

May 17, 2007 (4:12pm)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

CONSUMERS ENERGY COMPANY, NUCLEAR
MANAGEMENT COMPANY, LLC and
ENTERGY NUCLEAR PALISADES, LLC and
ENTERGY NUCLEAR OPERATIONS, INC.

Docket No. 50-255

(Palisades Nuclear Plant, License No. DPR-20)

**ANSWER IN OPPOSITION TO
PETITION FOR RECONSIDERATION OF THE
MICHIGAN ENVIRONMENTAL COUNCIL AND THE
PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN**

Consumers Energy Company, Entergy Nuclear Palisades, LLC and Entergy Nuclear Operations, Inc. (collectively, the "Applicants") file this Response to the Michigan Environmental Council's ("MEC") and the Public Interest Research Group in Michigan's ("PIRGIM") (collectively, the "Petitioners") Petition for Reconsideration of the Commission's April 26, 2007 Order in this docket. Pursuant to 10 C.F.R. § 2.345, the Applicants file this Answer in Opposition to the Petition for Reconsideration and respectfully request that the Commission deny the Petition for Reconsideration because the Petitioners have failed to satisfy the requirements set forth in 10 C.F.R. § 2.345(b).

Pursuant to 10 C.F.R. § 2.345(b), a petition for reconsideration must show "compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, which renders the decision invalid." Petitions for reconsideration will be granted only where a petitioner brings "decisive new information to [the

Commission's] attention or demonstrates a fundamental Commission misunderstanding of a key point." *In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility)*, 60 NRC 619, 622 (2004). The Commission will "apply this standard strictly..." *In the Matter of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, Memorandum and Order, Docket No. 72-26-ISFSI, Nuclear Reg. Rep. P 31,520 (Nov. 9, 2006). In their Petition for Reconsideration, the Petitioners do not provide decisive new information, do not demonstrate the Commission's fundamental misunderstanding of a key point, and fail to show "compelling circumstances" as required by 10 C.F.R. § 2.345(b).

MEC and PIRGIM have not identified any clear or material error or other issue in the April 26, 2007 decision which could not have reasonably been anticipated and which would render that decision invalid. The Petitioners instead attempt to impermissibly expand the scope of the proceeding and reargue their alleged standing to intervene.

The Petitioners argue that the Commission should reconsider the scope of this proceeding to include consideration of the transfer of the Big Rock Point Independent Spent Fuel Storage Installation ("Big Rock ISFSI") license, which has already been approved by the Commission in a separate proceeding. *In the Matter of Consumers Energy Company (Big Rock Point ISFSI)*, CLI-07-19 (Apr. 26, 2007). This request must be denied for several reasons. First, the Petitioners challenge the scope of the proceeding for the first time in their Petition for Reconsideration. Having failed to raise this issue before, the Petitioners have waived their ability to raise it in the Petition for Reconsideration. *Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility)*, CLI-02-2, 55 NRC 5, 7 (2002) (In petitions for

reconsideration, “[n]ew arguments are improper.”) (citations omitted). Despite the Petitioners' failure to challenge the scope of this proceeding, the Commission clearly delineated this proceeding from the Big Rock ISFSI proceeding in its April 26, 2007 Order. Further, the Petitioners do not explain how their suggested expansion of the scope of this proceeding would alter anything in the Commission's April 26, 2007 Order, or how it would remedy any error resulting in injury to the Petitioners as a result of that Order.

Second, the Petitioners had full notice of the proceeding for the transfer of the Big Rock ISFSI and could have filed a petition to intervene in that proceeding, but did not do so. Third, the Petitioners provide no authority for their proposition that the Commission should combine the separate license transfer proceedings, particularly not where one of the proceedings has been concluded. Nor does any authority appear to exist for such a request. The impropriety of combining these two separate proceedings seems intuitive from the Commission's regulations, which focus on the transfer of each individual license and not on the commercial contract that prompted the parties to seek the license transfers.

Finally, on the facts alone, it is clear that it would be inappropriate to include the transfer of the Big Rock ISFSI license within the scope of this proceeding. Among other relevant facts, the Big Rock ISFSI is a completely separate facility in a geographically distant area and the Big Rock ISFSI license was issued pursuant to the NRC's regulation of the Big Rock Point nuclear facility operating license, *not* the Palisades operating license. For all of these reasons, the Petitioners request to expand the scope of this proceeding to include the transfer of the Big Rock ISFSI license must be denied.

As for the Petitioners' standing arguments, the Petitioners may not use their Petition for Reconsideration to reassert these previously considered and rejected arguments. 10 C.F.R. § 2.345(b). The Petitioners do not even allege that the Commission's failure to grant them standing constituted material error under the Commission's well-known requirements for standing, but rather seek to supplement the record to address deficiencies in *their* previous filing. Indeed, the Petitioners attempt to gain standing now by providing affidavits of MEC's president and PIRGIM's executive director. Even if the Commission were to allow this untimely supplementation, the Petitioners still fail to establish any cognizable injury to warrant either organizational or representational standing in *this* proceeding. The Petitioners rely, in large part, on their standing in a Michigan Public Service Commission ("MPSC") case regarding the transfer of the Palisades facility, in which the jurisdiction of the agency and scope of the proceeding differed from the present case. The Petitioners' attempt to "import" their standing from the MPSC proceeding is thus improper and based on inapposite circumstances.

Because MEC and PIRGIM have failed to demonstrate the "compelling circumstances" required for reconsideration of the April 26, 2007 Order, this Commission should deny their Petition for Reconsideration. As establish above, the Petitioners' new arguments to expand the scope of the proceeding and previously rejected arguments—none of which provide decisive new information or demonstrate the Commission's fundamental misunderstanding of a key point—do not show any compelling circumstances required by 10 C.F.R. § 2.345(b).

Wherefore, the Applicants respectfully request the Commission to deny MEC and PIRGIM's Petition for Reconsideration of the April 26, 2007 Order denying their Petition to Intervene because MEC and PIRGIM have not satisfied the requirements of 10 C.F.R. § 2.345(b).

Respectfully submitted,

/S/

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/S/

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CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of May, 2007, served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

/S/

Ahren S. Tryon

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May 17, 2007

VIA HAND DELIVERY

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Re: In the Matter of Consumers Energy Company, Nuclear Management Company,
LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.
(Entergy Palisades Nuclear Power Plant)
Docket Number 50-255-LT

Dear Sir/Madam:

Enclosed for filing please find the Answer in Opposition to the Petition for
Reconsideration of the Michigan Environmental Council and the Public Interest Research Group
in Michigan.

Very truly yours,

/S/

Ahren S. Tryon

Enclosure
cc: Service List for Docket No. 50-255-LT
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