

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-247-LR/50-286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

NRC STAFF'S ANSWER IN OPPOSITION TO
HUDSON RIVER SLOOP CLEARWATER, INC.'S
PETITION FOR REVIEW OF LBP-13-13, REGARDING
CONTENTION CW-EC-3A (ENVIRONMENTAL JUSTICE)

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.341(b), the staff of the U.S. Nuclear Regulatory Commission (“Staff” or “NRC Staff”) hereby files its answer in opposition to Hudson River Sloop Clearwater, Inc.’s (“Clearwater”) petition for review¹ of the Atomic Safety and Licensing Board’s (“Board”) “Partial Initial Decision (Ruling on Track 1 Contentions),” LBP-13-13, 78 NRC ____ (Nov. 27, 2013),² regarding its resolution of Contention CW-EC-3A (Environmental Justice). In its petition, Clearwater asserts that the Board should have remanded and recirculated the Staff’s Final Supplemental Environmental Impact Statement (“FSEIS”) upon finding that the Staff’s FSEIS analysis was deficient. Specifically, Clearwater contends that the Board should have remanded the FSEIS for further development of the environmental justice (“EJ”) discussion and analysis, including a detailed evaluation of specific mitigation measures to address EJ impacts.

¹ Hudson River Sloop Clearwater, Inc. Petition for Review (Feb. 14, 2014) (“Clearwater Petition”).

² *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-13-13, 78 NRC ____ (Nov. 27, 2013) (slip op.) (“LBP-13-13”). By Order of February 28, 2014, the Commission granted the parties an extension of time to file answers to petitions for review of LBP-13-13 regarding Contention CW-EC-3A until March 25, 2014. Order (Granting Entergy’s Motion to Hold in Abeyance New York’s Petition for Review of Board’s Ruling on Contention 12C), at 2 (Feb. 28, 2014) (unpublished).

As discussed in the Staff's petition for review, filed on February 14, 2014,³ the Board correctly resolved Contention CW-EC-3A (Environmental Justice) in favor the Staff, but the Board's underlying rationale was, in part, erroneous and should be set aside in favor of the Staff's EJ analysis in the FSEIS. However, even if the Board had been correct in finding that the FSEIS analysis was deficient, the Board did not err in determining to supplement the FSEIS analysis with the evidence of record. For these reasons, and as discussed in further detail below, Clearwater's Petition should be denied.

BACKGROUND

The procedural background of this proceeding was summarized in the Staff's petition for review of LBP-13-13;⁴ to avoid duplication, that discussion is incorporated by reference herein. In particular, as pertinent here, Entergy Nuclear Operations Inc. ("Entergy" or "Applicant") submitted its license renewal application ("LRA") for Indian Point Nuclear Generating Units 2 and 3 ("IP2" and "IP3" or "Indian Point") on April 23, 2007;⁵ the LRA was accompanied by an Environmental Report ("ER"), in which Entergy, *inter alia*, provided an analysis of environmental impacts to EJ populations. On December 10, 2007, Clearwater filed a petition to intervene that included six environmental contentions, including Contention CW-EC-3, which asserted that the Applicant's analysis failed to adequately consider the impacts of an evacuation on minority, low-income and disabled populations in the vicinity of Indian Point.⁶ The Applicant and the Staff opposed admission of Contention CW-EC-3 on the grounds that the contention raised issues

³ NRC Staff's Petition for Commission Review of LBP-13-13 in part (Contentions NYS-8 and CW-EC-3A), and LBP-11-17 (Contention NYS-35/36) (Feb. 14, 2014) ("Staff Petition").

⁴ Staff Petition at 2-6.

⁵ See *generally*, LRA (Ex. ENT00015A-B).

⁶ Hudson River Sloop Clearwater, Inc.'s Petition to Intervene and Request for Hearing (Dec. 10, 2007), at 31-55.

outside the scope of license renewal, was unsupported, and failed to demonstrate a genuine dispute with respect to material issue of law or fact.⁷ On July 31, 2008, the Board admitted the contention, in part, after re-framing the issues raised by Clearwater.⁸

On December 22, 2008, the NRC Staff issued its Draft Supplemental Environmental Impact Statement (“Draft SEIS”) concerning the Indian Point LRA.⁹ The Staff published the Final SEIS (“FSEIS”) on the Indian Point LRA on December 3, 2010.¹⁰ On February 3, 2011, Clearwater filed a motion seeking leave to amend and expand Contention CW-EC-3, to include a challenge to the EJ analysis presented in the FSEIS.¹¹ On March 7, 2011, Entergy and the NRC Staff filed Answers supporting in part and opposing in part the amendment of Contention CW-EC-3.¹² On July 6, 2011, the Board granted in part and denied in part Clearwater’s motion to amend Contention CW-EC-3, and re-designated the contention as Contention CW-EC-3A.¹³

⁷ Answer of Entergy Nuclear Operations, Inc. Opposing Hudson River Sloop Clearwater Inc.’s Petition to Intervene and Request for Hearing (Jan. 22, 2008), at 59-71; NRC Staff’s Response to Petitions for Leave to Intervene Filed by (1) Connecticut Attorney General Richard Blumenthal, (2) Connecticut Residents Opposed to Relicensing of Indian Point, and Nancy Burton, (3) Hudson River Sloop Clearwater, Inc., (4) The State of New York, (5) Riverkeeper, Inc., (6) The Town of Cortlandt, and (7) Westchester County, (Jan. 22, 2008), at 96-99.

⁸ See *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 196-201 (2008).

⁹ NUREG-1437, Vol. 1, Supplement 38, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Draft Report for Comment,” (Dec. 2008) (Ex. NYS000132A-D).

¹⁰ NUREG-1437, Vol. 1, Supplement 38, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 38 Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Final Report,” (Dec. 2010) (“FSEIS”) (Ex. NYS000133A-J).

¹¹ Motion for Leave to Amend and Extend Contention EC-3 Regarding Environmental Justice and Petition to Do So (Feb. 3, 2011).

¹² Applicant’s Answer to Hudson River Sloop Clearwater, Inc.’s Amended Environmental Justice Contention (Mar. 7, 2011); NRC Staff’s Answer to Amended and New Contention (EC-3) Filed by Hudson River Sloop Clearwater, Inc. Concerning the Final Supplemental Environmental Impact Statement (Mar. 7, 2011).

¹³ Memorandum and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) (July 6, 2011) (unpublished), at 52-60. Contention CW-EC-3A, as amended by the Board, (...footnote continued)

On December 22, 2011, Clearwater submitted its initial proposed testimony and exhibits on this contention.¹⁴

On October 23, 2012, the Board held the evidentiary hearing for Contention CW-EC-3A. During those hearings, nine witnesses appeared on Clearwater's behalf, testifying, in principal part, about the potential impacts on EJ populations of an evacuation in the event of a severe accident at Indian Point. Entergy presented three witnesses to address this contention, while the Staff presented two witnesses – Mr. Jeffrey Rikhoff (a highly experienced EJ analyst who prepared the EJ analysis in the Indian Point FSEIS) and Ms. Patricia Milligan (an emergency planning specialist from the Office of Nuclear Security and Incident Response (“NSIR”). The parties filed proposed findings of fact and conclusions of law on March 23, 2013, and filed reply findings of fact and conclusions of law on May 2, 2013.

On November 27, 2013, the Board issued LBP-13-13, resolving all of the nine Track 1 contentions. With regard to Contention CW-EC-3A, the Board found, *inter alia*, that the EJ analysis contained in the FSEIS failed to satisfy the agency's obligations under NEPA in that it did not address the impacts of an emergency evacuation on EJ and special needs populations – which the Board sought to rectify in its decision by supplementing that EJ analysis with Clearwater's evidence presented on the hearing record.¹⁵ On February 14, 2014, the Staff,

(footnote continued...)

states, “Entergy's environmental report and the Final Supplemental Environmental Impact Statement contain seriously flawed environmental justice analyses that do not adequately assess the impacts of relicensing Indian Point on the minority, low-income and disabled populations in the area surrounding Indian Point.” *Id.* at 60.

¹⁴ Entergy and the Staff filed motions *in limine* to exclude portions of Clearwater's pre-filed and rebuttal testimony and exhibits on Contention CW-EC-3A. The Board denied these motions. Order (Granting in Part and Denying in Part Applicant's Motions in Limine) (Mar. 6, 2011) (unpublished); Transcript of Hearing (“Tr.”) at 1265 (Oct. 15, 2012).

¹⁵ LBP-13-13 (slip op. at 382-88).

Entergy, and Clearwater each filed petitions for review of the Board's decision in LBP-13-13, regarding the Board's resolution of Contention CW-EC-3A.¹⁶

DISCUSSION

Overview

In LBP-13-13, the Board found the Staff's FSEIS evaluation was deficient for not considering emergency planning protective action impacts on EJ (minority and low-income) populations in the event of a severe accident at Indian Point, and that the Staff's EJ evaluation therefore failed to satisfy the agency's EJ obligations under the National Environmental Policy Act ("NEPA"). Notwithstanding these perceived deficiencies, the Board held that the evidence proffered by Clearwater provided sufficient information for the agency's consideration, as to the disparate impacts of emergency preparedness protective actions on EJ populations, thus satisfying the NRC's obligation to take a hard look at the environmental impacts of IP2/IP3 license renewal under NEPA.¹⁷

In its petition for review, Clearwater asserts that the Board should have remanded and recirculated the FSEIS for (1) further development of the EJ discussion and analysis, and (2) presentation of a detailed discussion and evaluation of specific mitigation measures to address the EJ disparity and adverse impacts.¹⁸ These assertions by Clearwater should be rejected. As explained in the Staff's petition for review, the Board correctly resolved Contention CW-EC-3A in favor of the Applicant and Staff, in that the Staff's FSEIS analysis of EJ impacts was sufficient under NEPA. However, the Board erred in determining that the FSEIS for license

¹⁶ See Clearwater Petition, *passim*; Staff Petition, at 24-41; Applicant's Petition for Review of Board Decisions Regarding Contentions NYS-8 (Electrical Transformers), CW-EC-3A (Environmental Justice), and NYS-35/36 (SAMA Cost Estimates) (Feb. 14, 2014) ("Entergy Petition"), at 24-43.

¹⁷ LBP-13-13 (slip op. at 387-88).

¹⁸ Clearwater Petition at 4, 7-13.

renewal of Indian Point must consider the impacts to EJ populations that might result from an evacuation or sheltering-in-place protective action recommendation in the event of a highly unlikely severe accident. As stated in the Staff's petition for review, the Staff's FSEIS conclusion, which the Board rejected, reasonably relied on the Commission's previous generic determination in the Generic Environmental Impact Statement ("GEIS"),¹⁹ that (a) the probability-weighted consequences of a severe accident are "SMALL,"²⁰ and (b) "this GEIS analysis should reasonably account for the effects of emergency planning."²¹ For these reasons, and as discussed in the Staff's Petition,²² the rationale underlying the Board's decision should be set aside, and the Commission should find that the Staff's FSEIS discussion of environmental impacts to EJ populations satisfied the NRC's obligations under NEPA.

Moreover, as discussed below, Clearwater's arguments regarding the need for (1) further development of the EJ discussion and analysis, and (2) a detailed discussion and evaluation of specific mitigation measures to address the EJ disparity and adverse impacts are flawed and fall outside the scope of this proceeding. Accordingly, Clearwater's Petition should be denied.

¹⁹ NUREG-1437, Vol. 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Final Report" (May 1996) ("GEIS") (Ex. NYS000131A-I).

²⁰ See 10 C.F.R. Part 51, Subpart A, App. B, Table B-1 at 65 (2013 ed.); GEIS (Ex. NYS000131A-I), at 5-115. In the GEIS and 10 C.F.R. Part 51, Table B-1, the Commission generically determined that the environmental impacts of design basis accidents are of SMALL significance for all plants, and that the probability-weighted consequences of severe accidents are SMALL for all plants; these determinations apply to all populations, including EJ populations – and explicitly included consideration of emergency planning. Thus, the Staff's EJ analysis reasonably relied on the GEIS findings in concluding that there would be no disproportionately high and adverse impact on minority and low-income populations in the event of a severe accident. See Staff Petition at 31-32, 35-39.

²¹ GEIS (Ex. NYS000131A-I), at 5-26.

²² See Staff Petition at 24-41.

I. Further Analysis of Impacts from Emergency Planning Protective Actions is Unnecessary and Outside the Scope of this License Renewal Proceeding

Clearwater asserts that the Board's resolution of Contention CW-EC-3A was flawed because Clearwater's witnesses "merely 'illustrated' (the Board's term) EJ population treatment disparities through the EJ examination discussion, and analysis of a very small part of the population of concern."²³ For example, Clearwater contends that its witnesses, Dr. Michael Edelstein and Mr. Papa, focused primarily on the evacuation of Sing Sing prison and its suitability for sheltering-in-place; therefore, "there has been no sufficient development by [Clearwater's] witnesses, the NRC Staff, nor anyone else of the EJ analysis of the institutionalized [EJ] populations at the other 24 prisons or detention institutions within the 50-mile radius of Indian Point."²⁴ Clearwater similarly asserts, regarding the ability of EJ populations to evacuate or shelter-in-place, that the record contains a specific discussion of very few identified minority communities other than Peekskill.²⁵

However, contrary to Clearwater's assertions, NEPA does not require the NRC to undertake this level of detailed analysis in its FSEIS for remote and speculative impacts,²⁶ such as those that might result in the event of a highly improbable severe accident, followed by the failure of emergency planning protective actions (evacuation or sheltering) despite the Federal Emergency Management Agency's ("FEMA") and the NRC's pre-existing "reasonable assurance" determinations.²⁷ Further, the Commission has stated that the NRC's goal is to

²³ Clearwater Petition at 7.

²⁴ *Id.* at 8.

²⁵ *Id.* at 9.

²⁶ See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); accord, *Massachusetts v. NRC*, 708 F.3d 63, 67 (1st Cir. 2013). See also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002).

²⁷ See NRC Staff Testimony of Jeffrey J. Rikhoff and Patricia A. Milligan Regarding Contention (...footnote continued)

identify and adequately weigh or mitigate environmental impacts on low-income and minority communities that become apparent only by considering factors peculiar to those communities.²⁸

The Commission noted that, “were NEPA construed broadly to require a full examination of every conceivable aspect of federally licensed projects, ‘available resources may be spread so thin that agencies are unable adequately to pursue protection of the physical environment and natural resources.’”²⁹ Thus, NEPA does not require the Staff to undertake a detailed analysis of every prison or detention center or minority community, but to consider factors peculiar to EJ populations common across those communities. Accordingly, the Staff’s FSEIS analysis of EJ impacts is sufficient under NEPA, such that supplementation is not required.

Moreover, in view of the Board’s determination to admit and consider evidence regarding the impacts of emergency preparedness protective actions on EJ populations, the Staff and Entergy provided testimony regarding the evacuation of prisoners or transport-dependent persons, and submitted testimony describing how the NRC’s regulatory framework for emergency planning, combined with New York State law, provide for the protection of all populations – including low-income and minority populations – in the event of a severe accident at Indian Point.³⁰ Further, contrary to the views of Clearwater’s witnesses, the Staff and Entergy submitted evidence that sheltering-in-place is an appropriate emergency preparedness

(footnote continued...)

CW-EC-3A (Environmental Justice) (“Staff Testimony on CW-EC-3A”) (Ex. NRC000063) at 23-26.

²⁸ See Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,047 (Aug. 24, 2004) (“EJ Policy Statement”) (Ex. ENT000260) (*quoting Louisiana Energy Servs. (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 100 (1998) (“LES”)*).

²⁹ *Id.* at 52,045 (*quoting LES, CLI-98-3, 47 NRC at 102-103*).

³⁰ See *generally*, Staff Testimony on CW-EC-3A (Ex. NRC000063) at 23-38; Testimony of Entergy Witnesses Donald P. Cleary, Jerry L. Riggs, and Michael J. Slobodien Regarding Contention CW-EC-3A (Environmental Justice) (“Entergy Testimony on CW-EC-3A”) (Ex. ENT000258) at 47-61.

protective action for all populations, in accordance with regulations and guidance promulgated by the NRC and FEMA, and guidance from the Environmental Protection Agency (“EPA”).³¹

Additionally, as stated in the Staff’s petition for review,³² Entergy witness Mr. Slobodien testified that NRC regulations specifically require that licensee emergency plans consider a range of protective actions for all members of the public within the 10-mile EPZ, including, evacuation and sheltering, under 10 C.F.R. § 50.47(b)(10).³³ Staff witness Patricia Milligan similarly testified that the Staff considers all populations in its emergency preparedness reviews.³⁴ These witnesses explained that the emergency plans contain specific provisions that would protect low-income and minority populations, in the event of a severe accident at Indian Point,³⁵ such that there would be no disproportionately high and adverse impacts to EJ populations.³⁶ Therefore, there is no merit in Clearwater’s assertion that further analysis of impacts from evacuation or sheltering-in-place on additional EJ communities is necessary.

Moreover, Clearwater’s assertion that the Staff should be required to conduct further analysis of evacuation and sheltering-in-place for additional EJ communities directly challenges the adequacy of emergency preparedness at Indian Point and raises issues that are outside the scope of this proceeding.³⁷ In this regard, the Commission has concluded that “the adequacy

³¹ Staff Testimony on CW-EC-3A (Ex. NRC000063) at 31-33; Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 50-52, 56-57.

³² Staff Petition at 33-34.

³³ Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 48-49.

³⁴ See, e.g., Tr. at 2760-61.

³⁵ Staff Testimony on CW-EC-3A (Ex. NRC000063) at 29-38; Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 53-61.

³⁶ Staff Testimony on CW-EC-3A (Ex. NRC000063) at 34-38; Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 60-61.

³⁷ As the Staff stated in its petition for review, the Board erred in its determination that the potential impacts of emergency response protective actions must be considered for license renewal. See Staff Petition at 32-35.

of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license.”³⁸ Rather, the adequacy of emergency planning is a safety issue that is evaluated by the Commission on an ongoing basis as part of its oversight of operating reactors under 10 C.F.R. Part 50.³⁹ In establishing the requirements for license renewal, the Commission explained that:

Through its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors. Thus, these drills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of emergency preparedness in light of changes in site characteristics that may occur during the term of the existing operating license, such as transportation systems and demographics. There is no need for a licensing review of emergency planning issues in the context of license renewal.⁴⁰

Further, NEPA is governed by a “rule of reason” that requires agencies to address only impacts that are reasonably foreseeable – not remote and speculative impacts.⁴¹ Clearwater’s assertion that the Staff should undertake further analysis regarding impacts to additional EJ communities from emergency planning protective actions suggests that the emergency plans for Indian Point are deficient and/or that emergency response personnel will be unable to protect EJ populations, contrary to NRC regulations, NRC and FEMA guidance, and New York State law. Such assertions are speculative and unreasonable under NEPA, and fall outside the scope of this proceeding.

³⁸ Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,967 (Dec. 13, 1991) (Final Rule) (Ex. ENT000270) (“1991 Statement of Consideration”).

³⁹ The requirements for maintaining, implementing, and revising emergency preparedness programs for licensed nuclear power plants are governed by the NRC’s regulations in 10 C.F.R. Part 50. See 10 C.F.R. §§ 50.47, 50.54(q), 50.54(s) through (u), and 10 C.F.R. Part 50, Appendix E.

⁴⁰ 1991 Statement of Consideration (Ex. ENT000270), 56 Fed. Reg. at 64,966.

⁴¹ *Methow Valley*, 490 U.S. at 350; *accord, Massachusetts v. NRC*, 708 F.3d 63, 67 (1st Cir. 2013). See also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002).

Finally, even if the Board was correct in finding the Staff's FSEIS analysis to be deficient under NEPA, remand and recirculation of the Staff's Indian Point FSEIS is unnecessary. Thus, as the Staff explained in its recent reply to New York State's answer to Clearwater's and the Staff's petitions,⁴² supplementation of an EIS, where appropriate, is consistent with the long-standing and approved practice of the Commission and licensing boards, supplementing the Staff's EIS evaluations and conclusions with evidence admitted in the related adjudicatory proceedings.⁴³

II. Further Detailed Discussion and Evaluation of Specific Mitigation Measures is Unnecessary and Outside the Scope of License Renewal

In its petition, Clearwater also asserts that the Board should have remanded and recirculated the FSEIS for further discussion and evaluation of specific mitigation measures to address the EJ disparity and adverse impacts.⁴⁴ It is unclear what Clearwater means in asserting that "mitigation" is required – (a) mitigation (*i.e.*, supplementation) of the Staff's EJ analysis, or (b) mitigation of emergency preparedness measures and plans. As discussed below, to the extent that Clearwater seeks further analysis of impacts to EJ populations, no further analysis is required; to the extent that it may seek changes to the onsite and/or offsite emergency plans for Indian Point, it impermissibly raises an issue that is outside the scope of

⁴² State of New York Answer in Support of Hudson River Sloop Clearwater Inc.'s Petition for Review of the Atomic Safety and Licensing Board Decision LBP-13-13 with Respect to Contention CW-EC-3A, (Mar. 11, 2014).

⁴³ NRC Staff's Reply to State of New York's Answer in Opposition to Staff Petition for Review of LBP-13-13 (Contention CW-EC-3A) (Mar. 21, 2014), at 2-5. *See also Hydro Res., Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 53 (2001) ("[T]he hearing process itself 'allows for additional and *more rigorous* public scrutiny of the FES than does the usual 'circulation for comment.'" (quoting *Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 707 (1985) (emphasis added)). The Staff's petition for review of LBP-13-13 states our view that the Board erred in finding it necessary to supplement the FSEIS analysis of EJ impacts with evidence proffered in the adjudicatory proceeding, inasmuch as the FSEIS analysis satisfied NEPA. Staff Petition at 24-40.

⁴⁴ Clearwater Petition at 4, 13.

this proceeding.

First, as discussed in the Staff's Petition,⁴⁵ the Staff's evaluation of impacts to EJ populations at Indian Point, presented in section 4.4.6 of the FSEIS, specifically concluded that there would be no disproportionately high and adverse impacts to EJ populations during the license renewal term, relying upon the Commission's generic determination that the probability-weighted consequences of severe accidents is small for all plants and all populations.⁴⁶ Moreover, as described above, the Staff and Entergy's witnesses have testified that the emergency plans contain specific provisions that would protect low-income and minority populations (such as persons who may be incarcerated or transport-dependent), in the event of a severe accident at Indian Point, such that there would be no disproportionately high and adverse impacts to those populations.⁴⁷

Because there would be no disproportionately high and adverse impacts to EJ populations in the event of a severe accident, analysis of mitigation measures to reduce any purported impact of these emergency planning protective actions would be unnecessary. Further, NEPA "demands 'no fully developed plan' or 'detailed examination of specific measures which will be employed' to mitigate adverse environmental effects."⁴⁸ Therefore, contrary to Clearwater's assertions, further discussion of specific mitigation measures is unwarranted.⁴⁹

⁴⁵ Staff Petition at 31-32, 35-39.

⁴⁶ FSEIS (Ex. NYS000133A-J), § 4.4.6, at 4-53.

⁴⁷ Staff Testimony on CW-EC-3A (Ex. NRC000063) at 34-38; Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 60-61.

⁴⁸ *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-11, 71 NRC 287, 316 (2010) (*citing Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2)*, CLI-03-17, 58 NRC 419, 431 (2003) (*quoting Methow Valley*, 490 U.S. at 353)).

⁴⁹ Moreover, in accordance with 10 C.F.R. § 51.53(c)(3)(ii)(L), the NRC Staff reviewed severe accident mitigation alternatives ("SAMAs") for IP2 and IP3 in Section 5.2 of the FSEIS. FSEIS (Ex. NYS000133A-J), § 5.2, at 5-4 to 5-12. Clearwater has not challenged the SAMA evaluation in Contention CW-EC-3A. See also *Indian Point*, LBP-08-13, 68 NRC at 201-203 (rejecting admission of Clearwater (...footnote continued)

Second, Clearwater's petition appears to suggest that the Staff's EJ analysis and discussion of mitigation measures is incomplete in light of Clearwater witness Dr. Edelstein's testimony describing "a social disintegration" at the prison in New Orleans during Hurricane Katrina, and Clearwater witness Dr. Larsen's testimony regarding impacts on the availability of medical services to EJ populations in the event of a severe accident.⁵⁰ In describing such potential inadequacies in emergency preparedness measures, Clearwater appears to be seeking mitigation of allegedly inadequate measures in the offsite emergency preparedness plans at Indian Point. However, further analysis of the impacts of an evacuation or mitigation measures to address such impacts relate to the adequacy of emergency planning and are thus outside the scope of this proceeding.

Moreover, the testimony provided by Clearwater's witnesses, even if proper for consideration here, was thoroughly rebutted by the Staff and Entergy. Thus, the Staff and Entergy provided evidence that a severe accident at Indian Point would not result in the same conditions for inmates as those experienced during Hurricane Katrina.⁵¹ For example, Staff witness Patricia Milligan testified that the rigorousness of the preparedness planning for nuclear power plants is unique.⁵² Ms. Milligan also testified that the onsite and offsite emergency plans for Indian Point are routinely exercised and evaluated by the NRC and FEMA to verify that the impacted populations can be safely protected from adverse effects resulting from a nuclear

(footnote continued...)

Contention EC-4 which asserted that Entergy's SAMA analysis does not adequately consider the impacts of a possible terrorist attack, a radiological event, or an evacuation at Indian Point, particularly the impact on the EJ communities discussed in Clearwater EC-3).

⁵⁰ Clearwater Petition at 12.

⁵¹ Staff Testimony on CW-EC-3A (Ex. NRC000063) at 33-34; Entergy Testimony on CW-EC-3A (Ex. ENT000258) at 64.

⁵² Staff Testimony on CW-EC-3A (Ex. NRC000063) at 33.

power plant accident.⁵³ Clearwater's evidence regarding other types of evacuations or disasters is thus not material.

With respect to the assertion that there would be a breakdown in social order in the prison population, Staff witness Patricia Milligan testified that she spoke with Colonel Michael Kirkpatrick, a high-ranking official at the New York State Department of Corrections regarding the potential for the breakdown of social order during a prison evacuation and his experiences in a variety of emergencies.⁵⁴ Ms. Milligan testified that Colonel Kirkpatrick "explained that prisoners . . . become more cooperative rather than less cooperative because it's been in their interest to be more cooperative in order to be assisted in terms of evacuations."⁵⁵ Entergy also provided testimony discussing how the offsite emergency plans for nursing homes and other institutions account for medical care in the event of a severe accident.⁵⁶ Additionally, New York State regulations require that each nursing home and hospital have comprehensive, biennially-updated written emergency and disaster preparedness plans that include provisions accounting for nuclear accidents.⁵⁷ Therefore, an analysis of the impacts or mitigation measures for emergency preparedness is unnecessary as these issues relate to the adequacy of emergency planning and fall outside the scope of this proceeding.

⁵³ *Id.*

⁵⁴ Tr. at 2909-10.

⁵⁵ Tr. at 2910.

⁵⁶ Tr. at 2916-17.

⁵⁷ See 10 NYCRR § 405.24 (g) (Ex. ENT000292); see also 10 NYCRR § 702.7 (Ex. ENT000293) (applying the same requirements to other medical facilities).

CONCLUSION

For the foregoing reasons, Clearwater's Petition fails to demonstrate any reason for the Commission to require a remand of Contention CW-EC-3A and recirculation of the Staff's FSEIS for further analysis of EJ impacts. Clearwater's Petition should therefore be denied. Additionally, although the Board correctly resolved Contention CW-EC-3A (Environmental Justice) in favor of the Staff, the Board's underlying rationale of the need for the Board to supplement the FSEIS was erroneous and should be set aside in favor the Staff's existing EJ analysis in the FSEIS.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 25th day of March, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket No. 50-247-LR/50-286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing “NRC STAFF’S ANSWER IN OPPOSITION TO HUDSON RIVER SLOOP CLEARWATER, INC.’S PETITION FOR REVIEW OF LBP-13-13, REGARDING CONTENTION CW-EC-3A (ENVIRONMENTAL JUSTICE),” dated March 25, 2014, have been served upon the Electronic Information Exchange, the NRC’s E-Filing System, in the above-captioned proceeding, this 25th day of March, 2014.

/Signed (electronically) by/

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