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September 18, 2007

Via electronic and first class mail

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff


Re: Motion to Intervene of Local 369, Utility Workers Union of America, AFL-CIO
Docket Nos. 50-293 *et al.*

Dear Secretary Vietti-Cook:

Please find attached the motion to intervene and request for hearing procedures of Local 369 of the Utility Workers Union of America in the proceedings initiated by the July 30, 2007, "Application for Order Approving Indirect Transfer of Control of Licenses" submitted by Entergy Nuclear Operations, Inc.

Please contact the undersigned if you have any questions or concerns.

Sincerely,



Scott H. Strauss
Rebecca J. Baldwin

Attorneys for the Utility Workers Union of
America, AFL-CIO, Local 369

Enclosure
cc: service list

**UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION**

Entergy Nuclear Operations, Inc.	Docket No. 50-293
Pilgrim Nuclear Power Station	Docket No. 50-003
Indian Point Nuclear Generating Unit No. 1	Docket No. 50-247
Indian Point Nuclear Generating Unit No. 2	Docket No. 50-286
Indian Point Nuclear Generating Unit No. 3	Docket Nos. 50-333 & 72-12
James A. FitzPatrick Nuclear Power Plant	Docket No. 50-271
Vermont Yankee Nuclear Power Station	Docket Nos. 50-255 & 72-7
Palisades Nuclear Plant	Docket Nos. 50-155 & 72-43
Big Rock Point	

**PETITION OF LOCAL 369, UTILITY WORKERS
UNION OF AMERICA, AFL-CIO FOR LEAVE TO
INTERVENE AND REQUEST FOR INITIATION OF
HEARING PROCEDURES**

Pursuant to 10 C.F.R. § 2.309 of the regulations of the United States Nuclear Regulatory Commission (“NRC”), Local 369, Utility Workers Union of America, AFL-CIO (“Local 369”), hereby responds to the July 30, 2007, “Application for Order Approving Indirect Transfer of Control of Licenses” (“Application”) submitted initiating proceedings in the above-captioned dockets by Entergy Nuclear Operations, Inc., *et al.* (“Entergy Nuclear”).¹ Entergy Nuclear seeks the Commission’s consent to the indirect transfer of control of several nuclear plant licenses due to “certain restructuring transactions that will involve the creation of new intermediary holding companies and/or changes in the intermediary holding companies for the ownership structure for the corporate entities that hold the NRC licenses” for (a) Pilgrim Nuclear Power Station; (b) Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; (c) James A. FitzPatrick

¹ Entergy Nuclear is joined in its Application by Entergy Nuclear Generation Company; Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Vermont Yankee, LLC; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; and Entergy Nuclear Palisades, LLC.

Nuclear Power Plant; (d) Vermont Yankee Nuclear Power Station; (e) Palisades Nuclear Plant; and (f) Big Rock Point. Application at 1.

For the reasons stated herein, Local 369 seeks leave to intervene on behalf of itself and its members in the instant proceedings, and requests that the relief requested in the Application not be granted without the conduct of an evidentiary hearing. In addition, Local 369 comments upon the Application, states the bases for its concerns about the grant of relief without the conduct of an evidentiary proceeding, and asks that its views be taken into account by the NRC in determining whether to grant its consent to the proposed indirect transfer of control.

I. COMMUNICATIONS

Communications regarding this Motion should be addressed to:

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II. PETITION TO INTERVENE

Local 369 is a roughly 3,100-member local union, the membership of which includes approximately 350 of the 550-employee workforce at Pilgrim Nuclear Power Station ("PNPS"). The PNPS employees represented by Local 369 have an obvious, direct, and substantial interest in Pilgrim's safe operation. Approval of the transfer proposed by Entergy may have an adverse effect both on PNPS employees represented by Local 369, and on citizens living in the communities surrounding the Plant.

As no other party can adequately protect the interests of Local 369 and its members, their participation in this proceeding with full rights as a party is required to protect their specific and substantial interests. Moreover, the participation of Local 369 in this proceeding will be in the public interest because its members have knowledge, information, and a perspective regarding the potential impact of the proposed transfer that cannot be provided by other parties. For these reasons, Local 369 requests leave to intervene in this proceeding with full rights as a party.²

A. Standing

Local 369 has standing to intervene and a right to party status in this proceeding because, on its own behalf and on behalf of its members employed at PNPS, Local 369 has a substantial interest in the safe operation and good reputation of PNPS. The members of Local 369 are dedicated to and responsible for Pilgrim's safe operation. The interests of these workers in ensuring that Pilgrim is operated in a safe manner go beyond the workplace, as these same workers also live in the communities surrounding the Plant. As described in more detail below, a decision by the NRC to approve Entergy's proposed transfer may have a negative impact on the safe operation of PNPS, which would have a corresponding and adverse impact upon the surrounding community.

"[T]he Commission has long looked for guidance to judicial concepts of standing." *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) *on remand*, 49 N.R.C. 238 (1999), *reconsideration denied*, 49 N.R.C. 375 (1999). The risk to the safe operation and reputation of PNPS presents a

² In compliance with 10 C.F.R. § 2.309(d), this petition for leave to intervene includes the name, address, and telephone number of Local 369's agent and its attorneys, *see, supra*, on page 2

threatened injury to the organizational interests of Local 369 and to the interests of its members. Commission denial of Entergy's application will redress this threatened injury by maintaining the *status quo*. An organization may establish standing through "either immediate or threatened injury to its organizational interests, or to the interests of identified members." *Ga. Inst. of Tech.*, (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *see also Yankee*, CLI-98-21, 48 NRC at 194-95. An organization may attain standing through a member, or "representational standing," by "demonstrat[ing] that the individual member has standing to participate, and has authorized the organization to represent his or her interests." *Ga. Tech.*, CLI-95-12, 42 NRC at 115. The alleged injury in fact to the member must fall within the purposes of the organization. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33-34 (1998). As the union representing many of the employees at PNPS, Local 369 has an organizational interest in protecting its members' safety. Moreover, each individual member employed at PNPS has an interest in the safe operation of PNPS; Local 369 thus has representational standing through its members' standing, which falls within the organizational purposes of Local 369.

B. Contentions To Be Raised If Intervention Is Granted

Approval of the transfer would contravene the Congressional statement of purpose in the Atomic Energy Act, 42 U.S.C. § 2011, because implementation of the Amendment could involve a significant increase in the likelihood or consequences of an accident. The NRC must always consider the public safety in its decision-making. "The... utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to... protect the health and safety of the public." 42 U.S.C. § 2012(d). As explained below, because some of the facilities with which PNPS

would be more closely affiliated after the proposed transfer, notably Vermont Yankee and Indian Point, are known to have safety problems,³ Local 369 is concerned that under the new “control” structure proposed by Entergy Nuclear those safety problems could “migrate” to PNPS, adversely affecting Local 369 members both as PNPS employees and as local residents. Furthermore, Local 369 members currently employed at PNPS could suffer harm to their career prospects if other potential employers come to view PNPS operations as similar to those at Vermont Yankee.

In addition, we note that Entergy Nuclear’s filing refers (at page 7, emphasis added) to

pro forma Projected Income Statements for the six year period from January 1, 2007 through December 31, 2012 for each of the licensed owners of the Facilities and Entergy Nuclear Finance Holding, LLC are provided in a separately bound proprietary addendum as Attachment 3A. In addition, a sensitivity analysis of these projections (reflecting a 10% reduction in projected revenue) is provided in Attachment 3A. ENO requests that Attachment 3A be withheld from public disclosure, as described in the Affidavits provided in Attachment 4. Redacted versions of these balance sheets, suitable for public disclosure, are provided as Attachment 3.

As Attachment 3A has been “withheld from public disclosure,” Local 369 does not know the basis for the potential for a “10% reduction in projected revenue.” Even more important, Local 369 has no way of knowing whether approval of the proposed transfer could have a negative impact on projected revenues. However, given Entergy Nuclear’s statement in the filing, we urge that the Commission make the information in Attachment

³ E.g., *Photos show damage of Vermont Yankee cooling system*, Burlington Free Press, Aug. 23, 2007) available at <http://www.burlingtonfreepress.com/apps/pbcs.dll/article?AID=/20070823/NEWS/70823008>; *Buchanan: Indian Point Misses Siren Deadline*, N.Y. Times, Aug. 31, 2007.

3A available to the public and, in any event, scrutinize closely Entergy Nuclear's financial forecasts.

C. Alternative request for discretionary intervention

If it is determined that Local 369 lacks standing, Local 369 requests that the Commission nonetheless exercise its discretion and permit the Local to intervene in this matter. We understand that such discretion can be exercised where the Commission (or presiding officer) finds that "at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held." 10 C.F.R. § 2.309(e). As described above, Local 369 has a unique perspective and unique experiences, which will allow it to "assist in developing a sound record." *Id.* § 2.309(e)(1)(i). The "nature and extent of [Local 369]'s property, financial or other interests in the proceeding" and "the possible effect of any decision or order that may be issued in the proceeding on [Local 369]'s interest" are significant, as set out above. *Id.* § 2.309(e)(1)(ii)-(iii). There are no means other than intervention by which Local 369's interests can be protected, because it is in this proceeding that the decision will be made as to whether Entergy will be permitted to carry out the proposed transfer. There are no other existing parties of whom Local 369 is aware, nor is there any potential party who could represent Local 369's unique interests. Local 369's participation will not "inappropriately broaden the issues or delay the proceeding." *Id.* § 2.309(e)(2)(iii). Local 369's interest in safety is an appropriate consideration in this proceeding. *Id.* § 2.309(e)(2).

III. ARGUMENT

A. *Approval Cannot be Granted Where the Extent to which the Proposed Transfer will Involve Operational Changes is Unclear*

Entergy Nuclear states that “[t]here will be no physical changes to the Facilities and no changes in the officers, personnel, or day-to-day operations of the Facilities in connection with the indirect transfer of control.” Application at 5. Entergy Nuclear does not, however, include a commitment to this effect in its table of commitments. Furthermore, Entergy Nuclear makes statements that run contrary to this assertion, pointing out elsewhere in the filing that approval of the proposed transfer will allow the Applicants to “own and operate the company’s nuclear plants with more clarity.” *Id.* at 2. Entergy Nuclear nowhere explains what impact its proposal will have on the operation of its nuclear plants, how approval of the transfer will provide “clarity,” or what “clarity” is needed. To the extent that the provision of “clarity” will involve a change in nuclear plant operations, the two quoted statements are contradictory. Changes in operations, including staffing changes, should be evaluated by the NRC to ensure that there are no negative impacts on safety. *E.g.*, 10 C.F.R. § 50.92; 10 C.F.R. § 50.54.

Regardless of whether Entergy Nuclear intends for there to be any operational changes at the nuclear plants, the structural change may result in “cross-contamination” from less safe plants to those (such as PNPS) with a better safety culture. While it is possible that the “contamination” would travel in the other direction, *i.e.*, that less safe plants would learn from PNPS, Local 369 does not wish to gamble the safety of its members and their families on that chance. This is not an idle concern, as there have been recent and significant safety issues at Vermont Yankee, which is one of the plants that will be subject to the proposed transfer. Application at 1.

CONCLUSION

For the foregoing reasons, Local 369 respectfully requests that the Commission grant its motion to intervene, or, in the alternative, that the Commission accept and consider this filing in determining the actions to be taken in response to the proposed transfer.

Respectfully submitted,



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September 18, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have on this 18th day of September, 2007, caused the foregoing document to be sent by first-class mail, properly stamped and addressed, to the Applicant and to all participants pursuant to 10 C.F.R. §2.305 as follows:

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