

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Kaye D. Lathrop
Dr. Richard E. Wardwell

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))	
_____)	Date: May 17, 2013

**HUDSON RIVER SLOOP CLEARWATER, INC.'S MOTION FOR LEAVE TO FILE ONE
ADDITIONAL EXHIBIT RELATED TO CONTENTION EC-3A (ENVIRONMENTAL
JUSTICE)**

In accordance with 10 C.F.R. § 2.323(a), Hudson River Sloop Clearwater, Inc. (“Clearwater”) requests leave to file as an additional exhibit. This exhibit is a Statement of Interest by the United States of America that was filed on May 10, 2013. It accompanies this motion and is labeled CLE000076. New York State and Riverkeeper do not oppose this motion. Entergy and the NRC Staff oppose the motion on grounds of lack of relevance and other unstated objections. The Staff reserves its right to file a written answer in response.

Good cause exists for allowing the admission of this exhibit. First it is dated within the last 10 days and so was not available at the time of the hearing. Second, it is relevant to the issues addressed by Contention EC-3A. The contention alleges that, “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.” *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), ASLBP No. 07-858-03-LR-BD01, 60 (ASLB July 6, 2011) (emphasis added). The new exhibit is the official position of the United States of America on the extent to which New York City discriminates against disabled people by failing to plan properly for their evacuation during an emergency. It finds that the “City’s plan fails to account for and include the needs of individuals with disabilities related to, at a minimum, shelters, transportation, evacuation, and emergency-related communications.” CLE00076 at 4.

The new exhibit is also relevant because it contradicts statements by NRC Staff that an *ad hoc* unplanned evacuation of New York City would not result in disparate impacts upon environmental justice populations. *See* CLE00076 at 12 (stating “the importance of advance planning in developing and implementing [functional needs support services] cannot be overstated”). Although Entergy has objected that individuals with disabilities are not separately recognized as environmental justice populations, a disproportionate number of low-income individuals are disabled as compared to the general population.¹ Because the statistics confirming the correlation between and low-income status and disability originate with the Census Bureau, this Board may take judicial notice of this correlation.² Indeed, the Commission upheld a Board decision that rested, in part, on taking judicial notice of an American Automobile Association road map. In the Matter of Strata Energy, Inc., (Ross In Situ Uranium Recovery Project), 2012 WL 1759015, CLI-12-12, FN. 28 (May 11, 2012). Moreover, the contention explicitly mentions disabled individuals as within its scope.

¹ According to the census bureau the poverty rate among people with a disability was 28.8% in 2011, compared with 12.5 for the general population. In addition, among people aged 18 to 64, those with a disability represented 16.3 percent of people in poverty, compared with 7.7 percent of all people in this age group. U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2011, 16 *available at* <http://www.census.gov/prod/2012pubs/p60-243.pdf>.

² Courts routinely take judicial notice of government-compiled statistics and official reports and publications of agencies of the United States. *See United States v. Orozco-Acosta*, 607 F.3d 1156, 1164 n.5 (9 Cir. 2010); see also FRE 201(b)(2) (allowing a court to take judicial notice of a fact “not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

Finally, because this Exhibit states the position of the United States, its admission will assist in the development of a full hearing record and ensure that the Board can take full account of that position. Furthermore, its admission will not cause delay or other harm to any party because the position of the United States is now beyond dispute. This Board should therefore admit this new Exhibit.

Respectfully Submitted,

/s/

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Dated: May 17, 2012

Certificate Pursuant to 10 C.F.R. § 2.323

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 counsel for Clearwater has made a sincere effort to contact other parties in the proceeding and resolve the issues raised in the motion. New York State and Riverkeeper do not oppose this motion. Entergy and the NRC Staff oppose the motion on grounds of lack of relevance and other objections.

_____/s/_____

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