

**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))	
)	November 30, 2012

**ENTERGY’S ANSWER OPPOSING HUDSON RIVER SLOOP CLEARWATER’S
SECOND MOTION TO SUPPLEMENT THE RECORD**

In accordance with 10 C.F.R. § 2.323(b), Entergy Nuclear Operations, Inc. (“Entergy”) files this Answer opposing Hudson River Sloop Clearwater, Inc.’s (“Clearwater”) Notice of Supplemental Exhibits to Motion to Supplement the Record with Relevant New Information that Became Apparent After Hurricane Sandy (“Second Motion”), dated November 26, 2012. More than a month after the conclusion of the hearing on its environmental justice (“EJ”) contention, CW-EC-3A, Clearwater proffers four more newspaper articles about events related to Hurricane Sandy, to “supplement” the record on this contention. This Second Motion follows Clearwater’s November 14, 2012 motion,¹ which proposed to add eleven selected news articles about events related to Hurricane Sandy to the hearing record.

The Motion should be rejected for all of the reasons set forth in Entergy’s Answer to Clearwater’s First Motion,² and for the reasons set forth in the NRC Staff’s Answer.³ The hearing on CW-EC-3A has been completed, so an elevated burden for the submission of post-

¹ Hudson River Sloop Clearwater, Inc.’s Motion to Supplement the Record with Relevant New Information that Became Apparent After Hurricane Sandy (“First Motion”).

² Entergy’s Answer Opposing Hudson River Sloop Clearwater, Inc.’s Motion to Supplement the Record with New Information that Became Apparent After Hurricane Sandy (Nov. 28, 2012) (“Entergy’s Answer to First Motion”).

³ NRC Staff’s Answer to “Hudson River Sloop Clearwater, Inc.’s Motion to Supplement the Record with Relevant New Information that Became Apparent After Hurricane Sandy” (Nov. 28, 2012) (“Staff Answer”).

hearing evidence is appropriate. At a minimum, the Atomic Safety and Licensing Board (“Board”) should firmly apply the admissibility standards of Section 2.337 and exclude new proffered evidence that is irrelevant, immaterial, unreliable, or unduly repetitious.⁴

Most significantly, as with Clearwater’s first eleven supplemental proposed exhibits, the four newest press clippings are irrelevant and unreliable because they are based on the unsubstantiated *assumption* that the impacts of a severe reactor accident at Indian Point on New York City would be the same as the impacts of Hurricane Sandy.⁵ Clearwater offers no evidence to show that the storm’s impacts on those in need of affordable housing,⁶ the unemployed,⁷ or those who rely on food banks⁸—in New York City or Jersey City, New Jersey—would be comparable to the impacts of a severe accident at Indian Point, twenty-five or more miles away from both locations; *i.e.*, areas where protective actions are unlikely to be required because they are well beyond the ten-mile emergency planning zone. On the contrary, the four new exhibits are merely selected, anecdotal accounts of *the storm’s* impact, submitted without any sponsoring witness or any other evidence to connect them to the alleged impacts of a postulated accident at Indian Point.⁹

⁴ The Board could also find that the record is already closed and apply the standards of 10 C.F.R. § 2.326 to reject Clearwater’s Second Motion. Under the requirements of Section 2.326, Clearwater has, among other things, failed to supply an affidavit, failed to show that its new evidence is timely, failed to raise a significant environmental issue, and failed to demonstrate that the admission of the new exhibits would lead to a materially different result. *See* Staff Answer at 4-11; Entergy’s Answer to First Motion at 4 n.4.

⁵ *See* Entergy’s Answer to First Motion at 13-15.

⁶ *See* Storm Bared a Lack of Options for the Homeless in New York (Nov. 20, 2012) (CLE000072); A Rising Clamor for Compassion (Nov. 23, 2012) (CLE000073).

⁷ *See* Hurricane Sandy Destroys Jobs, Brings Threat of Poverty to Thousands of Unemployed (Nov. 19, 2012) (CLE000074).

⁸ *See* In Aftermath of Sandy, Food Banks’ Disaster Relief Efforts Are Put to the Test (Nov. 24, 2012) (CLE000075).

⁹ *See* Entergy’s Answer to First Motion at 13-15, 21-22; Staff Answer at 12-15; *see also* Second Motion at 2 (providing the bare assertion of counsel that the four new exhibits “illustrate yet more ways in which environmental justice communities are disparately affected by major disasters such as storms and nuclear accidents”).

The four new exhibits also primarily raise non-environmental issues that are outside the scope of impacts cognizable under the National Environmental Policy Act (“NEPA”), and this NEPA contention, and raise topics that are outside the scope of the EJ analysis. By focusing on social and economic problems such as unemployment and the need for affordable housing and food, Clearwater is impermissibly seeking to expand the NEPA analysis into a wide-ranging inquiry into topics unrelated to the physical environment.¹⁰ The irrelevance of the newest exhibits is further confirmed by Clearwater’s continued reliance on a definition of EJ populations that is far more expansive than the Commission’s.¹¹

Finally, as with the first eleven supplemental exhibits, the newest exhibits are duplicative and unduly repetitious. Clearwater’s fundamental point—to provide examples of disruptions caused by natural disasters—has already been amply made in the admitted Clearwater exhibits discussing other events.¹²

In short, the Board should put a stop to this arguably frivolous series of submittals.¹³ The Second Motion may not be the last. Clearwater proposes to continue to “supplement” the record with irrelevant, cumulative, and unreliable news articles.¹⁴ To allow the hearing on this contention to move into its next phase—the preparation and submittal of proposed findings of

¹⁰ See Entergy’s Answer to First Motion at 11-12 (*citing* Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,045 (Aug. 24, 2001) (ENT000260)).

¹¹ See Second Motion at 1 (defining EJ populations as including “the elderly and the disabled, as well as those in prisons, hospitals, and nursing homes”).

¹² See Entergy’s Answer to First Motion at 19-20.

¹³ Clearwater’s filings are arguably frivolous not only because the various news articles are so clearly inadmissible, but also because Clearwater has explicitly excused itself from its burden to make a showing in support of the relevance of its new exhibits. See First Motion at 10 n.12. Clearwater has, in fact, already consulted with Entergy regarding its desire to file a reply in support of its First Motion. During those consultations, Clearwater offered no valid justification for a reply. Entergy reserves the right to respond to any motion from Clearwater for leave to file a reply.

¹⁴ See First Motion at 3.

fact—the Board should reject Clearwater’s motions and affirmatively state that the record is closed on the contentions where hearings have been completed.

For the reasons set forth above, the Board should deny Clearwater’s Second Motion. In the alternative, in the event that the Board admits one or more of the new exhibits, then Entergy respectfully requests that the Board set a deadline of thirty days after the completion of the Track 1 oral hearings (or thirty days after the Board’s ruling on Clearwater’s Motion, whichever is later) for the filing of any responsive evidence by Entergy or the NRC Staff. At the upcoming oral hearings in December—if not sooner—Entergy respectfully suggests that the Board should affirmatively state that the record is closed on this contention and all other contentions that have been heard in their entirety.

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Respectfully submitted,

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

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MOTION CERTIFICATION

Counsel for Entergy 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.

Executed in accord with 10 C.F.R. § 2.304(d)

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that, on this date, copies of “Entergy’s Answer Opposing Hudson River Sloop Clearwater, Inc.’s Second Motion to Supplement the Record” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Raphael P. Kuyler

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