

**UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD**

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In re:	Docket Nos. 50-247-LR; 50-286-LR
License Renewal Application Submitted by	ASLBP No. 07-858-03-LR-BD01
Entergy Nuclear Indian Point 2, LLC,	DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and	
Entergy Nuclear Operations, Inc.	May 3, 2013
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**STATE OF NEW YORK'S
REPLY TO ENTERGY AND NRC STAFF'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR
CONTENTION NYS-17B**

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.712, the Atomic Safety Licensing Board's ("ASLB" or "Board") July 1, 2010 Scheduling Order at ¶ N, and the Board's February 28, 2013 Order, the State of New York hereby replies to Entergy and NRC Staff's Proposed Post-Hearing Findings of Fact and Conclusions of Law on Contention NYS-17B.

The Final Supplemental Environmental Impact Statement (FSEIS) fails to address the impact of the relicensing and continued operation of IP2 and IP3, and the impact of the no-action alternative, on offsite land use, including real estate values, in the residential areas within 5 kilometers of Indian Point. This failure violates the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* and 10 C.F.R. §§ 51.71(a), 51.71(d), 51.95(c)(1) and 51.95(c)(4) because NRC Staff failed to take a hard look at reasonably foreseeable, direct and indirect impacts to the physical and human environments.

NRC STAFF FAILED TO ANALYZE THE IMPACT OF THE PROPOSED ACTION ON PROPERTY VALUES

Citing the GEIS and its own guidance, NRC Staff adheres to the position that "Entergy and the Staff were not required to address the impact of license renewal on property values for property in the area surrounding Indian Point." *See* March 22, 2013 NRC Staff's Proposed Findings of Fact and Conclusions of Law Part 7: New York State Contentions NYS-17, NYS-17A and NYS-17B (Real Estate Values) (NRC Staff's Proposed Findings) ¶ 7.71. NRC Staff contends that FSEIS §§ 4.4.1 and 4.4.3 "meet[] the requirements of 10 C.F.R. § 51.95(c)." *Id.* ¶ 7.66. However, as set forth in the testimony of New York State expert Stephen C. Sheppard and not disputed by the applicant's expert, property values determine offsite land use and cannot be ignored. "It is widely understood that within regulatory bounds land uses are determined by

property values. Specifically, land uses that generate the highest property values predominate.”

NYS000434 (Sheppard Rebuttal Test.) at 10; *see id.* at 8-11.

The 2005 report by Levitan Associates, to which NRC Staff cites when claiming that it took property values into account, NRC Staff Proposed Findings ¶¶ 7.89-7.92, found that those values would “likely” increase if relicensing were denied. *Id.* ¶ 7.90. Levitan (also referred to as LAI) did not claim that the increase to property values was unquantifiable, observing only that “LAI did not speculate as to the net effect of local property values for the purpose of this assignment.” NYS000056 at 103. With no support for its claim, NRC Staff asks the Board to find that “Staff was not able to quantify” the increase. NRC Staff Proposed Findings ¶ 7.93. That statement is not supported by the record. And, even if it were, NEPA does not permit NRC Staff to simply ignore a reasonably foreseeable significant effect.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section,

“reasonably foreseeable” includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason

40 C.F.R. § 1502.22.

It is undisputed that it is possible to measure the impact on property values of a particular amenity or disamenity, and that it is possible to measure the impact in this case of the no-action alternative. *See, e.g.*, ENT000132 at 8 (Tolley); ENT000132 at 62 (Tolley); *id.* at 46-47 (Cleary); NYS000434 (Sheppard Rebuttal Test.) at 13-14; Tr. 2556:19-2557:5 (Sheppard). In Dr. Sheppard’s final report he analyzed local data to measure the impact of the Indian Point electric generating facility on residential property values located within 5 kilometers. Dr. Sheppard’s site-specific “analysis indicates that there is an unambiguous negative impact on the value of residential services and on house prices for residential property within 5 kilometers of IPEC.” NYS000231 at 1. Dr. Sheppard found, “to a reasonable degree of scientific certainty[,] that there is an adverse impact on property values resulting from IPEC’s presence in the community.” *Id.* Dr. Sheppard’s analysis, specific to Indian Point and based on actual sales data, suggested that “decommissioning of IPEC and reclamation of the site for alternative uses would generate a recovery in property values that could add more than \$1 billion dollars to the value of residential property, increasing its value by approximately 27%.” *Id.* Because the 2005 Levitan Report also predicted that property values would rise following shutdown, NRC Staff cannot claim that this impact on the physical environment was not “reasonably foreseeable.” *See* 40 C.F.R. § 1502.22.

Moreover, a 27% increase in land values is significant.

A 27% change in land values would certainly result in “significant” changes in land use. To help understand the potential impact of such a change in prices some comparisons might be helpful. From the beginning of 2007 through the first

quarter of 2011, house prices in the US fell by approximately 16%. A few large markets experienced greater change than this, but many experienced less. This level of change in house prices has generated profound impacts on urban development around the country, and will have impacts on land use that are likely to persist for at least a decade, perhaps longer. The change in house prices associated with the presence of IPEC is even larger than experienced in most US cities during the “great recession” and the consequence of IPEC’s continued presence for local land use can be expected to be at least as large as those experienced during the recent collapse of the housing market.

NYS000231 at 13.

NRC Staff’s failure to attempt to quantify the impact on property values – indeed, even to predict whether that effect would be positive or negative – is not reasonable, particularly where Staff has not even attempted to explain its alleged inability to quantify the increase. *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-550 (8th Cir. 2003) (remanding for examination of “the effects that may occur as a result of the reasonably foreseeable increase in coal consumption”), *rehearing denied*, 2004 U.S. App. LEXIS 1506 (8th Cir. Jan. 30, 2004).

**THE APPLICANT’S CLAIM THAT INDIAN POINT’S ADVERSE IMPACT
ON PROPERTY VALUES IS DUE TO APPREHENSION OR FEAR
IS BOTH UNFOUNDED AND IRRELEVANT**

Despite the evidence that the facility has attributes of an old-fashioned nuisance, the testimony of Dr. Sheppard, the not-inconsistent findings of its own expert, and the prediction of Levitan, the applicant (but not NRC Staff) claims that it is apprehension on the part of homebuyers that diminishes property values and that the State has failed to carry its burden of proof as to causation. Entergy Proposed Findings IV.B; *see, e.g., id.* ¶ 2 (“Rather, at most, those property value impacts, if they exist at all, are the product of a generalized fear of nuclear power or other psychological concerns”). The applicant then implies that *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772-74 (1983), creates a presumption that nuclear facilities lead to fear and apprehension, which are non-physical impacts and outside the scope of

NEPA. *Id.* ¶¶ 77-79, 115 (arguing that Dr. Sheppard had a burden to “disaggregate the degree to which property value impacts were associated with public perception, fear, or alarm”).

Metropolitan Edison stands for the proposition that the “relationship between the change in the environment and the ‘effect’ at issue” must be a close one. *Metropolitan Edison*, 460 U.S. at 772. There is no dispute that Indian Point has physical impacts on the environment and that electric generating facilities diminish property values. NYS Proposed Findings ¶¶ 120-125. Entergy’s expert cites “extensive literature” identifying “relatively large property values impacts” from power plants. ENT000132 at 63-64.

Despite this record evidence of Indian Point’s physical impacts on the environment and on its neighbors, Entergy suggests that because it believes that people fear nuclear facilities in general, the State must prove that physical impacts on the environment led to the diminution in property values predicted by Levitan, corroborated by Dr. Sheppard and consistent with Dr. Tolley’s results. And the applicant takes the further position that any physical impacts determined in the GEIS to be of “small” magnitude could not be factors in that diminution. In other words, the applicant seeks to impose a heavier causation burden upon the State because the facility at issue is nuclear and risk or apprehension *might* contribute to the “effect” (diminished property values) caused by the “change in environment” (relicensing) *and* the applicant seeks to render inadmissible the adverse evidence in the record.

This argument is unsupported by law or fact. As a matter of fact, there is no evidence that the diminished property values in the area surrounding Indian Point are caused by fear or apprehension. Entergy points to the testimony of Dr. Tolley and Mr. Cleary, neither of which demonstrates that the diminished property values documented by Dr. Sheppard are caused by fear. Entergy Proposed Findings ¶ 112. Mr. Cleary provided no site-specific evidence that the

diminution in property values documented by Dr. Sheppard “are not directly related to any physical environmental impact.” *Id.* Rather “Mr. Cleary testified that noise, aesthetic, and radiological impacts are Category 1 issues that the GEIS resolves *generically* as having SMALL impacts.” Entergy Proposed Findings ¶ 112 (emphasis added). These generic findings are irrelevant to the questions before the Board: Whether the FSEIS fails to address the impact of the continued operation of IP2 and IP3 for another 20 years on offsite land use, including real estate values in the surrounding area in violation of 10 C.F.R. §§ 51.71(a), 51.71(d), 51.95(c)(1), and 51.95(c)(4). Jul. 6, 2011 Board Mem. and Order (Ruling on Pending Motions for Leave to File New and Amended Contentions) at 11; *see id.* at 16 (admitting NYS-17B). Offsite housing and land use both require site-specific evaluations. 10 C.F.R. Pt. 51, Subpt. A, App. B, Tbl. B-1. The GEIS did not purport to determine the impact to property values of those allegedly “small” impacts. Rather, its purpose was to assess specific environmental facility outputs: noise, aesthetics, and radiological impacts, among others. Its purpose was not to evaluate the cumulative impact of the noise, aesthetics, and radiation, which would be relevant to neighbors. Nor, of course, did the GEIS measure the impact of particular outputs on particular neighbors of particular facilities.

Further, Indian Point’s particular setting makes drawing conclusions from the GEIS’s findings especially inappropriate.

Typically, nuclear power plant sites and the surrounding area are flat-to-rolling countryside in wooded or agricultural areas. More than 50 percent of the sites have 80-km (50-mile) population densities of less than 200 persons per square mile, and over 80 percent have 80-km (50-mile) densities of less than 500 persons per square mile. *The most notable exception is the Indian Point Station, located within 80 km (50 miles) of New York City, which has a projected 1990 population density within 80 km (50 miles) of almost 2000 persons per square mile.*

NYS000131A at 2-2 (emphasis added). Moreover, “[o]f all U.S. nuclear power plants, Indian Point has the highest combination of population density and proximity to urban centers, whereas Wolf Creek has one of the lowest combinations of the same variables.” *Id.* at 3-9. There is no relationship whatsoever between the GEIS’s finding of “small” discrete impacts and the nuisance impact of a particular facility on its neighbors. Certainly the GEIS provides no evidence relevant to the impacts on Indian Point’s Buchanan neighbors of its noise, aesthetics, spills, leaks, traffic, fencing, or status as a brownfield.

The applicant’s claim that the GEIS either resolves or forecloses a site-specific examination of property values (not only at Indian Point but presumably at all facilities nationwide) is nothing more than an attempted end run around the requirement that NRC Staff conduct a site-specific analysis of the impact of relicensing on offsite land use and housing. Mr. Cleary’s testimony does not support the applicant’s claim that risk or fear, not physical impacts, diminished property values within a 5 kilometer radius of the facility.

Nor does the testimony of Dr. Tolley establish that people are afraid of Indian Point and willing to pay less for nearby residences as a result. Dr. Tolley observed that “[s]imply put, some people may not like living near certain types of facilities regardless of anything having to do with physical changes to the environment.” ENT000132 at 64. Even if Dr. Tolley’s observation is true, it is neither proof nor site-specific. Moreover, Dr. Sheppard testified that his site-specific study could not be “laid at the foot of simple fear of nuclear power.” Tr. at 2651:1-9 (Sheppard).

Entergy had the opportunity to prove that it was fear, not miles of power lines, thousands of vehicles, noise, pollution, and the facility’s status as a “brownfield” – all traditional indicia of nuisance – that caused the diminution in property values anticipated by Levitan and documented

by Dr. Sheppard. Entergy did not attempt to prove that some or all of the diminution was caused by apprehension. There is no evidence to support the applicant's claim that fear is responsible for the 27% diminution in value documented by Dr. Sheppard.

Moreover, the cases that the applicant relies upon have no bearing in this proceeding. *Metropolitan Edison* and its progeny¹ have nothing to do with the issues before this Board. Following the serious 1979 nuclear reactor accident at Three Mile Island (TMI), the facility's owner, Metropolitan Edison, sought to resume operations. "The Court of Appeals for the District of Columbia Circuit [had] held that the NRC improperly failed to consider whether the risk of an accident at TMI-1 might cause harm to the psychological health and community wellbeing of residents of the surrounding area." 460 U.S. at 768. The Supreme Court reversed, finding that NEPA did not require NRC Staff to analyze the potential impacts to human psychological health of the risk of a nuclear accident.

In undertaking its analysis of whether NEPA required an analysis of the risk of a nuclear accident on people, the Court said that "[t]o determine whether [NEPA] § 102 requires consideration of a particular effect, we must look at the relationship between that effect and the change in the physical environment caused by the major federal action at issue." *Id.* at 773. "The federal action that affect[ed] the environment" in *Metropolitan Edison* was "permitting renewed operation of TMI-1." 460 U.S. at 775.

¹ Entergy also relies on *Olmsted Citizens for a Better Comm. v. United States*, 606 F. Supp. 964, 974 (D. Minn. 1985), *aff'd*, 793 F.2d 201 (8th Cir. 1986), in which a district court confronted the claim that an EIS analyzing the conversion of a facility from use as a state hospital to use as a prison was inadequate. The plaintiffs argued that the EIS should have analyzed "secondary socio-economic effects" to their neighborhood including diminished property values, increased crime, and a change in character resulting from the "psychological and sociological effects upon individuals from having prisoners nearby." *Id.* at 977. Like *Metropolitan Edison*, *Olmsted* is inapposite. See Apr. 22, 2010 Board Order (ruling that this contention does not seek an evaluation of risk or fear).

The next step, and where the *Metropolitan Edison* intervenors could not make their case, was in “the change in the physical environment.” The Board said that

[t]he direct effects on the environment of this action include release of low-level radiation, increased fog in the Harrisburg area (caused by operation of the plant’s cooling towers), and the release of warm water into the Susquehanna River. The NRC has considered each of these effects in its EIS, and again in the EIA . . .
Another effect of renewed operation is a risk of a nuclear accident.

Id. at 775 (emphasis added).

The “risk of a nuclear accident” was what the *Metropolitan Edison* intervenor claimed fell within NEPA’s purview. The Supreme Court disagreed. “[A] *risk* of an accident is not an effect on the physical environment. A risk is, by definition, unrealized in the physical world. In a causal chain from renewed operation of TMI-1 to psychological health damage, the element of risk and its perception by [intervenor]’s members are necessary middle links. We believe that the element of risk lengthens the causal chain beyond the reach of NEPA.” *Id.* at 775 (emphases added). In this case, the applicant seeks to “lengthen[] the causal chain beyond the reach of NEPA” in this case by implying that NYS-17B depends upon “the element of risk.” *See id.*

It does not. As the Board has already determined, “NYS-17/17A does not seek an evaluation of risk or fear. Rather, this contention seeks an assessment of the impact of the no-action alternative to license renewal directly on property values themselves.” Apr. 22, 2010 Board Order. Dr. Sheppard testified that the results of his property value analysis could not be “laid at the foot of simple fear of nuclear power.” Tr. at 2651:1-9 (Sheppard). Dr. Sheppard’s analysis focuses on the narrow time period from 1974 to 1976 “and estimating an impact from then . . . in order to come to the conclusion that this was really just capturing a fear of nuclear power or something like that, we would have to accept the interpretation that suddenly the fear of nuclear power wasn’t present and then emerged in 1974-’76. I don’t accept that hypothesis, and

so I don't think it's correct." Tr. at 2651:1-9 (Sheppard). There is no site-specific evidence in the record to suggest that risk or fear caused the depression in property values.

In any event, even if the applicant had established that it was fear that diminished property values, not the facility's physical impacts on the physical environment, NEPA would still require an analysis of the impact. Property values are a major driver of land use and cannot reasonably be ignored or overlooked in any socioeconomic analysis of the human environment. NYS Proposed Findings ¶ 79. In other words, even if property values drop as a result of fear, the lowered property values themselves have a physical impact on housing and offsite land use, and NEPA requires that it be analyzed. NYS000231 at 13 ("A 27% change in land values would certainly result in "significant" changes in land use"). Here, the State has adduced competent expert evidence that shows that property values in the residential areas immediately surrounding Indian Point diminished by 27% over the average ownership period. NYS000231 at 1-13; NYS Proposed Findings ¶ 147. This effect is indisputably realized in the physical world and NEPA mandates that NRC Staff address it.

NEPA's regulations mandate that human environment

shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (*See* the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

40 C.F.R. § 1508.14. Despite the applicant's best efforts, there is no doubt that property values are interrelated with physical environmental effects.

For this reason, *Hammond v. Norton*, 370 F. Supp.2d 226 (D.D.C. 2005), upon which the applicant also relies, is not on point. In *Hammond*, the proposed federal action was construction

of a refined petroleum products pipeline from New Mexico to Utah, including new pipeline as well as the conversion of existing natural gas pipeline to petroleum products use. The project proponent sought “by construction of this pipeline to provide access to the potentially lucrative petroleum products market in Salt Lake City.” *Id.* at 231. The plaintiffs alleged that the EIS was inadequate because it failed to consider “(i) major supply disruptions that could occur if the operation of the Williams pipeline forced closure of local Salt Lake City refineries; (ii) the impact of job losses associated with these possible closures; and (iii) the harm that could result from supply shortages if the gasoline and diesel fuel supplies on which Bloomfield currently relies were diverted to the Williams pipeline.” 370 F. Supp.2d at 243. As the court properly found, “[t]here is no relationship between these economic problems and the *environmental* impacts of the Williams project; rather, they flow solely from Williams’ proposed introduction of petroleum products into the Salt Lake City market.” *Hammond* might aid the applicant if NYS-17B alleged that relicensing would have unexamined economic impacts on the New York State Power Authority, for instance. It has nothing to do, however, with NRC Staff’s failure to examine the impact of the proposed relicensing on property values and offsite land use.

Entergy also cites to *Tongass Conservation Soc. v. Cheney*, 924 F.2d 1137 (1991), in which an intervenor argued that the Navy had failed to conduct a reasonable analysis of the impact of the proposed federal action (permitting of a submarine testing range) on the local tourist industry. Contrary to the intervenor’s argument, the Navy had assessed “the impact that [the testing range] would have on the tourist economy of an area that markets itself as a ‘wilderness experience.’” *Id.* at 1143 (*citing* FEIS §§ 4.19-4.27 and 5.13-5.16 [totaling 13 pages of the FEIS]). The Navy acknowledged that the proposed project would have socioeconomic impacts that would be “governed by the navigational access and safety restrictions” that the

Navy proposed. Critically, the FEIS “analyze[d] the effect that each restriction would have upon the kind of fishing generally found in that area, and conclude[d] that the adverse impact of Restricted Areas 1-4 would be minimal.” But with respect to a fifth area in which navigation and fishing would be restricted, the Navy acknowledged that the tourist and sport fishing industries would likely incur losses, and addressed in detail its plan to mitigate those losses. *Id.* Here, by contrast, NRC Staff has failed to even address the very significant loss to the community. *See* NRC Staff Proposed Findings ¶ 7.93 (Staff was “not able to quantify” the impact to property values).

More to the point, however, *Tongass* does not stand for the proposition that the nuclear nature of the proposed federal action somehow relieves NRC Staff of the obligation to analyze the direct and indirect impacts of the proposed action on the human environment. Even though the proposed federal action in *Tongass* involved Trident nuclear submarines, the Navy did not claim that it had no obligation to examine the socioeconomic impacts of its proposed test range because the direct and indirect impacts to tourism and the fishing industry must have been due to public fear or apprehension. No evidence in the record supports the applicant’s speculation that fear is causing the \$1 billion dollar diminution in property values that Dr. Sheppard documented. And even if fear were the motive, the diminution itself impacts the physical environment.

NEPA regulations also counter Entergy’s claim that “New York has not met its burden to establish that the alleged property value impacts are the *direct* result of significant physical impacts to the environment actually caused by license renewal or the no-action alternative.” Entergy Proposed Findings ¶ 119 (emphasis added); *see also, e.g., id.* ¶¶ 13, 26 & n.84; 31, 46, 78 & n.265, 110-119. But “effects” of the proposed relicensing include not only “direct effects,” which are caused by the action and occur at the same time and place, but also “[i]ndirect effects,

which are caused by the action and are later in time or farther removed in distance, [that] are still reasonably foreseeable. 40 C.F.R. § 1508.8(a), (b).² Indeed, “[i]ndirect effects may include growth inducing effects and *other effects related to induced changes in the pattern of land use, population density or growth rate*, and related effects on air and water and other natural systems, including ecosystems.” *Id.* § 1508.8(b) (emphasis added). Entergy’s attempt to exempt property values from this proceeding is not supported by the regulations, which make clear that “indirect effects” of relicensing, including “effects related to induced changes in the pattern of land use, population density or growth rate,” are subject to no special burden of proof and are within the scope of NEPA.

There is no evidence in the record that suggests that “property value impacts were associated with public perception, fear, or alarm.” Entergy Proposed Findings ¶ 115. And even if there were, NEPA still requires an evaluation of the impacts to offsite land use and housing. Federal NEPA regulations place the burden of proof squarely on NRC Staff and the applicant. “Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.” 10 C.F.R. § 2.325. NRC Staff should have analyzed the impact of relicensing on property values, which are a principal driver of offsite land use. The omission renders unreasonable the FSEIS’s analysis of socioeconomics and housing. 40 C.F.R. § 1500.3: “The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law.”

² “Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 C.F.R. § 1508.8(b).

CONCLUSION

The record shows that Indian Point has physical impacts on the environment, that those impacts depress property values, that the diminution in property values itself has physical impacts on the environment, and that it is possible to measure the impact on property values of a traditional disamenity. The evidence further shows that the approximately 27% diminution in property values is sufficient to have a significant impact on Indian Point's residential neighbors. NEPA requires that the FSEIS analyze the impact to property values, and therefore offsite land use and housing. For the foregoing reasons, and those expressed in the State's Proposed Findings, the proposed findings of fact and conclusions of law of the applicant and NRC Staff provide no basis in fact or law for a Board decision in Entergy's favor on Contention NYS-17B.

Respectfully submitted,

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