

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

February 13, 2008 (4:00pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative

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

In the Matter of	)	Docket Nos. 50-247 and
	)	59-286-LR
ENTERGY NUCLEAR OPERATIONS, INC	)	
	)	ASLBP No. 07-858-03-LR
(Indian Point Nuclear Generating Units 2 and 3)	)	February 1, 2008 ORDER

**ANSWER TO ORDER**

**(Concerning Certain Exhibits Submitted by Petitioners WestCAN et. al.)**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF ROCKLAND )

Susan Shapiro, being duly sworn, deposes and says:

1. I am legal co-counsel for Westchester Citizen's Awareness Network (WestCAN), Rockland County Conservation Association, Inc. (RCCA), Public Health and Sustainable Energy (PHASE), Sierra Club - Atlantic Chapter (Sierra Club), and New York State Assemblyman Richard L. Brodsky (hereinafter "Petitioners"). I am familiar with the facts contained herein.
2. On February 1, 2008, the Atomic Safety and Licensing Board (hereinafter "ASLB") Ordered Petitioners "(1) to review Appendices A and B to this Order and (2) to the extent that Petitioners believes the exhibits listed in Appendix B were filed appropriately, to explain to the Board how, when, and on which parties the exhibits B were served." I submit this affidavit in support of Petitioners

answer to the ASLB Order of February 1, 2008. (ASLB Order dated February 1, 2008 p. 3).

3. On December 10, 2007, Petitioners brought a Petition for Intervention in the above matter with exhibits that were electronically served to all parties named in Exhibit A attached hereto.
4. On December 11, 2007, hard copies of said Petition and exhibits were served on the Commission and Commission staff by Fed Ex served by "... courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rule Making and Adjudication Staff." (10 C.F.R. 2.309(c) as instructed in the application). The Fed Ex package included three (3) hard copies and CD disks of the Petition and exhibits, in a box weighing 45 lbs, tracking number 86348708254. The Fed Ex box was received by the Nuclear Regulatory Commission (hereinafter "NRC") on December 12, 2007. Two copies were designated for the Commission and one copy was designated for the staff. P. Neal signed for receipt of the package. (Attached hereto as Exhibit "B").
5. Said copies of said Petition and exhibits were made at the same time and location and thus were identical.
6. The exhibits sent on December 10, 2007 and December 11, 2007 included the following contained in Appendix B as specified by the ASLB Order:

**Exhibit K: Safety Evaluations by the Division of Reactor Licensing Unit 2 Nov 16, 1970, Exhibit K Supplement, Appendix A pages 1-7:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit T:** Exhibit T was not submitted;

**Exhibit U:** Exhibit U was not submitted;

**Exhibit X: Memorandum of Chairman Diaz of April 25, 2003:** Exhibit served electronically on December 10, 2007 and a hardcopy served by FedEx on December 11, 2007. (See 3 & 4 above);

**Exhibit Y: Status of Decommissioning Funding for Plants March 25, 2005:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit Z: Federal Register, August 1, 2007:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit AA: H.R. 994: To Require the NRC to conduct an ISA:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit BB: Notice of Availability of the Final License Renewal Interim Staff Guidance August 14, 2007:** Exhibit served electronically on December 10, 2007 and a hardcopy served by FedEx on December 11, 2007. (See 3 & 4 above);

**Exhibit CC: NRC Regulatory Issue Summary 2003-09 Environmental Qualification of Low Voltage Instrumentation and Control Cables, May 2, 2003:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit DD: Entergy Replacement Reactor Vessel Head, Doosan Heavy Industries Co.:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). The table of contents of the exhibits inadvertently omitted Exhibit DD, but Exhibit DD was appropriately served;

**Exhibit EE: CRS Report to Congress-Nuclear Power Plant Vulnerability to Terrorist Attack:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**Exhibit FF:** Exhibit FF was intentionally not submitted;

**Exhibit HH: NYS Notice to Intervene in Petition:** Exhibit HH was not included in the documents served on the Office of the Secretary. This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**Exhibit JJ: Entergy Questionnaire 7/31/06: Groundwater Protection Baseline Info IPEC 1, 2, & 3 :** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit KK: Indian Point 2 2Q/2007 Plant Inspection Findings:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit LL: Declaration of Gordon Thompson in Support of Petitioner's Concern:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit MM: Gordon Thompson: Robust Storage of Spent Nuclear Fuel:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). The exhibit was inadvertently omitted from the table of contents;

**Exhibit OO: James Lee Witt Associates – Executive Summary: Review of Emergency Preparedness IP/ Millstone 2003:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). The table of contents inadvertently omitted the Exhibit, but the first page is marked Exhibit "OO";

**Exhibit PP: POGO on Nuclear Security Act: Exhibit:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit SS: Notes from 8/30/07 Conference Call Regarding Dry Cask Storage at Indian Point:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above);

**Exhibit XX: Replacement Energy for Indian Point: How Much Do We Need?:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**Exhibit LLL: Richard Brodsky's Declaration:** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was inadvertently omitted from the table of contents;

**Exhibit FP No. 5: "Entergy Letter dated July 24, 2006, Re: Indian Point Unit NO. 3 Docket No. 50-286, NL-06-078 Request for Revision of Existing Exemptions from 10 C.F.R. 50, et al":** Exhibit served electronically on December 10, 2007 and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 7: "First Declaration of Ulrich Witte":** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No.8: "NUCLEAR REGULATORY COMMISSION REGION I, 475 ALLENDALE ROAD, KING OF PRUSSIA. PENNSYLVANIA 19406-1415, May 11, 1995, New York Power Authority Indian Point 3 Nuclear Power Plant Post Office Box 215 Buchanan, NY 10511, SUBJECT: SPECIAL INSPECTION TO RESTART ITEMS, INSPECTION:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 9: contains three parts: (1)"Updated FSAR Chapter 7 provided with renewal application" (2) Second Part Drawing that is referenced on Page 8 of this document, and (3) Third part -- Drawing -- 392-F-31193:** Exhibit served electronically on December 10, 2007, and a hardcopy served by FedEx on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 11: "United States Nuclear Regulatory Commission Office Of Nuclear Reactor Regulation Office Of Nuclear Material Safety And Safeguards Washington D.C. 20555-0001 April 1, 2005 INFORMATION NOTICE 2005-07: Results Of Hemyc Electrical Raceway Fire Barrier System Full Scale Fire Testing."** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to

Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 12: December 9, 2003, POGO Letter to NRC Chairman Nils Diaz:** Exhibit served electronically on December 10, 2007, and a hardcopy served by FedEx on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 13: CRS Report for Congress Received through the CRS Web Order Code RS21131 Updated August 9, 2005 Nuclear Power Plants: Vulnerability to Terrorist Attack Carl Behrens and Mark Holt Specialists in Energy Policy Resources, Science, and Industry Division.:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 14: March 27, 2007, Re: NRC Proposed Rule: Power Reactor Security Requirements (RIN 3150-AG63) , Annette Vietti-Cook, Secretary, U.S. Nuclear Regulatory Commission Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff Submitted via e-mail to [SECY@nrc.gov](mailto:SECY@nrc.gov) by Council On Intelligent Energy & Conservation Policy (Ciecp) Comments To Proposed Rule 10 C.F.R. Parts 50, 72 And 73 Regarding Power Reactor Security Requirements At Licensed Nuclear Facilities Cured with electronic file send via You Send It on December 19, 2008:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No.15: CRS Report for Congress, Received through the CRS Web Order Code RS21131, Updated August 9, 2005 Nuclear Power Plants: Vulnerability to Terrorist Attack Carl Behrens and Mark Holt Specialists in Energy Policy Resources, Science, and Industry Division:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

**FP No. 20: NUREG-1852 Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire Final Report U.S. Nuclear Regulatory**

**Commission, Office of Nuclear Regulatory Research , Washington, DC 20555-0001:** Exhibit served electronically on December 10, 2007, and a hardcopy served by Fed Ex on December 11, 2007. (See 3 & 4 above). This exhibit was the subject of concern to Attorneys Turk and O'Neill and was part of the December 19<sup>th</sup>, 21<sup>st</sup>, and was brought to the attention of all parties on December 28, 2007. (See 7, 8, & 9 below);

7. On December 19, 2007, Sherwin Turk, Esq. of the NRC, and Martin O'Neill, Esq. and Ms. K. Sutton, Esq. representing Entergy, telephoned Petitioners' attorneys pursuant to 10 C.F.R. 2.323(b) to inform us that were planning to move to strike unless certain action was taken by five p.m. that day. (Emails resulting from that conversation are attached hereto as Exhibit C). Without admitting the existence of any defects in any papers already served, or the validity of any putative deadlines, Petitioners asked for a list of specific matters of concern to the NRC and Entergy. (Exhibit C). Upon receipt of such information from NRC's attorney and Entergy's attorneys, Petitioners sent the requested clarifications to Attorney Turk and Entergy's attorneys electronically by direct email on December 19, 2007. (Exhibit C). Receipt of said email was acknowledged by Attorneys Turk and O'Neill. (Exhibit C). Petitioners in several emails informed NRC attorney Sherwin Turk and Entergy's Attorneys that if any further clarification or documents were needed, they were to contact Petitioners. No such requests were made of Petitioners. (See, e.g., Exhibit C).
8. On December 21, 2007, as promised in the discussions of December 19, 2007 between Petitioners, Attorney Turk, and Attorney O'Neill, Petitioners sent a hard copy of all exhibits and a table of contents for the exhibits and a copy of all the exhibits by overnight mail to Sherwin Turk, Esq. and Entergy's

attorneys. (See Exhibit D). Attorneys Turk and O'Neill subsequently acknowledged receipt of the hard copy of said Petition with exhibits. (See Exhibit C & D). "The staff received your delivery on Friday, December 21, 2007 as promised. I did not request anything other than that." (See email of December 28, 2007 from Sherwin Turk in Exhibit E).

9. On December 28, 2008, Petitioner sent its exhibits along with a new table of contents for the exhibits electronically to all parties. (See Exhibit E). The email provided a link to YouSendIt.com that instructed all parties to click on the website and download the exhibits. (See Confirming Documents, an email dated December 28, 2007 and "list of exhibits dec 28[1].jpg" in Exhibit E).
10. The said email of December 28, 2007 expressly notified all parties that additional hard copies of Petitioner's exhibits would be provided upon request. (See Exhibit E). Petitioner received no such requests.
11. Petitioners did not receive any further requests for clarification by any party or the by any office of the NRC until the ASLB Order of February 1, 2008.
12. Petitioners timely filed and served Petition and exhibits with the Office of the Secretary and all other parties, as required by 10 C.F.R. 2.304, and all requested clarifications were made immediately.
13. Petitioner respectfully submits that the Petition and its exhibits of December 10<sup>th</sup>, 11<sup>th</sup>, and subsequent clarifications on 19<sup>th</sup>, 21<sup>st</sup> and 28<sup>th</sup>, and service




thereof have been consistent with the letter and the spirit of the NRC regulations, including but not limited, to the table of contents which appears not to be a regulatory requirement. Petitioners also assert that they have complied with the NRC Regulations and responded to any requests for clarification made by any party.

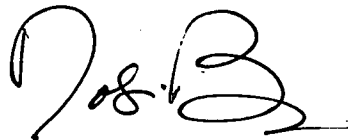
14. Petitioner acknowledges the specific guidelines set forth in the ASLB Order of February 1, 2008.
15. Pursuant to 10 C.F.R. 2.306, if the last day to answer falls on a Sunday, the period runs until the end of the next day. 10 C.F.R. 2.306 Accordingly, since the ASLB Ordered required a response to be served on February 10, 2008, which was a Sunday, Petitioners are filing on Monday, February 11, 2008.

Dated: February 11, 2008

Respectfully submitted,



Susan Shapiro  
Co-counsel for Petitioner WestCAN et. al



NOSHINA BABAR  
Notary Public, State of New York  
No. 01BA5078960  
Qualified in Rockland County  
Commission Expires June 22, 2011