Nuclear Crisis (Feb. 5, 2012); Ex. CLE000056, Mail Online: An Accident waiting to happen? Populations around U.S. nuclear plants have grown 450% since 1980 (June 27, 2011).

<sup>23</sup> Edelstein Rebuttal Testimony at 5-6; Edelstein Rebuttal Report at 23-24.

<sup>24</sup> As this Board has explicitly recognized, “the adequacy of emergency planning is outside the scope of license renewal proceedings. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-10-13, 71 NRC 673, 687 (2010), *citing Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43, 149-50 (2008)); *cf. id.*, LBP-08-13, 68 NRC at 201.

and Entergy. Finally, Dr. Edelstein relies on a number of exhibits that were available in 2011,<sup>25</sup> Clearwater fails to show why Dr. Edelstein could not have raised these arguments earlier, when filing his pre-filed initial testimony. The proffered evidence should therefore be excluded.

3. Portions of Dr. Edelstein's Rebuttal Report regarding the NRC's Alleged Psycho-social Motives is Not Relevant

In his rebuttal report, Dr. Edelstein explores various hypothetical psycho-social motivations behind the Staff's testimony. For example, Dr. Edelstein speculates that the NRC may be caught in some sort of "regulatory bind," and that there "is a 'regulatory heuristic' evident in the NRC Staff's . . . rationalization."<sup>26</sup> Further, Dr. Edelstein asserts that the Staff may also be engaging in "regulatory complacency" and that "regulatory capture may also be at play."<sup>27</sup> This testimony should be excluded because it is neither relevant to any of the environmental justice issues involved in Contention CW-EC-3A nor responsive to the environmental justice issues raised in the Staff's testimony or exhibits.

4. Dr. Edelstein's Appendix to his Rebuttal Report is Not Relevant

Dr. Edelstein's Appendix to his rebuttal report should be excluded from the hearing record on grounds that this evidence is not relevant. This appendix contains an excerpt from Dr. Edelstein's book entitled "Contaminated Communities: Coping with Residential Toxic Exposure."<sup>28</sup> The excerpt contains a critique of a Supreme Court case regarding the need to

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<sup>25</sup> See Ex. CLE000052, Robert Booth and Justin McCurry, The Guardian: Japanese Earthquake Takes Heavy Toll on Aging Population (March 17, 2011); Ex. CLE000056, Mail Online: An Accident waiting to happen? Populations around U.S. nuclear plants have grown 450% since 1980 (June 27, 2011).

<sup>26</sup> Edelstein Rebuttal Report at 6-7.

<sup>27</sup> *Id.* at 7-10.

<sup>28</sup> Ex. CLE000059, Michael Edelstein, Ph.D Appendix to Rebuttal to Respondents Testimony on the Environmental Justice Contention Report.

consider psychological impacts under NEPA.<sup>29</sup> This excerpt is not relevant to any of the environmental justice issues regarding Contention CW-EC-3A. Accordingly, this exhibit should be excluded from the hearing record.

C. Portions of Dr. Kanter's Rebuttal Testimony and Supporting Exhibits Should Be Excluded Because this Evidence is Not Relevant, Reliable, or Within the Scope of this Proceeding.

In his rebuttal testimony, Dr. Kanter discusses Chairman's Jaczko's statements regarding evacuation zones in Japan after Fukushima.<sup>30</sup> As discussed above, emergency planning issues regarding Fukushima are irrelevant and beyond the scope of this license renewal proceeding. Nothing in this evidence concerns EJ populations, as distinct from the general population. Accordingly, this portion of Dr. Kanter's rebuttal testimony and his supporting exhibit should be excluded from the hearing record.

CONCLUSION

For the reasons set forth above, and in Attachment 1 hereto, the Staff respectfully requests that the Board exclude portions of Clearwater's pre-filed rebuttal testimony and supporting exhibits related to Contention CW-EC-3A, to the extent discussed herein and in Attachments 1 hereto.

Respectfully submitted,

**/Signed (electronically) by/**  
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<sup>29</sup> *Id.*

<sup>30</sup> "Rebuttal Testimony of Dr. Andrew S. Kanter, M.D. M.P.H. in Support of Hudson River Sloop Clearwater, Inc.'s Contention EC-3A Regarding Environmental Justice," (Ex. CLE000049) at 3.

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Dated at Rockville, Maryland  
this 30th day of July 2012

CERTIFICATION OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), the undersigned attorney hereby certifies that she has made a sincere effort to contact Hudson River Sloop Clearwater, Inc. and Entergy Nuclear Operations, Inc., to resolve the issues raised in this Motion. Entergy indicated that it supports the Staff's Motion and is filing its own motion in limine. Clearwater opposes the motion. Thus, Counsel's efforts to resolve these issues have been unsuccessful.

Respectfully submitted,

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Dated at Rockville, Maryland  
this 30<sup>th</sup> day of July 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "NRC STAFF'S MOTION IN LIMINE TO EXCLUDE PORTIONS OF THE PREFILED REBUTTAL TESTIMONY AND REBUTTAL EXHIBITS REGARDING CONTENTION CW-EC-3A (ENVIRONMENTAL JUSTICE)" dated July 30, 2012, in the above-captioned proceeding has been filed and served by Electronic Information Exchange (EIE), with copies to be served by the EIE system on the following persons, this 30th day of July, 2012.

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