

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 ANSWER TO STATE OF NEW YORK MOTION FOR LEAVE TO
FILE AN ADDITIONAL EXHIBIT AND ADDITIONAL CROSS-EXAMINATION
QUESTIONS CONCERNING CONSOLIDATED CONTENTION NYS-12C

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to the "State of New York Motion for Leave to File an Additional Exhibit And Additional Cross-Examination Questions Concerning Consolidated Contention NYS-12C," ("New York's Motion") filed by the State of New York ("New York"), on September 18, 2012.

New York's motion seeks to introduce a new exhibit, consisting of two separate email chains. The first email, appearing in New York's Attachment 1, is from C. Ader, Director, Division of Safety Systems and Risk Assessment, Office of New Reactors ("NRO") to M. Johnson (then) Director of NRO ("Johnson Email"), dated January 19, 2011; this email included attachments that appear after the second email in New York's Attachment 1. The second email is from C. Ader, Director, Division of Safety Systems and Risk Assessment, NRO, to M. Bano, an Administrative Assistant in the Office of Nuclear Regulatory Research ("RES"),¹ ("Bano Email") dated January 20, 2011, which included no attachments.

¹ Ms. Bano has since retired from the NRC.

In its Motion, New York claims that the Johnson Email represents an NRC Staff position that the input values used in the MAACS2 code are of “uncertain pedigree” and that this contradicts the Staff’s pre-filed testimony in this proceeding.² In addition, New York describes its recent discovery of its proposed exhibit, and it asserts that the Staff was somehow remiss in failing to identify these documents among its document disclosures in this proceeding.³ Finally, New York seeks to submit additional Board questions based upon the proposed exhibit.⁴

The Staff respectfully submits that New York’s Motion should be denied, because (1) as set forth in the attached affidavit of Dr. S. Tina Ghosh, the views expressed in New York’s proposed exhibit represent solely the views of one individual Staff member (since deceased), and was rejected by responsible officials in RES, having been assigned one of the lowest overall scores that year and the lowest evaluation score under the “technical gap” element; (2) the document does not pertain to the Indian Point license renewal proceeding and was not reviewed or considered by the Staff in this proceeding; (3) consistent with the Board’s previous ruling on the disclosure of NRC documents,⁵ the Staff was under no obligation to search for or produce documents of this nature; (4) New York, itself, had an obligation to search for and find this information in a timely manner, if it wished to use the document to support its case-in-chief;

² New York’s Motion at 3 – 4. It is unclear based on New York’s Motion and Ms. Liberatore’s Declaration whether New York is unaware that the documents in Attachment 1 appear to be two independent emails. See *id.*; Declaration of Kathryn M. Liberatore in Support of the State of New York’s Motion for Leave to File an Additional Exhibit and Additional Cross-Examination Questions Concerning Consolidated Contention NYS-12C (“Liberatore’s Declaration”) at ¶¶ 5 – 6. Compare New York’s Motion, Attachment 1 at 1 (beginning of the Johnson Email); *id.* at 3 (beginning of the Bano Email); *id.* at 4 (beginning of Johnson Email Attachments).

³ New York’s Motion at 5.

⁴ *Id.* at 1.

⁵ “Order (Denying in Part State of New York and Riverkeeper’s Motion to Compel)” (March 16, 2012) (“Disclosure Order”), at 8.

(5) the document was available in the NRC's Agency Document Access and Management System ("ADAMS") – and, indeed, was found by New York upon its belated decision to conduct an ADAMS search for such documents; and (6) at best, the document is redundant with respect to other exhibits previously filed by New York. Thus, New York's Motion should be denied.

BACKGROUND

This proceeding concerns the license renewal application ("LRA") submitted by Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") for Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3") on April 23, 2007. A Notice of Opportunity for Hearing on the application was published in the Federal Register on August 1, 2007 and on November 30, 2007, New York filed its petition for leave to intervene in the proceeding.⁶ On July 31, 2008, the Board issued its decision in LBP-08-13, in which it, *inter alia*, granted New York's petition to intervene and admitted many of its contentions.⁷

On December 18, 2008, the Board directed the parties to "provide the mandatory disclosures required under 10 C.F.R. § 2.336 as soon as possible."⁸ In a telephonic prehearing conference held on January 14, 2009, the Board set January 30, 2009, as the date for initial disclosures, and stated that it "had no objections to the provisions of the Letter Agreement filed by the parties memorializing mandatory disclosure protocols agreed to by all parties."⁹

⁶ See "New York State Notice of Intention to Participate and Petition to Intervene" (Nov. 30, 2007).

⁷ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 68 NRC 43 (2008).

⁸ "Memorandum and Order (Scheduling Prehearing Conference and Ruling on New York State's Motion Requesting Consideration of Additional Matters)" (Dec. 18, 2008), at 1.

⁹ "Memorandum and Order (Summarizing Pre-Hearing Conference)" (Feb. 4, 2009), at 3 and n.5, *citing* "Agreement of the Parties Regarding Mandatory Discovery Disclosures" (Jan. 13, 2009); Tr. 771. The date for initial disclosure certifications was subsequently extended to February 28, 2009, for (continued. . .)

As the Board is aware, New York has previously challenged, on three previous occasions, the adequacy of the Staff's document disclosures – and, in particular, the Staff's document disclosures concerning Contentions NYS-12 and NYS-16 on Severe Accident Mitigation Alternatives (“SAMAs”). The first such motion sought to compel the Staff to waive the required fee for production of the MAACS2 code to New York, thereby allowing New York to obtain the code free of charge; the Staff then voluntarily agreed to produce the code to New York without charge.¹⁰ The second motion sought to compel the Staff to disclose certain additional documents on SAMA issues – which the Staff then disclosed or identified as privileged, without requiring further action by the Board.¹¹ The third motion essentially sought Staff disclosure of documents used, reviewed or generated by the Staff or its consultants regarding any admitted contentions; in response, the Staff confirmed under oath that it had already disclosed those documents,¹² and the Board then declined to grant New York's motion.¹³

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Contention RK-EC3/CW-EC1. See “Order (Granting Consent Motion Regarding Mandatory Disclosures)” (Jan. 30, 2009).

¹⁰ See “Order (Dismissing New York's Motion to Compel Discovery as Moot)” (Jan. 28, 2010).

¹¹ See (1) letter from Sherwin E. Turk to the Board (May 25, 2011), summarizing the Staff's additional document disclosures provided in response to New York's motion to compel of April 22, 2011, and reciting New York's agreement that these additional disclosures resolved its motion to compel; (2) letter from Sherwin E. Turk to Janice A. Dean (May 25, 2011), producing an electronic copy of the requested documents.

¹² “NRC Staff's Answer to ‘State of New York and Riverkeeper Motion to Compel Compliance with Disclosure Obligations by NRC Staff’” (Feb. 9, 2012) (“Staff Answer”), at 13-14, 15, and 16-17, and attached “Affidavit of Kimberly J. Green” (Feb. 9, 2012), at 1-2.

¹³ Disclosure Order (March 16, 2012), at 7 and 10-11. The Board's Order directed the Staff to produce any such documents that had not been disclosed already, or to confirm by March 23, 2012, that it does not have any such documents in its possession. *Id.* at 11. On March 22, 2012, the Staff reported that the Staff and its consultants “are again reviewing the documents in their possession, to determine if
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DISCUSSION

I. The Proposed Exhibit Should Be Rejected

New York's legal arguments in support of admitting the proposed exhibit raise two main issues. First, New York asserts that its proposed exhibit is essential to creating an adequate record.¹⁴ Second, New York asserts that good cause excuses its failure to identify the proposed exhibit and to have brought it to the attention of the parties and Board in a timely manner.¹⁵

New York's arguments rest on an assertion that the proposed exhibit represents a Staff position that contradicts the Staff's pre-filed testimony, and that this information is materially different from the information that was already presented to the Board in the parties' submissions.

New York's arguments are unavailing and appear to be driven by a misunderstanding of the documents in question. The Staff's response, set forth below, will address (1) the underlying content and context of New York's proposed exhibit, (2) New York's lack of good cause for its belated discovery the proposed exhibit, and (3) the adequacy of the record without the proposed exhibit.¹⁶ The Staff's response will also address the prejudicial impact that would

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any documents must be disclosed that have not been disclosed already," and if any such additional documents are identified, "they will be filed as evidentiary exhibits along with the Staff's testimony and/or placed in the hearing file, as appropriate." "NRC Staff's Motion for Partial Reconsideration and/or Clarification of the Board's Order of March 16, 2012" (Mar. 22, 2012), at 1 n.1. The Staff then filed its testimony and Hearing File update on March 30, 2012, thereby closing this issue.

¹⁴ New York's Motion at 4.

¹⁵ *Id.* at 5 – 6.

¹⁶ Due to New York's misunderstanding of the content of the proposed exhibit, the Staff has adopted throughout this response terms to help clarify the issues being discussed. The term "proposed exhibit" refers to the entirety of New York's Attachment 1. The term "Johnson Email" refers to the first email appearing in the proposed exhibit at pp. 1 – 2 of Attachment 1. The term "Bano Email" refers to the second independent email appearing in the proposed exhibit at p. 3 of Attachment 1. Finally, the term "Johnson Email Attachments" refer to the documents appearing at pp. 4 –12 of Attachment 1. New York's assertions regarding the proposed exhibit included a number of errors. For example, New York
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result from introducing the late Mr. Lee's proposal at this late time. Finally, the Staff's response will address the Staff's disclosure obligations given New York's intimations that the proposed exhibit should have been but was not disclosed by the Staff in this proceeding or placed into ADAMS in a more timely manner.

A. The Proposed Exhibit Does Not Represent a Staff Position on the Input Values to the MACCS2 Code

New York's proposed exhibit consists of at least two separate emails and attachments, including the Johnson Email, the Bano Email, and the Johnson Email Attachments.¹⁷ As Dr. Ghosh explains in her affidavit, the emails presented in New York's proposed exhibit represent "part of the NRC office concurrence process" for the Long-Term Research Program ("LTRP") from NRO.¹⁸ Importantly, NRO's concurrence was not directed to the Johnson Email Attachments (in which Mr. Lee presented his research proposal), but to a Commission paper titled "Agency Long-Term Research Activities for Fiscal Year 2013."¹⁹ The Johnson Email

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alleged that Scott Flanders is an attorney; instead, Mr. Flanders is the Director of the Division of Site Safety and Environmental Analysis in NRO. New York also seems to believe that regardless of which email an individual received, that person would be aware of events that occurred later in time or were not included in their email. New York's Motion at 2. For example, while New York asserts that the Staff's Counsel, Sherwin Turk received and was aware of these documents, in fact Mr. Turk responded to Ms. Bano's email, dated January 10, 2011, indicating that the email had been misdirected and should be delivered to the Office of the General Counsel's ("OGC") mailroom, where it could be appropriately assigned. See Attachment B, Email from S. Turk to M. Bano, dated January 10, 2011. Upon further investigation, the undersigned Counsel has determined that after being delivered to OGC's mailroom, the draft Commission paper was assigned to the Reactor and Materials Rulemaking Division, which is not responsible for license renewal proceedings or Indian Point.

¹⁷ The proposed exhibit, as it appears in ADAMS, is available at Accession No. ML12024A077.

¹⁸ Affidavit of S.Tina Ghosh Concerning State of New York Motion For Leave to File an Additional Exhibit and Additional Cross-Examination Questions Concerning Consolidated Contention NYS-12C ("Ghosh Affidavit") (Attachment A) at ¶ 7.

¹⁹ Ghosh Affidavit at ¶ 7. The LTRP is managed by the Office of Nuclear Regulatory Research ("RES"). *Id.* at ¶ 3. As part of the LTRP, staff members throughout the NRC are able submit suggestions (continued. . .)

attachments are not part of the Commission paper; instead, they are simply a reproduction of all of the proposals received from individual NRO staff members.²⁰

With respect to Mr. Lee's proposal, "New Improved MELCOR Accident Consequence Code System (MACCS)",²¹ the LTRP Review Committee²² evaluated Mr. Lee's proposal and assigned it "one of the lowest scores of all proposals submitted that year."²³ The proposal received the lowest score in the "technical gap" element.²⁴ Mr. Lee's proposal was thereupon rejected.

New York's argument centers on a single sentence contained in Mr. Lee's proposal's "Brief Summary of Need,"²⁵ in which he states, "[t]he pedigree of some of those input values is

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for potential research to address technical gaps that the NRC may need in 5 to 10 years. *Id.* at ¶ 3. The content of the proposals for fiscal year 2013 was not reviewed by the program offices. *Id.* at ¶ 4. Once submitted, the suggestions are then reviewed by a committee made up of senior technical advisors from throughout the agency. *Id.* at ¶ 5. The suggestions are evaluated under a number of parameters including whether the suggestion fits within the expressed purpose of the LTRP, the merits of the research suggestion, and technical merit, among others. *Id.* at ¶ 5. After eliminating proposals that do not meet the requirements of the LTRP, the committee evaluates and recommends which remaining research suggestions should be pursued. *Id.* at ¶ 5. Once finalized, a Commission paper is developed identifying the selected research projects. *Id.* at ¶ 6. As part of developing the Commission paper, each of the program offices are asked to concur on the recommendation. *Id.* at ¶ 6.

²⁰ *Id.* at ¶ 7.

²¹ Johnson Email Attachments at pp. 5, 8 of the proposed exhibit. New York's Motion, Attachment 1, at 5, 8.

²² The LTRP Committee is "comprised of senior staff from across the agency" with a broad cross-section of technical disciplines. Ghosh Affidavit at ¶ 6, 8.

²³ *Id.* at ¶ 8.

²⁴ *Id.* Receiving the lowest score in the "technical gap" element indicates that in LTRP Review Committee's expert judgment "there was no important technical gap in our existing regulatory tool and practices." *Id.*

²⁵ Johnson Email Attachments at pp. 5, 8. New York's Motion, Attachment 1, at 5, 8.

not known.”²⁶ A careful examination of Mr. Lee’s proposal demonstrates that New York’s inference that this statement reflects a Staff position or that it is inconsistent with the Staff’s testimony in this proceeding is unwarranted.²⁷ Thus, in Mr. Lee’s “Statement of Work,” he states that certain input values used in the MACCS2 code should be “[r]eview[ed], and update[d] or upgrade[d] as necessary.”²⁸ He did not point to any specific input values that he believed were incorrect or unsupported.

Thus, the underlying reason New York asserts for admitting this late-filed exhibit is incorrect and New York’s Motion should be denied.

B. New York Was Dilatory in Identifying and Raising the Proposed Exhibit

New York argues that it was not late in identifying this proposed exhibit because (1) New York’s counsel was unfamiliar with the term “REAcct” and thus would not have known to look for this information and/or (2) Staff concealed this information.²⁹ These assertions should be rejected.

First, New York argues that it has good cause for its late-filed proposed exhibit, because New York’s counsel (Ms. Liberatore) had been conducting regular searches of ADAMS using terms “relevant to the various admitted contention and other issues of interest,”³⁰ and that she

²⁶ *Id.*

²⁷ See Johnson Email Attachments at pp. 5, 8, “Statement of Work.” New York’s Motion, Attachment 1, at 5, 8.

²⁸ See Johnson Email Attachments at pp. 5, 8, “Statement of Work.” New York’s Motion, Attachment 1, at 5, 8. (emphasis added)

²⁹ New York asserts that the Staff delayed entering this email into ADAMS in contravention of NRC Management Directive 3.4. See New York’s Motion at 8, 8 n. 4.

³⁰ Declaration of Kathryn M. Liberatore in Support of the State of New York’s Motion for Leave to File an Additional Exhibit and Additional Cross-Examination Questions Concerning Consolidated Contention NYS-12C (“Liberatore Decl.”) at ¶ 7.

was unfamiliar with an alternative economic model, titled Regional Economic Accounting Tool (“REAcct”).³¹ Thus, New York asserts she did not know to conduct searches in ADAMS using this term.³²

New York’s arguments should be rejected. The Commission has stated that intervenors have an “iron-clad obligation to examine the publicly available documentary material ... with sufficient care to enable [them] to uncover any information that could serve as the foundation for a specific contention.”³³ Similarly, New York can have no less an obligation to uncover information to support its case-in-chief or its rebuttal testimony. Counsel’s claim of personal unfamiliarity with REAcct fails to support New York’s position as this term is commonly used in presentations and publications concerning severe accident consequences and other accident analysis.³⁴ Indeed, REAcct is widely known and discussed by experts within the severe accident community and by other experts seeking to model economic damages from certain events. Thus, New York’s experts should have been able to assist or direct New York in searching for the information in more timely manner.³⁵ New York’s decision to either not make

³¹ Liberatore Decl. at ¶ 4.

³² *Id.* at ¶ 4 – 5.

³³ *Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2)*, CLI-10-27, 72 NRC 481, 483 (2010).

³⁴ See, e.g., (1) “An Updated Economic Model for Level-3 PRA Consequence Analysis Using MACCS2,” PSA 2011 - International Topical Meeting on Probabilistic Safety Assessment and Analysis, Thursday March 17, 2011 available at <http://meetingsandconferences.com/psa2011/pdf/FinalProgram-LR.pdf>; (2) National Infrastructure Simulation and Analysis Center Risk Development and Modeling Branch Homeland Infrastructure Threat and Risk Analysis Center Office of Infrastructure Protection, “Louisiana Highway 1/Port Fourchon Study,” (July 15, 2011) available at <http://www.la1coalition.org/phire-content/assets/files/LA%201%20Port%20Fourchon%20USDHS.pdf>; and (3) V. Vargas, “Estimated Business Interruption Losses of the Deepwater Horizon Oilspill,” (May 2011) available at <http://repository.unm.edu/handle/1928/1280>.

³⁵ New York claims that it was not able to locate the proposed exhibit until it searched for the terms “MACCS2 and REAcct.” New York’s Motion at 6. However, if New York had only searched for (continued. . .)

use of their experts' knowledge or conduct its document searches using other terms does not excuse their nearly 9-month delay in identifying this proposed exhibit.

New York further asserts that the Staff "chose to wait over a year to add the document ADAMS,"³⁶ "despite the fact that NRC policy requires documents to be available on ADAMS within six days."³⁷ New York's arguments are without merit. New York's proposed exhibit was placed into ADAMS as a result of a Freedom of Information Request ("FOIA") filed by the Union of Concerned Scientists ("UCS").³⁸ But for the FOIA request, it is unlikely that the Johnson Email and Bano Email would have been placed in public ADAMS, as they are internal emails requesting concurrence on budgeting and man-power requirements; such documents are not normally made available in ADAMS or released to the public. As such, the Staff was under no obligation to place the documents in ADAMS "six days" after they were generated or to make them publicly available. New York's claim that it has good cause for filing this proposed exhibit on the eve of trial cannot be excused by its unsupported claim that Staff improperly withheld this document from ADAMS.

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"MACCS2," it would have found the document, as that term alone would have triggered its appearance in the search results. It therefore appears that New York failed to focus on this document until the last hours before the hearing.

³⁶ New York's Motion at 8.

³⁷ *Id.* (citing Liberatore Declaration at ¶ 8.)

³⁸ See FOIA 2011-0083 (ADAMS Accession No. ML110400354).

C. New York's Proposed Exhibit Is Not Necessary to the Development of an Adequate Record

New York asserts that its proposed exhibit is necessary for developing a full and complete record for a relicensing decision.³⁹ New York's premise for this assertion is that the proposed exhibit "is both material and materially different from evidence offered in this proceeding."⁴⁰ With respect to the material difference, New York argues that proposed exhibit "renders evidence offered in this proceeding unreliable and contradictory by impeaching pre-filed witness testimony."⁴¹ As explained above, New York has misunderstood the multiple emails and attachments contained in its proposed exhibit, and the nature of proposals made for the LTRP. In fact, Mr. Lee's proposal represented his personal views alone.⁴² The LTRP Review Committee evaluated Mr. Lee's proposal and found it to be lacking in the "technical gap" element (i.e., there was no important technical gap in the existing regulatory tools and practices).⁴³ New York's claim that the proposed exhibit contradicts the Staff's pre-filed testimony is thus unsupported. As to whether an adequate record exists for a decision on this contention without New York's late-filed proposed exhibit, the answer is clear. New York has filed extensive testimony concerning this contention and states that the appropriateness of certain input values to the MACCS2 code was "[o]ne of the central arguments advanced by New York in support of NYS-12C."⁴⁴ Thus, New York has had ample opportunity to submit

³⁹ New York's Motion at 4.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *See supra* Section I.A.

⁴³ *Id.*

⁴⁴ New York's Motion at 2.

information in its testimony and exhibits to provide an adequate record on this issue. Thus, New York's Motion should be denied.

D. The Proposed Exhibit Is Redundant of Evidence Already Submitted and Is Highly Prejudicial

As discussed above, the information New York's seeks to present in this proposed exhibit is directly related to one of its central arguments. New York's in its pre-filed testimony, statement of position, and supporting exhibits already challenge the appropriateness of the certain input values used in the MACCS2 code.⁴⁵ Since the proposed exhibit does not represent a Staff position, but only the unexplained views of a single individual (since deceased), there is little value in admitting it on the eve of the hearing. Further, the proposed exhibit has little probative value. Although Mr. Lee's proposal states "[t]he pedigree of some of those input values is not known," his more detailed "Description of Work" merely contemplates "reviewing" the inputs and making changes "as necessary."⁴⁶ This can hardly be said to add something materially different from Dr. Lemay's testimony, New York's expert witness.

Finally, the introduction of this proposed exhibit would be highly prejudicial, because it represents, at best, the thoughts of Mr. Lee, who passed away last year and who is unavailable to be questioned regarding the specific values he was referring to or the meaning of his statements.⁴⁷ Thus, the Board and parties would have no opportunity to understand or examine the meaning or intent of Mr. Lee's proposal. New York's Motion should, therefore, be denied.

⁴⁵ *See id.*

⁴⁶ Johnson Email Attachments at pp. 5, 8. New York's Motion, Attachment 1, at 5, 8.

⁴⁷ Ghosh Affidavit at ¶ 8.

II. Requirements Governing the Staff's Document Disclosures.

As the Board has explicitly held, the Staff's document disclosure requirements are governed by 10 C.F.R. §§ 2.336(b) (mandatory disclosures) and 2.1203(b) (hearing file).⁴⁸ Significantly, the Board has explicitly considered, and rejected, arguments by New York that the Staff is required to disclose documents that were not reviewed, utilized or generated by the Staff or its consultants, in their review of the application or any admitted contentions in the proceeding. In this regard, the Board ruled as follows:

While we agree that the NRC Staff's disclosure obligations are broader than those of the other parties in the proceeding, they are not without limitation. One such limitation applies to generically applicable documents that reside in ADAMS but do not relate to the application or proceeding at hand. Section 2.336(b) requires the NRC Staff to disclose documents used in its review of the application or proposed action that is the subject of the proceeding. While this may encompass thousands of documents, it does not include every document in the NRC Staff's possession applicable to a particular system, structure, component, facility, or issue in a proceeding. As the NRC Staff has stated, if this interpretation were correct, then

the Staff would be required, in each and every licensing proceeding, to create a massive hearing file that contains every record pertaining to any generic or site-specific issue that was ever raised regarding any facility, regardless of whether those documents were utilized or referred to by Staff members in their review of the application at hand. For example, all generic documents relating to nuclear power plant safety, all documents pertaining to the environmental impacts of nuclear power plants, and all documents pertaining to any nuclear plant's operating experience, would have to be included in each license renewal proceeding hearing file – notwithstanding the fact that such documents are available in ADAMS – since one could never know whether that document might have some general relevance to an issue that has been or might later be raised in the specific proceeding. That view is simply unsupportable.

⁴⁸ See Disclosure Order (March 16, 2012), at 4-6.

We agree. Generically applicable documents or documents that the NRC Staff simply did not use in its review might be useful to other parties in this and other proceedings, but that does not bring such documents within the scope of Sections 2.336(b) and 2.1203(b).⁴⁹

Moreover, as the Board also observed, while the Staff need not disclose such documents in the hearing file of a particular proceeding, other parties are able to obtain such documents by conducting their own searches of NRC document databases, such as ADAMS, the NRC's website, and the NRC's Public Document Room:

Nevertheless, simply because such documents are not legally required to be placed into a proceeding's hearing file does not mean that they are hidden from public view. On the contrary, the NRC provides multiple avenues for litigants to access its generically applicable materials and reports, including its website, ADAMS, and its Public Document Room. Moreover, in this proceeding the NRC Staff appears to have acted in a professional spirit of cooperation to assist the Intervenors in reviewing such materials.⁵⁰

Here, New York's proposed exhibit represents a single individual's views. The document was not used, reviewed, or generated in the Staff's review of the Indian Point license renewal application. The Staff was, thus, under no obligation to search for and produce this document. Moreover, New York could have – and finally, did find this document in ADAMS. New York's argument that the Staff was remiss for not disclosing the document here should be rejected.

⁴⁹ Disclosure Order (March 16, 2012), at 8 (*citing* E-mail from Sherwin Turk to John J. Sipos (Jan. 27, 2012) (Attach. 8 to NRC Staff Answer)) (emphasis added; footnotes omitted).

⁵⁰ *Id.* at 8-9.

CONCLUSION

For the reasons set forth above and in the Affidavit and documents submitted herewith, the Staff respectfully submits that New York's request to add this late-filed exhibit and to submit additional proposed Board questions should be denied.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 28th day of September 2012

CERTIFICATION OF COUNSEL

In accordance with the Board's Scheduling Order of July 1, 2010 (at 8-9), and 10 C.F.R. § 2.323(b), the undersigned Counsel hereby certifies that he has made a sincere effort to make himself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been unsuccessful.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 28th day of September 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. 50-247/286-LR
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(Indian Point Nuclear Generating)
Units 2 and 3))

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (revised), I hereby certify that copies of the foregoing NRC STAFF'S ANSWER TO STATE OF NEW YORK MOTION FOR LEAVE TO FILE AN ADDITIONAL EXHIBIT AND ADDITIONAL CROSS-EXAMINATION QUESTIONS CONCERNING CONSOLIDATED CONTENTION NYS-12C, dated September 28, 2012, and Attachments A and B, have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, this 28th day of September, 2012:

Signed (electronically) by

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Date of signature: September 28, 2012