

IN THE MATTER OF:

Entergy Nuclear Operations, Inc;	)	
Entergy Nuclear Indian Point 2, LLC;	)	Docket No.
Entergy Nuclear Indian Point 3, LLC;	)	50-247-866
	)	
Indian Point Nuclear Generating Unit Nos. 1, 2 and 3	)	

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**Petition of Westchester Citizen’s Awareness Network (WestCAN), Rockland County Conservation Association (RCCA), Promoting Health and Sustainable Energy (PHASE), Sierra Club – North East Chapter (Sierra Club) and Richard Brodsky (Brodsky)**

Westchester Citizen’s Awareness Network (WestCAN), Rockland County Conservation Association (RCCA), Promoting Health and Sustainable Energy (PHASE), Sierra Club – North East Chapter (Sierra Club) and Richard Brodsky (Brodsky) (collectively referred to as “Stakeholders”), object to the proposed restructuring, request leave to intervene in accordance with 10 C.F.R. 2 Subpart M—“Procedures for Hearings on License Transfer Applications,” with regard to the application for a proposed license transfer above captioned corporate Restructuring and Opportunity for Hearing and Subpart C--Rules of General Applicability: “Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings”

In addition, Stakeholders motion for intervention and participation in what may be multiple hearings of corporate restructuring as was formally noticed in four other federal register announcements that in affect consolidate or modify the proposed new corporate structure as it affects not only the afore mentioned licensees, and the Indian Point Nuclear

Power Plants, but as it affects the James A. FitzPatrick Plant, the Vermont Yankee Nuclear Plant, and the Palisades Plant in the same restructure and license transfer. For the reasons set forth below, Stakeholders have standing and raise at least one admissible contention. Stakeholders assert that Entergy's proposed restructuring is a transfer of ownership and legal liability, that directly affects the proposed 20 (twenty) year superseding license application.

### Background

On July 28, 2007, Entergy filed for a transfer of Indian Point 1 Facility Operating License DPR-5, Indian Point 2 Facility Operating License DPR-26 and Indian Point 3 Facility Operating License DPR-64 (collectively referred to as "Licenses") to Entergy Nuclear Operations, an indirectly related corporation which would result in substantial reorganization of Entergy's corporate structure and LLC holdings, affecting the fiscal responsibility and liabilities of Indian Point 1, Indian Point 2 and Indian Point 3.

On January 16, 2008, notice was published in the Federal Register that the NRC is considering the issuance of an Order, under 10 C.F.R.50.80, approving the indirect transfer of the Facility Operating License for Indian Point.

By letter dated July 30, 2007 and supplemented on October 31, 2007 and December 5, 2007, Energy Nuclear Operations, Inc. (hereinafter ENO), on behalf of Entergy Nuclear Generation Company, Entergy Nuclear Fitzpatrick, LLC, Entergy Vermont Yankee, LLC, Entergy Nuclear Indian Point2, LLC, Entergy Nuclear Point 3, LLC, and Entergy Nuclear Palisades, LLC seek approval of the Nuclear Regulatory Commission (hereinafter NRC) for permission to indirectly transfer control of the above

mentioned pursuant to Section 184 of Atomic Energy Act (hereinafter AEA), as amended, and 10 C.F.R. 50.80. The proposed transfer would restructure the existing control and ownership, as well as, create an intermediary holding company and/or companies that hold NRC licenses for Pilgrim, Indian Point 1, 2, & 3, FitzPatrick, Vermont Yankee, Palisades, and Big Rock Point. (See Entergy Letter dated December 5, 2007 at pp. 1-2).

### Standing

To intervene in any Commission licensing proceeding, a stakeholder must demonstrate that its interest may be affected by the proceeding to establish standing. See AEA, Section 189a, 42 U.S.C. section 2239(a). The Commission's rules for licensing transfer proceedings further require that a stakeholder raise at least one admissible contention.

WestCAN has standing on its own behalf and on behalf of its members. WestCAN is a grassroots coalition that has advocated for a nuclear free northeast and has consistently followed the events at Indian Point in order to keep the public informed through its listserve. WestCAN has approximately five hundred members who live in Westchester, Rockland, Putnam and Orange County, in the State of New York, and who resides and work within fifty (50) miles of Indian Point, and whose concrete and particularized interests will be directly affected by this proceeding. WestCAN's central office is located at 2A Adrian Court, Cortland Manor, N.Y. which is within three miles of Indian Point and situated within the Plume, the peak fatality zone.

RCCA has standing on its own behalf and on behalf of its members. RCCA is not-for-profit organization, founded in 1930 and incorporated in 1936. RCCA is dedicated to the conservation of our natural resources, and promotes sound land use, advocate's clean air and water quality, develops proper drainage, and supports energy conservation and preservation of natural beauty. RCCA has membership of approximately 450, who live within the State of New York, primarily in Rockland County. The members of RCAA who make their residences, places of occupation and recreation within twenty (20) miles of Indian Point, and have concrete and particularized interests that will be directly affected by this proceeding. RCCA's central office is located in Pomona, N.Y.- within nine miles of Indian Point and situated within the Plume Exposure Pathway (EPZ), also referred to as the peak fatality zone.

PHASE as standing on its own behalf and on behalf of its members. PHASE is a grassroots think tank that advocates for the development and use of sustainable energy, in an effort to protect public health and safety, and the protection of the environment.

PHASE also has members who live within the State of New York, primarily in Rockland, Westchester, and Orange Counties and who make their residences, places of occupation and recreation within thirty (30) miles of Indian Point, and whose concrete and particularized interests will be directly affected by this proceeding. RCCA's central office is located at 21 Perlman Drive, Spring Valley, NY 10977, which is within eleven miles of Indian Point and situated within the Peak Fatality Zone.

SIERRA CLUB has standing on its own behalf and on behalf of its members. SIERRA CLUB is North America's oldest, largest and most influential grassroots

environmental organization. Sierra Club is a not-for-profit, member-supported, public interest organization that promotes conservation of the natural environment through public education, lobbying and grassroots advocacy. Founded in 1892, the Sierra Club Atlantic Chapter now more than 45,000 members who are residents of New York State. The Atlantic Chapter applies the principles of the national Sierra Club to the environmental issues facing New York State.

SIERRA CLUB has members who live within the State of New York, and throughout the Hudson Valley and New York City and who make their residences, places of occupation and recreation within two to fifty miles of Indian Point, and whose concrete and particularized interests will be directly affected by this proceeding, many of whom live within the Peak Injury Zone. SIERRA CLUB's central office is located at 353 Hamilton Street, Albany, New York 12210, with a regional office in New York City in the peak ingestion zone.

An organization has standing to sue on behalf of its members when a member would have standing to sue in his or her own right, the interests at issue are germane to the organization's purpose, and participation of the individual is not necessary to the claim or requested relief. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). As the Commission has applied this standard, an individual demonstrates an interest in a reactor licensing proceeding sufficient to establish standing by showing that his or her residence is within the geographical-area that might be affected by an accidental release of fission products. This "proximity approach" presumes that the elements of standing are satisfied if an individual lives within the zone of possible harm from the source of potential fission product release.

As is demonstrated by the above discussion and attached declarations, the members represented by WestCAN, RCCA, PHASE and SIERRA CLUB all have standing in their own right. The issues of public health and safety and environmental protection are germane to WestCAN, RCCA, PHASE and SIERRA CLUB's purposes. Also, the individual participation of the members is not necessary to the claims or requested relief. Proximity [to a facility] has always been deemed to be enough to establish the requisite interest to confer standing. The Commission's "rule of thumb" in reactor licensing proceedings is that "persons who reside or frequent the area within a 50-mile radius of the facility" are presumed to have standing. *Sequoyah Fuels Corp.*, 40 NRC 64, 75 n.22 (1994); *see also, Duke Energy Corp.*, 48 NRC 381,385 n.1 (1998).

Alternatively, Stakeholders request that the Commission exercise its discretion and permit Stakeholders to intervene pursuant to 10 C.F.R. 2.309(f)(e). Due to the Stakeholders are interested parties since their property, financial and other interests will be affected by this proceeding.

### Contentions

Title 10 of C.F.R. Part 50.80 reiterates the requirements of the Atomic Energy Act section 184, provides that the filing requirements for a license transfer application and establishes the following test for approval of the license transfer application: (1) the proposed transferee is qualified to hold the license and (2) the transferee is otherwise consistent with law, regulations and Commission orders. Entergy Operations, Inc.'s application to transfer control of licenses violates the law and NRC regulations, and therefore, must be denied in its entirety.

Stakeholders contend that Entergy's request for the indirect transfer of the Facility Operating Licenses for Indian Point 2 and Indian Point 3 be denied because the transfer violates 10 C.F.R. Part 50; violates 10 C.F.R. 54.35 and 54.37; the intended purpose of the corporate restructure is not met and is unclear; the restructuring potentially violates 10 C.F.R. 50.33(f)(2); the application fails to submit sufficient information concerning decommissioning funding; and the transfer violates anti-trust laws.

The alleged purpose of the restructuring and thus license transfer is to isolate and simplify the structure of the business that compromises Entergy Corporation's nuclear sector. (See Entergy Letter dated December 5, 2007 at p. 2). The restructuring will allegedly enhance the ability of analysts, regulators, capital markets and shareholders to understand and evaluate the business. (See Entergy Letter dated December 5, 2007 at p. 2). Entergy fails to explain how the proposed corporate restructuring would enhance the ability of analysts, regulators, capital markets and shareholders.

Stakeholders contend that Entergy Nuclear Operation Inc. lacks the necessary direct relationship between the Licensees and Entergy Nuclear Operations. Entergy Nuclear Operations, Inc. involved in daily operations or record keeping, in direct violation of 10 C.F.R. 50. In fact, Entergy states that by transferring of the license to a holding company, "ENOI" that will only have "indirect" control over the license. In the proposed restructuring Entergy Nuclear Operations will not have direct control over the license, nor will it maintain records as required by 10 C.F.R. 54.35 and 10 C.F.R. 54.37. Moreover, the proposed reorganization of Entergy's corporate will not protect the public and does not simply the corporate structure.

Entergy has proposed that the wholesale nuclear business segment be organized under a publicly owned holding company, referred to as “NewCo.” NewCo is being proposed as the indirect parent company of Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC. Stakeholders contend that since NewCo will be a publicly owned company, therefore, in a very short time ownership of the NewCo may become owned by a majority of foreign interests in violation of NRC regulations, such foreign ownership, control, or domination is prohibited by Sections 103 and 104 of the Atomic Energy Act (AEA) and by 10 C.F.R. Part 50.38. Fifty percent (fifty percent) ownership, although not a controlling interest may be a blocking interest, could prevent safety-related activities under the license, with an emphasis on protecting the common defense and security of the U.S.

Then ENOI will be owned by a parent company referred to as ENOI1 Holdings, LLC, which, in turn will be owned 50% (fifty percent) by Entergy Corporation and 50% (fifty percent) by New Co. Each of these 50% (fifty percent) interests will be held by whole owned subsidiaries of Entergy Corporation and New Co. ENOI will also be converted from a corporation to a limited liability company and its name will be changed to ENOI LLC.

Entergy has provided the following explanation for this proposed tiered holding company structure:

Entergy Nuclear Holding Company, a first tier of Entergy Corporation, has been established with the intent that it will ultimately hold all the subsidiaries associated with Entergy's nuclear operations. This will consolidate all of



Entergy's unregulated nuclear operations under a single holding company, while still supporting the operational and financing demands of the individual plants. *The use of holding companies below Entergy Nuclear Holding Company allows Entergy to segregate various types of financing, investment and business activities, and by doing so, enables Entergy to better manage and control risks associated with these activities. (See Exhibit A Synapse Energy Economics, Inc Financial Insecurity at page 8).*

A particular concern is that each intervening corporate layer can act as a barrier to extending liability to the parent corporation that contains most of the assets. An injured party would have to commence complex litigation and would be required to pierce the corporate veil of each corporation. (Exhibit A *Synapse Energy Economics, Inc Financial Insecurity* p. 12).

The proposed corporate structure will create a much more complicated and remote corporate structure of 10 tiers of corporate ownership. The current tiered holding company structure for Indian Point 2 has 4 (four) tiers, and Indian Point 3 has 5 (five) tiers. Thus, the restructuring is more complicated and simply lays extra, unnecessary corporate structure over another. Clearly, the proposed corporate restructuring does not simplify the corporate structure.

Entergy's history regarding its corporate responsibility can be best understood in the aftermath of Hurricane Katrina, Entergy New Orleans, a subsidiary of the Entergy Corporation, filed for Chapter 11 bankruptcy, even though the parent corporation continued to have ample finances. This corporate hide and seek resulted in Entergy

Corporation receiving massive government bailouts from taxpayers monies, while ratepayers in New Orleans experienced a substantial increase in energy costs. (Exhibit B Corporate Watch, Entergy Holds New Orleans Hostage).

Stakeholders question whether Entergy's parent company will have the necessary level of financial qualifications to run the nuclear power plants. Entergy's application does not provide reasonable assurance that it has the funds necessary to operate the nuclear power plants safely. 10 C.F.R. 50.33(f)(2). Additionally, Stakeholders challenge Entergy's cost and revenue projections.

Stakeholders' lack of access to the financial information provided in the Appendix entitled "Forecast Statements" attached to Entergy's application dated July 30, 2007 and December 5, 2007, precludes Stakeholders from fully presenting its arguments. The materials made available to the public are insufficient for an assessment of Entergy's ability to operate under the issued licenses. It is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. Furthermore, it is not possible to estimate the ability of Entergy to fund required payments to the decommissioning fund. Without the financial information, Stakeholders ability to present their substance case at a hearing is severally hindered.

In accordance with 10 C.F.R. 2.309(f)(v)(2)(i), Stakeholders request that they be permitted to submit new or amended contention based on review of this information.

The NRC must assess in license transfer requests whether a proposed transfer recipient is owned, controller, or dominated by a foreign individual or entity. Such foreign ownership, control, or domination is prohibited by Sections 103 and 104 of the Atomic Energy Act (AEA) and 10 C.F.R. Part 50.38. The NRC review process is

oriented toward determining that foreign individuals or entities do not control safety-related activities under the license. For example, in the license transfer of TMI-1, AmerGen Energy Company, the buyer, 50% was indirectly owned by British Energy, PLC, a foreign corporation. The NRC accepted AmerGen's "negation action plan," which requires AmerGen's other 50% owner, PECO, Inc. (now a part of Exelon Generation Company), to have control over safety-related decisions and reserves such authority to U.S. citizens. Because NewCo will be a publicly owned company, foreign ownership is possible. Entergy's application fails to address this issue. Thus, a hearing is appropriate before the license transfer is approved.

The timing of this transfer application creates the opportunity for the NRC staff to do less than an adequate review, as was found by the General Accounting Office in previous reviews performed. (Exhibit C GAO Report to Congress 02-48 dated December 3, 2001). The General Accounting Office has found that the NRC has done an inadequate analysis regarding the fiscal responsibility during license transfers in the past, affecting commitments or lack thereof, including but not limited to such items as the decommissioning funds, specifically relevant to Unit 2 and Unit 3 license renewal. The General Accounting Office found that "NRC did not obtain the same degree of financial assurance in the case of one merger that created a new generating company that is now responsible for owning, operating, and decommissioning the largest fleet of nuclear plants in the United States. The new owner did not provide, and NRC did not request, guaranteed additional sources of revenue above the market sale of its electricity, as other new owners had. Moreover, NRC did not document its review of the financial

information—including revenue projections, which were inaccurate—that the new owner submitted to justify its qualifications to safely own and operate 16 plants.”

(GAO Report to Congress 02-48 dated December 3, 2001).

In accordance with Section 50.75 of the C.F.R. the costs for complete and correct decommissioning and cleanup of the site must be adjusted to reflect a significant change in the contamination streams. However the Indian Point 2 and Indian Point 3 decommissioning trust funds have not been adjusted, as required by 10 C.F.R. 54.3 and 10 C.F.R. 50.75. Based on the GAO report and the lack of financial information provided concerning decommission funding, the license transfer should be denied pending a hearing and full disclosure of the financial aspects of the license transfer.

The decommissioning reports for Indian Point 2 from 2002 to 2006 indicate that the Urban Inflation rate has been 2.9% (two and nine-tenth percent) per year, yet the adjustment of the decommissioning funds for Indian Point 2 has only been 1% (one percent) per year. However, the decommissioning reports falsely state the escalation rate is 3.0% (three percent). The decommissioning funds for Indian Point have a substantial shortfall because they do not even keep up with the rate of inflation as evidenced in the March 29, 2005 Report BVY-05-033/NL-05-039/JNP-05-005/Entergy Nuclear Operations Ltr.2.05.023 and the March 29, 2007 Report Entergy Nuclear Operations C-07-00007. Consequently, the proposed corporate restructuring does not address the increased costs of decommissioning, and therefore, the NRC should not approve such restructuring without guarantees that the decommissioning funds are adequate.

On January 30, 2008 CNNMoney.com reported that Standard & Poor’s Ratings Service reported that Entergy Corp, including the “BBB” issuer credit rating, was

removed the ratings from development watch. Standard & Poors concluded that the rating outlook of the company is negative, as it reflects concern about Entergy's plan to spin off its merchant generation nuclear assets (NewCo or SpinCo) while creating a nuclear services company which will be jointly owned with NewCo or Spin Co. The negative outlook also accounts for the company's plan to use about 2.5 billion used from the proceeds to repurchase common shares upon the close of the transaction.

The proposed reorganization involves the transfer of 11 licenses into one holding company: Pilgrim Nuclear Power Station Docket No. 50-293 Indian Point Nuclear Generating Unit No. 1 Docket No. 50-003 Indian Point Nuclear Generating Unit No. 2 Docket No. 50-247 Indian Point Nuclear Generating Unit No. 3 Docket No. 50-286 James A. FitzPatrick Nuclear Power Plant Docket Nos. 50-333 & 72-12 Vermont Yankee Nuclear Power Station Docket Nos. 50-271 Palisades Nuclear Plant Docket No. 50-255 & 72-7 Big Rock Point Docket Nos. 50-155 & 72-43 Application for Order Approving Indirect Transfer of Control of Licenses. Stakeholders contend that this raises necessity for an anti-trust review.

Until 1999, NRC practice had been to review license transfer applications for antitrust considerations pursuant to Section 105 of the AEA. However, on June 18, 1999, in Memorandum and Order CLI-99-19, the Commission determined that the AEA does not require or authorize antitrust reviews of post-operating license transfer applications.

The 1999 Memorandum is based on guidance from the Nuclear Energy Institute and is not based in law. Anti-trust laws are Congressional legislation that cannot be trumped or ignored by the Commission. Therefore Stakeholders contend that the proposed license transfer violated anti-trust legislation and cannot be approved.

## Conclusion

Stakeholders contend that the proposed license transfer will cause undue confusion of ownership regarding matters relevant to future decisions, including issues of liability and those concerning extended operations during the proposed new superseding license period. Further the proposed transfer will cause undue harm to the Stakeholders' rights, in turn causing potential harm to the public's health and safety.

Based on the aforesaid, NRC must deny Entergy's license transfer request.

Dated: February 5, 2008

Respectfully Submitted,

/s/

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Susan Shapiro  
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Co- Counsel for Stakeholders

Certificate of Service

I certify that on the 5<sup>th</sup> day of February, 2008, copies have been electronically served to all parties on the list compiled for electronic submission in this matter and copies properly addressed and postage applied, deposited with in the U.S. Postal Service to the following:

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