

May 8, 2007 (8:07am)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

May 7, 2007 )

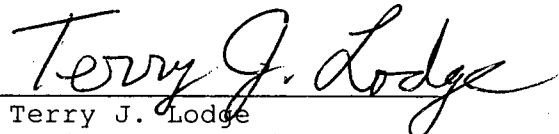
CONSUMERS ENERGY COMPANY )

Docket Nos. 50-155-LT &  
72-043-LT )

(Big Rock Point ISFSI) )

PETITION FOR RECONSIDERATION

Now come Victor McManemy, Nuclear Information and Resource Service ("NIRS") and Don't Waste Michigan ("DWM"), Petitioners herein, by and through counsel, and move the Commission to reconsider its April 26, 2007 Memorandum and Order denying Petitioners the status of intervenors and denying them a hearing on the license transfer from Consumers Power Company to Entergy Nuclear Palisades, LLC and Entergy Nuclear Operations, Inc.



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MEMORANDUM

NRC regulations - 10 CFR § 2.345 - authorize the Petitioners to seek reconsideration if they file their request within ten (10) days after the date of the relevant decision and "demonstrate a compelling circumstance, such as the existence of a clear and material error in

a decision, which could not have been reasonably anticipated, which renders the decision invalid."

By a calendaring error on his part, Petitioners' undersigned legal counsel omitted to prepare and submit a response in reply to Consumers' Answer and to oppose dismissal of the original petition. Petitioners' counsel was involved in consuming trial activity and overlooked the paper copy delivery of Consumers' Answer, which apparently was not also electronically filed (in which case it would have been more readily noticed by Petitioners' counsel).

Moreover, although Michael Keegan of Don't Waste Michigan is listed as having been served a paper copy of Consumers' Answer, he did not receive it in the mail. Finally, Kevin Kamps of NIRS was in Australia the entire month of March 2007 and unavailable to act in reply to the Answer. Even absent a response to the Answer, the Commission was clearly and materially erroneous in rendering the decision it made on the "Request for Hearing and Petition to Intervene."

The Commission's denial of standing to Victor McNameny, who indisputably lives within 40 to 42 miles of Big Rock Point, reflects a shallow analysis of the facts alleged by Petitioners as well as the public record information available to the NRC about the ISFSI at Big Rock. Finding that "[t]he potential radio-logical risks associated with an ISFSI license transfer are even lower, because an ISFSI is essentially a passive structure rather than an operating facility, and there therefore is less chance of widespread radioactive release," the Commission determines that McNameny doesn't live closely enough to be within the contemplated zone of harm.

A member of an organization may base his or her standing upon a showing that his or her residence is within the geographical area that might be affected by an accidental release of fission products. Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). This approach "presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Id.*

This rule of thumb has been applied to license renewal proceedings. Turkey Point, LBP-01-06, 53 NRC at 148-49. In reactor license renewal cases, "the distance from the significant source of radioactivity that is presumed to affect the petitioners logically must be the same 50-mile distance that forms the current basis for the proximity presumption for reactor construction permit and initial operating license proceedings". *Id.* See *Virginia Elec. and Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-522, 9 NRC 54, 56 (1979) ("close proximity [to a facility] has always been deemed to be enough, standing alone, to establish the requisite interest" to confer standing).

In *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96 (1993), *aff'd*, CLI-93-16, 38 NRC 25 (1993), the Commission was posed the question of a license transfer, as it faces in the present proceeding. The NRC approved standing for a petitioner who lived 35 miles from the plant for one week per

month. The petitioner in *Vogle* alleged that he could suffer harm from the transfer of operating authority to a company that, according to him, lacked the "character, competence, and integrity to safely operate the Vogle plant, and lacks the candor, truthfulness, and willingness to abide by the regulatory requirements necessary to operate a nuclear facility." CLI-93-16, 38 NRC at 33. That petitioner also alleged that management had submitted material false statements to the Commission in order to obstruct an NRC investigation. *Id.*

In the present matter, Petitioner Victor McNameny lives about 40 to 42 miles in a straight line from Big Rock at his residence and he lives there for 52 weeks per year. His recreational pursuits on Lake Michigan take him much closer to the Big Rock site in the warmer months of the year; several times per year he sails to within 15 miles of Big Rock Point, and every few years sails to a point within a mile from Big Rock Point. See "Supplemental Declaration of Victor McNameny" hereto attached. Several times per year he stops at a park within one mile of the ISFSI facility for various activities described in his Supplemental Declaration. Overall, McNameny has demonstrated more frequent and closer proximity to Big Rock than did the petitioner in *Georgia Power* to the Vogle plant.

At Big Rock, ninety-five per cent (95%) of all the long-lasting radioactivity generated at the reactor remains onsite in the form of irradiated nuclear fuel.<sup>1</sup> If there were an F-16 jet plane crash into

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<sup>1</sup>DOE "Integrated Data Base for 1997," Office of Civilian Radioactive Waste Management, [http://www.osti.gov/bridge/product.biblio.jsp?osti\\_id=574220](http://www.osti.gov/bridge/product.biblio.jsp?osti_id=574220)

the Big Rock ISFSI casks,<sup>2</sup> or an earthquake,<sup>3</sup> or a terrorist attack,<sup>4</sup> using a TOW shoulder-fired missile<sup>5</sup> - any of which has been officially accorded the potential to physically breach dry storage casks - and caused the escape of radioactive cesium in the course of a fire, the wind could well carry radiation for 42 miles. And the waters of Lake Michigan and Little Traverse Bay similarly could distribute radiation that far.

There is little technical difference, from the standpoint of physics, chemistry and potential environmental and public health damage, between a zirconium fire in a drained storage pool and a spent fuel fire caused by overheating ISFSI zirconium cladding in a dry storage cask.<sup>6</sup> Irrespective of how long spent fuel rods are left in casks to cool, they may potentially heat up to the point of ignition; hence the possibility of zirconium fires remains long after

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<sup>2</sup>A scenario previously recognized as possible by the Commission, see *Private Fuel Storage LLC*, 72-22-ISFSI.

<sup>3</sup>Acknowledged in a Staff memorandum seeking "negative consent" in the "Modified Rulemaking Plan: 10 CFR Part 72 - Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations", Secy-01-0178, 9/26/01.

<sup>4</sup>Judicially noticed for the NRC in *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* (Ninth Circuit, No. 03-74628, June 2, 2006), \_\_ F.3d \_\_.

<sup>5</sup>"Armor Piercing Missile Perforates High-Level Radioactive Waste Storage/Transport Cask," <http://www.nirs.org/factsheets/nirsfactshtdrycaskvulnerable.pdf>

<sup>6</sup>Credibly postulated in Robust Storage of Spent Nuclear Fuel: A Neglected Issue of Homeland Security, Institute for Resource and Security Studies (2003), [http://www.nukebusters.org/uploads/media/Thompson\\_Report.pdf](http://www.nukebusters.org/uploads/media/Thompson_Report.pdf)

decommissioning;<sup>7</sup> long after the adjoining nuclear power plant has been dismantled. The possibility of a fuel fire is explicitly admitted in Consumers' review of the scenario of "self-sustaining oxidation of spent fuel zirconium cladding" found in its decommissioning plans.<sup>8</sup>

If there were an attack on the cask storage facility at Big Rock where no radiation escaped, the sheer economic impacts on the northwestern Michigan tourism economy due to stigma effect would be tremendous and would not necessarily distinguish between a spent fuel storage site and an operating nuclear power plant. The effects would only be worsened if some, or a lot, of radiation escaped from a breach of the casks.

Petitioners remind the Commission that this license transfer proceeding is the first time that NIRS, DWM and McNamery have had occasion to demand consideration of the terrorism threat to the Big Rock casks since the 9/11 commission reported in 2004 that nuclear facilities were targeted by Al Qaeda on September 11, 2001. It is thus quite appropriate for the Petitioners to be raising these concerns now, at this initial opportunity.

When it denied the present petition, the Commission failed to analyze the adversities of earthquake, terrorism and plane wrecks together with certain Big Rock-specific troubles: (1) the security

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<sup>7</sup>NUREG-1738, Appendix 1A, pg A1A-5, available through NRC's ADAMS engine. Comments by Robert Alvarez, [www.fpif.org/presentations/wmd01/alvarez\\_body.html](http://www.fpif.org/presentations/wmd01/alvarez_body.html)

<sup>8</sup>Discussed in the Commission's October 7, 1998 grant of an exemption to Consumers from having to prepare an offsite emergency plan once the Big Rock reactor was closed and dismantled, see <http://www.epa.gov/fedrgstr/EPA-GENERAL/1998/October/Day-07/g26852.htm>

vulnerability of the casks (i.e., much of the former Big Rock reactor installation site has been released for public use, likely as a public park, with greatly altered security requirements from those which formerly pertained when the reactor existed nearby); (2) Entergy's poor security management track record<sup>9</sup>; and (3) the ongoing bankruptcy of the parent Entergy electric utility company as a result of Hurricane Katrina's devastation of Entergy's Gulf Coast rate base<sup>10</sup>, which has left New Orleans subject to frequent blackouts and unreliable service<sup>11</sup>. Entergy's corporate focus is distracted, and careful monitoring of the casks at Big Rock is a costly afterthought in its otherwise lucrative purchase deal. It is within reasonable contemplation that this struggling corporation and/or its subsidiaries might cut fiscal and staffing corners to deal with its unprecedented financial problems. This array of challenges should be respected and investigated via a public adjudication of the license transfer from Consumers to Entergy.

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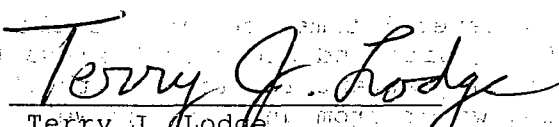
<sup>9</sup>A year after the 9/11 attacks, security guards at Indian Point - an Entergy facility - expressed major concerns about being understaffed, insufficiently trained, under-equipped, misunderstanding of the rules of engagement, and underpaid to provide security. The situation, according to this report, is even more dismal at decommissioned facilities. See report, "Nuclear Power Plant Security: Voices from Inside the Fences," Project on Government Oversight, <http://pogo.org/p/environment/eo-020901-nukepower.html#ExecSum>. The leaked internal Entergy Northeast report containing these conclusions is found at <http://pogo.org/m/ep/ep-EntergyReport-020125.pdf>

<sup>10</sup>Such that Entergy's Mississippi subsidiary received some \$81 million in federal grant aid, [http://www.boston.com/business/articles/2006/10/30/entergy\\_mississippi\\_gets\\_federal\\_grant/](http://www.boston.com/business/articles/2006/10/30/entergy_mississippi_gets_federal_grant/) and its New Orleans parent corporation received \$200 million in subsidized ratepayer assistance, <http://www.lra.louisiana.gov/pr103006entergy.html>.

<sup>11</sup>"New Orleans, Getting Less Power, May Pay More," New York Times, <http://www.nytimes.com/2006/07/22/us/22blackout.html?ex=1311220800&en=45835691d7996622&ei=5088&partner=rssnyt&emc=rss>

The facts of Entergy's corporate financial status and the implications for the firm's consequent ability to secure and manage the Big Rock storage facility fall within the 10 CFR § 2.345 "compelling" threshold. The Commission's trivialization of Entergy's financial problems and denial of an inquiry into the company's current management culture comprises a "clear and material error" which incorrectly prompted the denial of standing and a hearing for the Petitioners. The enumerated Entergy negatives should set off cautionary alerts and trigger closer NRC scrutiny, in the form of a public adjudicatory license transfer proceeding.

**WHEREFORE**, the Petitioners pray the Commission reconsider its April 26, 2007 decision and reverse the same, and further, that it grant the Petitioners standing to proceed, and set these matters for hearing.

  
Terry J. Lodge  
Counsel for Petitioners



**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of

May 7, 2007

CONSUMERS ENERGY COMPANY

Docket Nos. 50-155-LT &

(Big Rock Point ISFSI)

72-043-LT

**SUPPLEMENTAL DECLARATION OF VICTOR MCNAMENY**

Now come Victor McManemy ("Declarant"), who says as follows under the penalties of perjury:

1) Declarant makes this additional declaration to supplement the declaration he gave in February, 2007, in this proceeding.

2) Every few years Declarant sails his boat very close to the Big Rock Point (Michigan) ISFSI site, to within less than a mile away, on the Little Traverse Bay of Lake Michigan. Every year, he sails several times within fifteen (15) miles of Big Rock Point on Little Traverse Bay.

3) Several times per year Declarant travels by auto past the Big Rock Point site and stops at Elzinga Park, less than one (1) mile east of the current location of the Big Rock Point ISFSI, to collect drinking water from an artesian well in the park; to visit a monument to a B-52 crew that crashed in the 1960s just ten seconds' flight time short of the Big Rock reactor; and as well to hunt for Petoskey stones on the beach of Lake Michigan.

4) Further Declarant saith naught.

/s/ Victor McNameny

Victor McNameny

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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CONSUMERS ENERGY COMPANY	)	72-043-LT
	)	
(Big Rock Point Plant)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PETITION FOR RECONSIDERATION have been served upon the following persons by electronic mail this 7<sup>th</sup> day of May, 2007, followed by deposit of paper copies in the U.S. mail, first class, or through NRC internal mail.


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