

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

ENERGY NUCLEAR OPERATIONS, INC.;)	
ENERGY NUCLEAR INDIAN POINT 2, LLC;)	Docket Nos. 50-003-LT,
and ENERGY NUCLEAR INDIAN POINT 3, LLC)	50-247-LT, and 50-286-LT
)	
(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3))	February 26, 2008

**MOTION OF ENERGENCY NUCLEAR OPERATIONS, INC. FOR EXPEDITED
APPROVAL OF PROTECTIVE ORDER AND REQUEST FOR EXTENSION
OF TIME TO FILE ANSWER TO WESTCAN ET AL. PETITION TO INTERVENE**

I. INTRODUCTION

Pursuant to 10 CFR §§ 2.307 and 2.323, Entergy Nuclear Operations, Inc. (“ENO” or “Applicant”), acting on its own behalf and as agent for the other above-captioned applicants, requests that the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) issue a Protective Order governing access of the petitioners identified below to certain confidential proprietary information in the captioned proceedings. Specifically, ENO requests that the Commission adopt the attached Protective Order, which includes terms to maintain the confidentiality and non-disclosure of ENO’s proprietary information. (ENO’s proposed Memorandum and Protective Order is provided as Attachment 1.) Because these license transfer proceedings are governed by the Commission’s “fast track” hearing procedures in 10 CFR Part 2, Subpart M, and petitioners already have unnecessarily impeded the expeditious conduct of these proceedings, ENO respectfully requests that the Commission approve the Protective Order on an expedited basis.

As discussed below, counsel for petitioners Westchester Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club-Atlantic Chapter, and New York State Assemblyman Richard Brodsky (collectively, "WestCAN" or "Petitioners") were first provided with a draft of a proposed Confidentiality and Non-Disclosure Agreement on February 12, 2008 – two weeks ago. WestCAN, after some prodding, did not communicate its views on the draft agreement until February 22, 2008, and even then simply rejected the Agreement without explanation. Even after ENO furnished WestCAN with another draft of the agreement – the terms of which have been accepted by another petitioner in related indirect license transfer proceedings – WestCAN flatly refused to enter into an agreement with ENO. Again, WestCAN offered *no specific or tangible objections* to any of the terms of draft agreement provided by ENO. Accordingly, ENO seeks relief from the Commission in the form of the attached Protective Order, Revised Filing Schedule, and conforming extension of time in which to answer WestCAN's intervention petition, including any supplements thereto.

II. BACKGROUND

By letter dated July 30, 2007, and as supplemented on October 31, 2007 and December 5, 2007, ENO, acting on behalf of itself and (i) Entergy Nuclear Generation Company, (ii) Entergy Nuclear Fitzpatrick, LLC, (iii) Entergy Nuclear Vermont Yankee, LLC, (iv) Entergy Nuclear Indian Point 2, (v) Entergy Nuclear Indian Point 3, LLC, and (vi) Entergy Nuclear Palisades, LLC, requested that the Commission consent via order to the indirect transfer of control, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR § 50.80, of the operating licenses for the six above-captioned facilities. The indirect transfer of control would result from certain planned restructuring transactions involving the creation of a new

holding company, creation of new intermediary holding companies and/or changes in the intermediary holding companies for the ownership structure for the corporate entities (*i.e.*, ENO and the other entities listed above) that hold the NRC-issued operating licenses for the facilities. To the extent the application contains information that is proprietary to ENO or other Entergy companies, ENO requested that such information be withheld from public disclosure pursuant to 10 CFR § 2.390.

On January 16, 2008, the NRC published six separate notices in the *Federal Register* regarding ENO's application for Commission approval of the indirect license transfer application (*i.e.*, one for each plant subject to the indirect transfer).¹ In each of those notices, the Commission offered an opportunity to any person, whose interest may be affected by the Commission's action on the proposed transfer, to request a hearing and file a petition for leave to intervene in the indirect transfer proceeding within 20 days from the date of publication of the notices.² The Commission stated that any such petitions should be filed in accordance with the pleading requirements set forth in Subpart C of the NRC's Rules of Practice.

On February 5, 2008, two timely petitions to intervene were filed and served through the NRC's new electronic filing system. One petition was submitted by UWUA Locals.³ Although the UWUA Locals are specifically associated with Pilgrim Nuclear Power Station, they filed identical petitions in each of the six above-captioned dockets.⁴ A second petition was submitted

¹ See 73 Fed. Reg. 2948 (Jan. 16, 2008) (Palisades Nuclear Plant); 73 Fed. Reg. 2950 (Jan. 16, 2008) (James A. Fitzpatrick Nuclear Power Plant); 73 Fed. Reg. 2951 (Jan. 16, 2008) (Pilgrim Nuclear Power Station); 73 Fed. Reg. 2953 (Jan. 16, 2008) (Vermont Yankee Nuclear Power Station); 73 Fed. Reg. 2954 (Jan. 16, 2008) (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3); and 73 Fed. Reg. 2956 (Jan. 16, 2008) (Big Rock Point).

² See, *e.g.*, 73 Fed. Reg. at 2955.

³ See "Petition of Locals 369 and 590, Utility Workers Union of America, AFL-CIO for Leave to Intervene; Request for Initiation of Hearing Procedures, Preliminary Statement of Contentions, Request for Issuance of Protective Order(s) and Related Production of Data" (Feb. 5, 2008).

⁴ As the petition states, 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. Local 590 is a

by WestCAN.⁵ WestCAN filed its petition only on the Indian Point dockets (Docket Nos. 50-003-LT, 50-247-LT, and 50-286-LT).

In their petition, UWUA Locals proffered four proposed contentions. Among other things, UWUA Locals also requested that the Commission issue a Protective Order requiring ENO to disclose confidential information related to the indirect transfer application. UWUA Locals further requested that the Commission grant them the opportunity to review that confidential information and submit new or amended contentions based on that review.

WestCAN also submitted proposed contentions. In doing so, WestCAN likewise indicated a desire to obtain access to the confidential financial information submitted to the NRC as part of Entergy's application, in order to fully present its case. WestCAN, like UWUA Locals, requested the opportunity to submit new or amended contentions based upon its review of the pertinent confidential financial information.

Upon reviewing the intervention petitions and conferring with ENO management, on February 12, 2008, counsel for ENO telephoned counsel of record for WestCAN to discuss a confidentiality and non-disclosure agreement, pursuant to which ENO would produce the relevant confidential commercial information to each petitioner.⁶ Counsel for WestCAN agreed to review a draft Confidentiality and Non-Disclosure Agreement prepared by ENO counsel.

Accordingly, that same day, Mr. Matthews e-mailed a draft agreement to counsel for WestCAN.

60-member local union representing professional engineers working at Pilgrim Nuclear Power Station. UWUA Locals Petition at 6.

⁵ See "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" (Feb. 5, 2008) ("WestCAN Petition").

⁶ During the next two weeks, and through a good faith exchange of drafts, counsel for ENO and UWUA Locals successfully negotiated an agreement, which was fully executed on February 26, 2008.

ENO counsel's subsequent communications with WestCAN counsel are described and documented in the e-mails contained in Attachment 2 to this Motion.

Counsel for ENO e-mailed the draft agreement to Ms. Shapiro and, at Ms. Shapiro's request, to Sarah Wagner, co-counsel for WestCAN, and Mr. Richard Brodsky, one of the named WestCAN petitioners. On February 13, 2008, ENO counsel also provided a copy of the Commission's order in the 2007 Palisades license transfer proceeding, and directed attention to the attached "Model Confidentiality and Nondisclosure Agreement."⁷ Over the next week, further inquiries were made regarding WestCAN's response to the draft agreement, but no comments were forthcoming.

By e-mail dated February 22, 2008, Ms. Wagner indicated that WestCAN was not willing to enter voluntarily into a confidentiality and non-disclosure agreement with Entergy. In her e-mail, Ms. Wagner stated only that "[w]ith the information we currently have, we are not prepared to sign a Confidentiality and Nondisclosure Agreement." Counsel for ENO thus offered *no explanation whatsoever* as to why the draft agreement was not acceptable to her clients.

In response to Ms. Wagner's February 22 e-mail, ENO counsel telephoned Ms. Wagner to inquire about the basis for WestCAN's rejection of the draft Confidentiality and Non-Disclosure Agreement. ENO counsel explained that the draft agreement was based, in principal part, on the model agreement provided by the Commission in the 2007 Palisades license transfer proceeding.

Following that conference call, Mr. Matthews e-mailed Ms. Wagner to memorialize the parties' discussion. Mr. Matthews reiterated in writing the points described above. He also

⁷ *Consumers Energy Co. (Palisades Nuclear Power Plant)*, CLI-07-18, 65 NRC 399, 416, 420-22 (2007).

offered the terms of a revised draft Confidentiality and Non-Disclosure Agreement based upon the same terms that had been accepted by UWUA Locals. ENO counsel explicitly reminded Ms. Wagner that ENO would have no alternative but to seek a Protective Order if WestCAN refused to enter into an appropriate agreement with ENO.

Notwithstanding these diligent efforts by ENO, WestCAN refused to accept the revised draft agreement or provide a counter-proposal. Mr. Matthews contacted Ms. Wagner on February 25, 2008, to ascertain WestCAN's views on the revised draft agreement. Ms. Wagner stated only that WestCAN was unwilling to enter voluntarily into a Confidentiality and Non-Disclosure Agreement with ENO. Although Ms. Wagner stated that WestCAN objected to some of the terms in the draft agreement, she communicated no specific objections – orally or in writing – to ENO counsel. Accordingly, after the call, ENO counsel e-mailed Ms. Wagner, confirming, *inter alia*, that ENO had concluded its extensive efforts to negotiate an appropriate agreement, in satisfaction of 10 CFR § 2.323(b), that the parties were at an impasse, and that ENO would file a motion seeking Commission approval of a Protective Order and revised briefing schedule.

III. DISCUSSION

A. Request and Basis for Commission Issuance of a Protective Order

In view of the foregoing, ENO hereby requests that the Commission issue a Protective Order consistent with the terms of the draft Protective Order attached to this Motion. *See* Attachment 1. As noted above, the draft Protective Order is based upon the Commission's own "Model Confidentiality and Nondisclosure Agreement" and contains terms essentially the same as those accepted by UWUA Locals. The Protective Order would govern any possession and use by WestCAN of the Confidential Proprietary Information contained in ENO's indirect license

transfer application relating to NewCo and Indian Point Nuclear Generating Units 1, 2, and 3. As such, any designated representative of WestCAN to whom access to the said Confidential Proprietary Information would be required to sign a written acknowledgement that he or she is bound by the terms of the Protective Order.

Under the circumstances, the Commission's issuance of an appropriate Protective Order is plainly warranted. Since the very inception of its Subpart M rules – which are intended to provide a “streamlined hearing process [for] faster decision-making without loss of quality”⁸ – the Commission has encouraged applicants and petitioners to negotiate appropriate confidentiality and nondisclosure agreements.⁹ As set forth above, ENO made diligent, good faith, and eminently reasonable efforts to negotiate such an agreement with WestCAN. WestCAN has intransigently refused to enter into an appropriate agreement with ENO, and has failed to offer any concrete and specific objections to the draft Confidentiality and Non-Disclosure Agreements tendered by ENO. Thus, contrary to the Commission's expectations, ENO is unable to explain with greater “specificity” the basis for WestCAN's rejection of the draft agreements.¹⁰ Accordingly, the Commission should issue a Protective Order with terms identical or substantially similar to the one attached to this Motion. WestCAN was provided ample opportunity to voice any specific objections thereto.

⁸ Final Rule, “Streamlined Hearing Process for NRC Approval of License Transfers,” 63 Fed. Reg. 66,721, 66,723 (Dec. 3, 1998) (internal quotation marks omitted); *see also id.* at 66,722 (stating that the Subpart M procedures “are designed provide for public participation . . . while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases”).

⁹ *See, e.g., Power Auth. of the State of New York* (James A. Fitzpatrick Nuclear Power Plant; Indian Point Unit 3, CLI-00-22, 52 NRC 266, 292 (2000) (including cases cited in footnote 13); *see also Consolidated Edison Co.* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 230-31 (2001); *Palisades*, CLI-07-18, 65 NRC at 415-16. Towards that end, the Commission appended the aforementioned Model Confidentiality and Nondisclosure to its recent adjudicatory order in the 2007 Palisades license transfer proceeding. *Id.* at 420-22.

¹⁰ *See, e.g., Palisades*, CLI-07-18, 65 NRC at 416 (stating that if applicants and petitioners could not agree on the terms of a confidentiality and nondisclosure agreement, and such disagreement creates the need for a motion, such motion “must explain with specificity the objections to any terms” of the draft agreement).

B. Request and Basis for Revised Briefing Schedule

Notwithstanding their refusal to negotiate a confidentiality and non-disclosure agreement, WestCAN asserts in its Petition that “lack of access to the financial information” supporting Entergy’s application “precludes [WestCAN] from fully presenting its arguments.”¹¹ WestCAN adds that its “ability to present their substance [sic] case at a hearing is severally [sic] hindered.”¹² In view of these statements, ENO can only assume that WestCAN ultimately will seek to obtain access to Confidential Proprietary Information that ENO would have provided to WestCAN today – but for WestCAN’s unqualified refusal to negotiate an agreement.

Accordingly, to the extent WestCAN seeks access to such information pursuant an NRC-issued Protective Order, ENO asks that the Commission require WestCAN to submit any amended or new contentions based on that information within 20 days of the date of this Motion (*i.e.*, on or before March 17, 2008). ENO believes that this is a reasonable request given that WestCAN could have obtained a copy of the pertinent Confidential Proprietary Information *today* if not for its own recalcitrance. ENO would file its answer to WestCAN’s February 5, 2008, petition and any supplement thereto within 20 days of the service of any such supplemental petition (or, if WestCAN does not file a supplement, within 20 days after the date such a supplement is due to be filed).¹³ Under 10 CFR § 2.309(h)(2), WestCAN would have seven days to file their reply to ENO’s answer.

¹¹ WestCAN Petition at 10.

¹² *Id.*

¹³ ENO, in other words, would defer filing its answers to the February 5, 2008, intervention petitions until the petitioners have filed any new or amended contentions based on their review of the Confidential Proprietary Information. The 20-day timeframes for the filing of petitioners’ supplemental contentions and ENO’s responses thereto are generally consistent with NRC regulations and the filing periods allotted by the Commission in other license transfer proceedings involving analogous circumstances. *See* 10 CFR 2.309(b)(1), (h)(1); *see also Indian Point*, CLI-01-8, 53 NRC at 230-31; *Palisades*, CLI-07-18, 65 NRC at 416.

In the alternative, if the foregoing filing schedule is not acceptable to the Commission, ENO requests that the Commission adopt the following schedule:

- Within 3 days of the Commission's issuance of a Protective Order: WestCAN identifies any designated representatives seeking access to the Confidential Proprietary Information and provides signed acknowledgments by those representatives that they are bound by the terms of the Protective Order.
- Within 2 days of receiving WestCAN's signed acknowledgments: ENO provides, via overnight delivery, one protected paper copy of the Confidential Proprietary Information to counsel for WestCAN.
- Within 15 days of receiving a protected paper Copy of the Confidential Proprietary Information: WestCAN files any amended or new proposed contentions based on its review, and pertaining specifically to, the Confidential Proprietary Information.
- Within 20 days of WestCAN's service of any supplemental contentions: ENO files its answer to the WestCAN Petition, including any supplement thereto.
- Within 7 days of the service of ENO answer to WestCAN's Petition and any supplement thereto: WestCAN files its reply pursuant to 10 CFR § 2.309(h)(2).

In the event that WestCAN does not provide signed acknowledgments within three days of the Commission issuance of a Protective Order, then ENO will submit its response to the WestCAN Petition within 20 days after the date such signed acknowledgments are due to be filed.

C. Request and Basis for Conforming Extension of Time

Because 10 CFR § 2.309(h)(1) requires ENO to file its answers within 25 days after service of the WestCAN Petition, which was served on ENO on February 5, 2008, ENO seeks a conforming extension of time in which file its answer to the WestCAN Petition, including any supplement thereto. Good cause for such an extension clearly exists.¹⁴ The revised filing schedule sought by ENO would promote administrative ease and economy, simplify the proceeding, and ultimately expedite the conduct of the proceeding. Specifically, the requested actions would avoid the potential delay and duplication of effort that might otherwise result from

¹⁴ See 10 CFR § 2.307(a).

ENO's need to respond separately to (i) the February 5, 2008, WestCAN Petition, and (ii) any supplements to the Petition.¹⁵ Moreover, as explained above, ENO made diligent and reasonable efforts to negotiate an appropriate confidentiality and non-disclosure agreement with WestCAN similar to the one executed by ENO and UWUA Locals.¹⁶ Because such an agreement would have avoided the need for a Protective Order, any associated delay is attributable to the actions of WestCAN, not ENO.

In short, the actions requested herein are consistent with “the Commission’s oft-expressed desire to complete proceedings expeditiously,”¹⁷ especially license transfer proceedings, “where transactions frequently are time-sensitive.”¹⁸ The Commission has broad discretion to take measures that promote expeditious decision making.¹⁹ Indeed, such actions are explicitly authorized by NRC regulations. Section 2.319, for example, directs the Presiding Officer (here the Commission) to “avoid delay and to maintain order.” Section 2.307, in turn, authorizes the Commission to extend time limits for good cause shown or by stipulation

¹⁵ In a prior license transfer proceeding, the Commission noted that “where critical information has been submitted to the NRC under a claim of confidentiality and was not available to [p]etitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this [confidential] information and submit a properly documented issue” *Fitzpatrick*, CLI-00-22, 52 NRC at 300 n.23. This logic applies with equal force to an applicant’s response to proposed contentions; *i.e.*, it is appropriate for ENO to defer responding to proposed contentions that may be modified or supplemented based on petitioners’ review of relevant confidential financial information.

¹⁶ In view of ENO’s and UWUA Locals’ voluntary execution of Confidentiality and Non-Disclosure Agreement, Entergy has concurrently filed a separate motion that similarly seeks a revised briefing schedule and extension of time with respect to the UWUA Locals’ Petition and ENO’s answer thereto.

¹⁷ *Molycorp, Inc.* (Washington, Pennsylvania), LBP-00-10, 51 NRC 163, 172 (2000), citing *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 24 (1998); *see also* Final Rule, “Changes to Adjudicatory Process,” 69 Fed. Reg. 2182 (Jan. 14, 2004) (stating the Commission’s goal “to make the NRC’s hearing process more effective and efficient”).

¹⁸ *Indian Point*, CLI-01-8, 53 NRC at 229; *see also* 63 Fed. Reg. at 66,722 (Dec. 3, 1998) (stating that the Subpart M procedures “are designed provide for public participation . . . while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases”).

¹⁹ *See, e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1) CLI-88-9, 28 NRC 567, 569-70 (citing the Commission’s “inherent supervisory authority” to establish “expedited procedures” for the conduct of the proceeding).

approved by the Commission.²⁰ Thus, the procedural relief sought by this Motion is both warranted and well within the Commission's authority.

Given that ENO's answer to the UWUA Locals Petition is presently due on Monday, March 3, 2008, ENO respectfully requests that the Commission rule on this Motion on an expedited basis. While ENO regrets any inconvenience that this may cause the Commission, the timing of this Motion was unavoidable. Not only did WestCAN ultimately refuse to negotiate a confidentiality and non-disclosure agreement with ENO, it failed to convey that position to ENO in a timely manner.

IV. CONCLUSION

For the reasons stated, the Commission should, on an expedited basis, issue the requested Protective Order, approve the filing schedule set forth above, and grant ENO's associated request for a conforming extension of time in which ENO may file its answers to the February 5, 2008, WestCAN Petition, including any supplement to that Petition that may be based on ENO Confidential Proprietary Information.

²⁰ The extension sought here by ENO will, in fact, streamline the process by avoiding the need for piecemeal ENO responses to WestCAN's proposed contentions and potential supplements thereto that are based on the Confidential Proprietary Information.

V. CERTIFICATION

Pursuant to 10 CFR § 2.323(b), and as documented in Attachment 2, counsel for ENO certifies that he discussed the instant motion with Sarah Wagner, counsel of record for Sarah Wagner, on February 22 and 25, 2008 by telephone and e-mail, and that WestCAN refused to take any action that would resolve the issues addressed in this Motion and for which ENO seeks Commission relief. Counsel for ENO also certifies that he contacted Susan L. Uttal of the NRC's Office of General Counsel, who informed him that the NRC Staff is not participating as a party in this proceeding.

Respectfully submitted,

Signed (electronically) by

/s/ John E. Matthews

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COUNSEL FOR
ENTERGY NUCLEAR OPERATIONS, INC.

Dated in Washington, D.C.
this 26th day of February 2008

ATTACHMENT 1

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

ENTERGY NUCLEAR OPERATIONS, INC.;)	
ENTERGY NUCLEAR INDIAN POINT 2, LLC;)	Docket Nos. 50-003-LT,
and ENTERGY NUCLEAR INDIAN POINT 3, LLC)	50-247-LT, and 50-286-LT
(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3))	
)	

**MEMORANDUM AND ORDER
(Protective Order)**

I. BACKGROUND

On July 30, 2007, Entergy Nuclear Operations, Inc., acting on behalf of itself and Entergy Nuclear Generation Company, as well as other entities (together, Entergy), submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for the indirect transfer of control of the NRC licenses referenced therein. Supplemental information was submitted on October 31, 2007, December 5, 2007, and January 24, 2008. The December 5, 2007 submittal included the submission of updated financial projections containing proprietary trade secrets and commercial and financial information deemed by Entergy to be Confidential Proprietary Information pursuant to 10 CFR § 2.390. On January 16, 2008, the NRC published notices of consideration regarding Entergy’s application in the Federal Register.

II. TERMS OF PROTECTIVE ORDER

1. This Protective Order applies to and governs Entergy and joint petitioners Westchester Citizen’s Awareness Network (“WestCAN”), Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club-Atlantic Chapter, and New York State Assemblyman Richard Brodsky (collectively, “WestCAN” or “Petitioner”), including Petitioner’s representatives, as described in Paragraph 3 below, with respect to the provision, receipt, possession, use, return and destruction of Confidential Proprietary Information contained in Entergy’s application and produced to Petitioner.

2. Within two business days of receipt of an executed copy of the “Acknowledgment by Representative” (“Acknowledgment”) of this Protective Order, Entergy will provide to Petitioner by overnight mail one protected paper copy of the Confidential Proprietary Information contained in Entergy’s Application relating to the Indian Point Nuclear Generating Units 1, 2 and 3. Such information will include the balance sheet and income statement projections for Indian Point Nuclear Generating Unit 2 (which includes Unit 1) and Indian Point Nuclear Generating Unit 3, including “sensitivity” analyses, and the projections for NewCo, which is to provide a financial Support Agreement for the benefit of Indian Point. Each page of the paper copy provided by Entergy to Petitioner will be prominently marked: “**Confidential**”

Proprietary Information.” Entergy will provide the paper copy in a sealed envelope bearing prominent markings indicating the envelope contains “**Confidential Proprietary Information Subject to NRC Protective Order.**” Any storage medium used for an electronic file will be marked in the same manner.

3. Petitioner shall limit the possession and use of Confidential Proprietary Information provided by Entergy to Petitioner’s representatives. For purposes of this Protective Order, Petitioner’s representatives shall be limited to: (a) counsel to Petitioner; (b) [name or position of individual]; and (c) one or more individuals employed or retained by Petitioner as a testifying or non-testifying expert witness in any proceeding before the NRC regarding the proposed indirect transfer of control (“The NRC Proceeding”), and then only on a “need-to-know” basis to the minimum extent necessary for the effective performance by that designee or representative of his or her duties in connection with the resolution of issues related to The NRC Proceeding. Before disclosing or transmitting Confidential Proprietary Information to its representatives, Petitioner shall ensure that each representative has read and executed an Acknowledgement of this Protective Order. By signing the Acknowledgement of this Protective Order, Petitioner’s representatives acknowledge and agree that they shall be bound by the terms of the Protective Order. Petitioner shall send a copy of any Acknowledgment of the Protective Order to Entergy within three (3) days of the date of execution. Petitioner shall be responsible for ensuring that persons under its supervision or control comply with this Protective Order.

4. Petitioner shall use the Confidential Proprietary Information provided by Entergy only for the preparation of written submissions and testimony in The NRC Proceeding, as well as appeals.

5. Petitioner shall not use Confidential Proprietary Information provided to Petitioner by Entergy, except as permitted by Paragraph 4, and in accordance with all the other terms of this Protective Order. Petitioner also shall treat any paper copy or electronic file created by Petitioner or its representatives that contains Confidential Proprietary Information or information derived therefrom, including notes and drafts, the paper copy or electronic file as constituting Confidential Proprietary Information.

6. Petitioner shall treat the Confidential Proprietary Information provided to it by Entergy as confidential, and take all reasonable and practical steps necessary to protect the confidentiality of the Confidential Proprietary Information and to prevent its dissemination beyond those expressly authorized and who have executed the Acknowledgment of this Protective Order. Petitioner shall store the Confidential Proprietary Information in a secure fashion. Any Confidential Proprietary Information filed by Petitioner with the NRC will be filed and served in a sealed envelope bearing prominent markings indicating the envelope contains “**Confidential Proprietary Information Subject to NRC Protective Order.**” Each page of each paper copy or electronic file containing Confidential Proprietary Information filed by Petitioner (as well the storage medium used for any electronic file) will be prominently marked: “**Confidential Proprietary Information Subject to NRC Protective Order.**” Petitioner shall take appropriate steps to ensure that any electronic submission of files containing Confidential Proprietary Information is transmitted only to persons and entities authorized to receive the Confidential Proprietary Information. Petitioner shall delete and overwrite any file containing Confidential Proprietary Information before discarding or reusing any diskettes or other media on which such files are stored.

7. Petitioner and its agents and representatives (including the persons described in Paragraph 3 above) shall not copy or reproduce the documents and electronic files containing Confidential Proprietary Information provided to it by the Applicant except as permitted by, and in accordance with the requirements set forth in, this Protective Order

8. At any hearing or conference in this proceeding in which a statement is made by the representative of a party, or a witness is questioned, concerning Confidential Proprietary Information or information contained therein, or a document containing Confidential Proprietary Information is introduced, the statement, testimony or document shall be given in camera or under other suitable conditions as may be established, and the record of that portion of the hearing and any transcript thereof, including the document itself if it is entered into evidence, shall be withheld from distribution to the public. It shall be the duty of the Petitioner whose statement, testimony or document contains the Confidential Proprietary Information to be presented, to notify the NRC and other Petitioners that such testimony, statement or document will contain Confidential Proprietary Information, prior to the testimony or statement being made or the introduction of the document.

9. If Petitioner is required to disclose any part of the Confidential Proprietary Information in any legal or regulatory proceeding other than The NRC Proceeding, then prior to such disclosure Petitioner shall advise Entergy in a timely fashion so that Entergy can either consent to the disclosure or obtain a protective order from the relevant tribunal. In any event, Petitioner shall use all reasonable and available efforts to protect the confidential nature of the Confidential Proprietary Information provided to Petitioner by Entergy.

10. Within ten (10) days after the date on which an NRC decision or order terminating this proceeding becomes no longer subject to judicial review, Petitioner shall: (i) return to Entergy the paper copy of the Confidential Proprietary Information provided by Entergy to Petitioner pursuant to this Protective Order; (ii) destroy any other documents in its possession containing such Confidential Proprietary Information; and (iii) delete and overwrite any file containing Confidential Proprietary Information on any diskettes or other media on which such files are stored. Within such time period, Petitioner shall submit to Entergy an affidavit stating that, to the best of its knowledge, all Confidential Proprietary Information has been returned or destroyed.

11. This Protective Order is effective immediately.

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this __th day of February 2008

ACKNOWLEDGEMENT BY REPRESENTATIVE OF PETITIONER:

I, the undersigned representative of Petitioner, have read the foregoing Protective Order, acknowledge such Protective Order, and agree to be bound by its terms.

Petitioner's Representative

Printed Name & Title/Company

Date

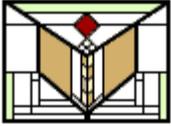
Executed copy of this page to be forwarded to:

Counsel for Entergy Nuclear Operations, Inc.

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ATTACHMENT 2



John E.
Matthews/WA/MLBLaw
02/25/2008 04:38 PM

To "Sarah Wagner" <sarahwagneresq@gmail.com>
cc Martin O'Neill/WA/MLBLaw@MorganLewis,
"Palisadesart@aol.com" <Palisadesart@aol.com>, "Richard
Brodsky" <richardbrodsky@msn.com>
bcc

Subject Re: Draft Confidentiality and Nondisclosure Agreement 

Dear Ms. Wagner,

In our telephone discussion today, you indicated that after consulting with your colleagues you have concluded that WestCAN et al is not willing to voluntarily enter into a Confidentiality and Nondisclosure Agreement with Entergy in order to obtain access to proprietary financial information relating to the indirect transfer of control of the Indian Point units. You also indicated that WestCAN et al objects to some of the terms in the draft agreement, but no specific objections have been communicated to us. Thus, even though we have been discussing a draft confidentiality agreement since we provided a draft to WestCAN et al. on February 12, 2008, the parties are unable to agree to the terms of an agreement.

Last week, we communicated our desire to establish a revised schedule for pleadings in the Indian Point license transfer proceeding in order to provide WestCAN et al with an opportunity to formulate a revised or amended contention based upon the proprietary information. We suggested that WestCAN et al have 20 days to do so, based upon having access to the information upon execution of a confidentiality agreement today or tomorrow, and that Entergy thereafter have 20 days to submit an Answer to WestCAN et al's February 5, 2008 petition and any revised or amended petition. You indicated that this was agreeable, except that WestCAN et al would like 30 days for its submittal. Again, the parties are unable to agree.

This confirms that we have attempted to negotiate an appropriate confidentiality agreement and a revised schedule in accordance with 10 CFR 2.323(b), but the parties are at an impasse. Therefore, we will file a Motion with the Commission requesting that the Commission issue a Protective Order consistent with the terms of the attached agreement and requiring that any individual to whom access to proprietary information is provided both acknowledge and agree to these terms.

John E. Matthews

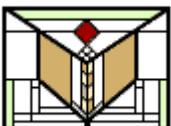
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John E. Matthews/WA/MLBLaw



John E.
Matthews/WA/MLBLaw
02/22/2008 06:31 PM

To "Sarah Wagner" <sarahwagneresq@gmail.com>
cc "martin.o'neill@morganlewis.com"
<martin.o'neill@morganlewis.com>, "Palisadesart@aol.com"
<Palisadesart@aol.com>, "Richard Brodsky"
<richardbrodsky@msn.com>
Subject Re: Draft Confidentiality and Nondisclosure Agreement 



Dear Ms. Wagner,

As we discussed earlier today, the NRC expects that we agree to a Confidentiality and Nondisclosure Agreement to govern the terms of West CAN et al's access to Entergy's proprietary information. If we cannot agree to terms, the NRC will resolve any disagreements, but the Commission does expect that we will attempt narrow the issue/terms in dispute so that it can focus on a limited number of issues to resolve. Our proposed agreement is consistent with the model agreement issued by NRC in the Palisades decision (attached), which we have previously provided to you. So, there really should be no genuine reason for any dispute.

We have reached agreement with Locals 369 and 590, which have intervened in the license transfer proceeding for Pilgrim. We expect to execute an agreement with Locals 369 and 590 on Monday, and we will provide them immediately with access to the proprietary information relevant to Pilgrim. We are prepared to offer WestCAN et al. the same terms that we agreed to with Locals 369 and 590, and I am attaching a revised draft agreement that is consistent with the terms to which Locals 369 and 590 have agreed.

On Monday or Tuesday of next week, we plan to make a filing with NRC submitting the executed agreement with Locals 369 and 590, along with a Motion requesting a revised schedule. Locals 369 and 590 have agreed that they will have 20 days to submit a revised or supplemental contention, and then we will file an Answer to their pending petition and revised submittal 20 days after that. This is the same schedule that we discussed with you by telephone today.

If we are unable to conclude an agreement with WestCAN et al., we will submit the attached, and we will ask that the Commission approve the agreement and immediately start the 20 day period for WestCAN et al. to submit its revised or supplemental contention based upon the proprietary information, without regard to whether or not WestCAN et al. obtains access to the proprietary information. It then will be up to WestCAN et al. to execute the required agreement in order to gain access to the information, and if it refuses to do so, its opportunity for submitting a revised contention should expire.

As we have discussed, the NRC's rules for license transfer proceedings in 10 CFR Part 2, Subpart M, were specifically adopted to provide for a "fast track" expedited proceeding. This is because license transfers involve a narrow set of well-defined issues and often involve plans for commercial transactions that require prompt action by the NRC. As demonstrated by our parallel negotiations with Locals 369 and 590, there has already been more than enough time to agree to the appropriate terms of a Confidentiality and Nondisclosure Agreement. Moreover, the original 20 day period established for submitting contentions expired on February 5, 2008. If WestCAN et al. had requested access to the proprietary information for purposes of filing its February 5 Petition, we were prepared to enter into an appropriate agreement and provide the information. (Our original draft of the agreement was prepared and ready to send out to any intervenor requesting access in mid-January.) At this late date, the NRC proceedings need to move forward.



02-22-2008 Confidentiality and Non-disclosure Agreement (WestCAN).pdf 2007-18cli (Palisades).pdf

Regards,

John E. Matthews

John E. Matthews

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"Sarah Wagner" <sarahwagneresq@gmail.com>



"Sarah Wagner"
<sarahwagneresq@gmail.com>
<m>

02/22/2008 01:08 PM

To "martin.o'neill@morganlewis.com"
<martin.o'neill@morganlewis.com>,
jmatthews@morganlewis.com
cc "Palisadesart@aol.com" <Palisadesart@aol.com>, "Richard
Brodsky" <richardbrodsky@msn.com>
Subject Re: Draft Confidentiality and Nondisclosure Agreement

Dear Mr. O'Neill:

As promised, this email is in response to your requests for Petitioners WestCAN et al to sign a Confidentiality and Nondisclosure Agreement. With the information we currently have, we are not prepared to sign a Confidentiality and Nondisclosure Agreement.

Sincerely,
Sarah L. Wagner

On 2/21/08, martin.o'neill@morganlewis.com <martin.o'neill@morganlewis.com> wrote:

Dear Ms. Wagner:

This is a follow-up to our telephone conversation of yesterday, during which I inquired about the status of WestCAN et al.'s review of the draft Confidentiality and Nondisclosure Agreement my colleague John Matthews provided to you on February 12, 2008. You indicated that you should be able to provide us with your views on the proposed agreement by the end of this week. I'd like to confirm that you still plan to do so by tomorrow. Absent WestCAN's entry into an appropriate agreement, we would proceed to seek a Commission protective order with comparable terms. An update on the status of your review would be much appreciated.

Thank you for your willingness to help expedite the proceeding in this regard.

Regards,

Marty O'Neill

Martin J. O'Neill
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