

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

In the Matter of	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-255-LT
and ENTERGY NUCLEAR PALISADES, LLC	)	and 72-7-LT
(Palisades Nuclear Plant)	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-333-LT
and ENTERGY NUCLEAR FITZPATRICK, LLC	)	and 72-12-LT
(James A. Fitzpatrick Nuclear Power Plant)	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-293-LT
and ENTERGY NUCLEAR GENERATION COMPANY	)	
(Pilgrim Nuclear Power Station)	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket No. 50-271-LT
and ENTERGY NUCLEAR VERMONT YANKEE, LLC	)	
(Vermont Yankee Nuclear Power Station)	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.;	)	Docket Nos. 50-003-LT,
ENTERGY NUCLEAR INDIAN POINT 2, LLC; and	)	50-247-LT, and 50-286-LT
ENTERGY NUCLEAR INDIAN POINT 3, LLC	)	
(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-155-LT
and ENTERGY NUCLEAR PALISADES, LLC	)	and 72-43-LT
(Big Rock Point)	)	
	)	February 26, 2008

**CONSENT MOTION OF ENTERGY NUCLEAR OPERATIONS, INC. FOR  
EXPEDITED COMMISSION APPROVAL OF REVISED FILING SCHEDULE AND  
APPLICANT’S CONFORMING REQUEST FOR EXTENSION  
OF TIME TO FILE ANSWER TO UWUA LOCALS 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,

seeks expedited Commission approval of the Revised Filing Schedule set forth herein. As discussed below, Locals 369 and 590, Utility Workers Union of America, AFL-CIO (“UWUA Locals”), among other organizations, have petitioned to intervene in this indirect license transfer proceeding via a petition dated February 5, 2008. In their petition, UWUA Locals submitted preliminary proposed contentions. UWUA Locals, moreover, requested the opportunity to review certain non-public financial information submitted by ENO in support of the indirect transfer application, and to file new or amended contentions based on that information.

As discussed below, ENO is providing the requested proprietary information to UWUA Locals on February 27, 2008, pursuant to a Confidentiality and Non-Disclosure Agreement negotiated and agreed by appropriate representatives of ENO and UWUA Locals. A copy of the agreement is provided as Attachment 1.<sup>1</sup> Accordingly, Entergy respectfully requests that the Commission approve the Revised Filing Schedule for the reasons set forth below. In short, it is authorized by the Commission’s Rules of Practice and consistent with Commission license transfer precedent. Furthermore, UWUA Locals entered into a Confidentiality and Non-Disclosure Agreement with ENO and concur in the Revised Filing Schedule. Finally, there is good cause to allow UWUA Locals to have an opportunity to submit new or amended contentions based upon their review of the confidential financial information and for Entergy to file its answer.

## **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

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<sup>1</sup> Mr. Scott H. Strauss, Counsel for UWUA, has authorized the undersigned to represent that he will execute this agreement later today. Therefore, a conformed copy is provided.

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).<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>2</sup> 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).

<sup>3</sup> See, e.g., 73 Fed. Reg. at 2952.

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.<sup>4</sup> Although the UWUA Locals are specifically associated with Pilgrim Nuclear Power Station, they filed identical petitions in each of the six above-captioned dockets.<sup>5</sup> A second petition was submitted by a group of joint petitioners comprising Westchester Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association, Promoting Health and Sustainable Energy, Sierra Club – North East Chapter, and Richard Brodsky (collectively, "WestCAN").<sup>6</sup> 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(s) 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 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,

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<sup>4</sup> 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) ("UWUA Locals Petition").

<sup>5</sup> 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 60-member local union representing professional engineers working at Pilgrim Nuclear Power Station. UWUA Locals Petition at 6.

<sup>6</sup> 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").

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 UWUA Locals to discuss a confidentiality and non-disclosure agreement, pursuant to which ENO would produce the relevant confidential commercial information to UWUA Locals. On the call were John Matthews and Martin O'Neill, counsel for ENO, and Scott Strauss, counsel for UWUA Locals. During the call, counsel for UWUA Locals 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 UWUA Locals. In his e-mail to Mr. Strauss, Mr. Matthews explained that the draft Agreement would "govern the production of the proprietary financial projections for 'Pilgrim' and 'NewCo,' including the two 10% 'sensitivity' analyses for each."<sup>7</sup>

On February 21, 2008, Mr. Strauss e-mailed Mr. Matthews, providing UWUA Locals views regarding the draft Confidentiality and Non-Disclosure Agreement prepared by ENO. After further discussions, ENO and UWUA Locals were able to reach agreement on the terms of a Confidentiality and Non-Disclosure Agreement. Counsel for ENO and UWUA Locals have

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<sup>7</sup> Counsel for ENO similarly contacted counsel for WestCAN, specifically Ms. Susan Shapiro, who also agreed to review a draft confidentiality and non-disclosure agreement prepared by ENO counsel. At Ms. Shapiro's request, Mr. Matthews e-mailed a draft agreement to Ms. Shapiro, as well as Sarah Wagner, co-counsel for WestCAN, and Mr. Richard Brodsky, one of the named WestCAN petitioners. By e-mail dated February 22, 2008, and again by telephone on February 25, 2008, co-counsel for WestCAN, Ms. Wagner, indicated that WestCAN was not willing to enter voluntarily into a confidentiality and non-disclosure agreement with Entergy to obtain access to the proprietary financial information relating to the indirect transfer of control of the Indian Point operating licenses. Ms. Wagner stated that WestCAN objected to some of the terms in the draft agreement, but communicated no specific objections – orally or in writing – to ENO counsel. Accordingly, ENO has concurrently filed a separate motion requesting that the Commission issue a Protective Order that would govern the disclosure and use of any confidential proprietary information relating to the indirect transfer application, should WestCAN still wish to obtain access to such information.

agreed to complete execution of that Agreement today, pursuant to which ENO will furnish one protected paper copy of the Confidential Proprietary Information described in paragraph 2 of the Agreement. A conformed copy of the Agreement is provided as Attachment 1.<sup>8</sup>

Counsel for ENO and UWUA Locals also agreed to a Revised Filing Schedule to accommodate any supplemental UWUA Locals contentions based on the Confidential Proprietary Information. Specifically, UWUA Locals would file any supplemental proposed contentions based on that information within 20 days of receiving that information (*i.e.*, 20 days from tomorrow's date). ENO would file its answer to UWUA Locals' February 5, 2008, Petition and any supplement thereto within 20 days of UWUA Locals' service of any such supplemental petition (or, if UWUA Locals do not file a supplement, within 20 days after the date such a supplement is due to be filed).<sup>9</sup> Under 10 CFR § 2.309(h)(2), UWUA Locals would have seven days to file their reply.

### **III. DISCUSSION**

Based on the foregoing, ENO, with the consent of UWUA Locals, requests that the Commission approve, by expedited order, the following Revised Filing Schedule:

March 18, 2008: UWUA Locals file any new and/or amended contentions based on the Confidential Proprietary Information provided to petitioners under the attached Confidentiality and Non-Disclosure Agreement with ENO.

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<sup>8</sup> ENO notes that its decision to enter into a Confidentiality and Non-Disclosure Agreement with UWUA Locals should not be construed as a concession by ENO that UWUA Locals have standing to intervene in any of the above-captioned matters. ENO has not waived any arguments opposing the standing of UWUA Locals to intervene in any of the six proceedings and expressly reserves the right to present those arguments in its answer to the UWUA Locals Petition.

<sup>9</sup> 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 Consolidated Edison Co.* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 230-31 (2001); *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 416 (2007).

April 8, 2008: ENO files its answer to the UWUA Locals Petition, including any supplement thereto submitted by petitioners on or before March 18, 2008, based on the Confidential Proprietary Information.

April 15, 2008: UWUA Locals, in accordance with 10 CFR § 2.309(h)(2), file their reply to ENO's answer to UWUA Locals Petition and any supplement thereto.

Because 10 CFR § 2.309(h)(1) requires ENO to file its answer within 25 days after service of the UWUA Locals Petition, which was served on ENO on February 5, 2008, the above schedule provides an extension of ENO's time to file an answer.

Respectfully, the Commission should approve the Revised Filing Schedule and associated ENO request for an extension of time. The requested actions 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 ENO's need to respond separately to (i) the February 5, 2008, UWUA Locals Petition, and (ii) any supplements to the Petition.<sup>10</sup> Also, by voluntarily entering into a Confidentiality and Non-Disclosure Agreement, ENO and UWUA Locals have lessened the NRC's adjudicatory burden by averting the need for Commission issuance of a Protective Order.<sup>11</sup> (By contrast, as noted above, WestCAN's refusal to enter into

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<sup>10</sup> 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" *Power Auth. of the State of New York* (James A. Fitzpatrick Nuclear Power Plant; Indian Point Unit 3, CLI-00-22, 52 NRC 266, 300 n.23 (2000)). 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.

<sup>11</sup> Such agreements present an acceptable vehicle for affording petitioners access to the non-public portions of a license transfer application. The Commission previously has directed applicants in license transfer proceedings to provide the petitioners access to redacted portions of the application pursuant to confidentiality and nondisclosure agreements or Protective Orders. *See, e.g., Fitzpatrick*, CLI-00-22, 52 NRC at 292; *Indian Point*, 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 a recent adjudicatory order in the 2007 Palisades license transfer proceeding. *Id.* at 420-22.

an agreement essentially identical to the one accepted by UWUA Locals has compelled ENO to file a motion for a Protective Order that will require additional review and action by the Commission). These same considerations provide good cause for ENO's related request for an extension of time in which to file its answer to the WestCAN Petition.<sup>12</sup>

In short, the actions requested herein are consistent with "the Commission's oft-expressed desire to complete proceedings expeditiously,"<sup>13</sup> especially license transfer proceedings, "where transactions frequently are time-sensitive."<sup>14</sup> The Commission has broad discretion to take measures that promote expeditious decision making.<sup>15</sup> 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 approved by the Commission.<sup>16</sup> 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

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<sup>12</sup> See 10 CFR 2.307(a).

<sup>13</sup> *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").

<sup>14</sup> *Indian Point*, CLI-01-8, 53 NRC at 229; see also Final Rule, "Streamlined Hearing Process for NRC Approval of License Transfers," 63 Fed. Reg. 66,721, 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").

<sup>15</sup> 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).

<sup>16</sup> The extension sought here by ENO will, in fact, streamline the process by avoiding the need for piecemeal ENO responses to UWUA Locals' proposed contentions and potential supplements thereto that are based on the Confidential Proprietary Information.



timing of this Motion was unavoidable. The execution of a Confidentiality and Non-Disclosure Agreement by ENO and UWUA Locals required careful review of a preliminary draft agreement by UWUA Locals and negotiations between the parties. The result of those efforts, however, will be a more efficient hearing process that warrants prompt Commission action here.

#### **IV. REQUEST TO FILE FUTURE PLEADINGS ON A SINGLE DOCKET**

As noted above, ENO's application for an indirect transfer of control encompasses six separate facilities and their associated dockets. Even with the NRC's new electronic filing system, filing pleadings on all six dockets is cumbersome. Accordingly, counsel for ENO and UWUA Locals have agreed that, while they will continue to include all six facilities in the captions of future pleadings and such pleadings will be deemed to be filed on all six dockets, such pleadings will be filed only on the Pilgrim Nuclear Power Station docket in the Electronic Information Exchange. Accordingly, to reduce administrative burden, ENO, with the consent of UWUA Locals, seeks express Commission approval of this modified filing approach.

#### **V. CONCLUSION**

For the reasons stated, the Commission should approve, on an expedited basis, the mutually agreed filing schedule set forth above to allow UWUA Locals to have an opportunity to submit new or amended contentions based upon their review of the confidential financial information and to provide an extension of the time in which ENO may file its answers to the February 5, 2008, UWUA Locals Petition and any supplement to that Petition.

## **VI. CERTIFICATION**

Pursuant to 10 CFR § 2.323(b), counsel for ENO certifies that he discussed the instant motion with Scott H. Strauss, counsel of record for UWUA Locals, on February 22, 25, and 26, 2008, by telephone and exchange of e-mail, and that UWUA Locals do not oppose the relief sought herein. 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

John E. Matthews, Esq.  
Martin J. O'Neill, Esq.  
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COUNSEL FOR  
ENTERGY NUCLEAR OPERATIONS, INC.

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

## **ATTACHMENT 1**

# CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

## I. INTRODUCTION

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 AGREEMENT

1. This Confidentiality and Non-Disclosure Agreement (Agreement) applies to and governs Entergy and Petitioner, Locals 369 and 590, Utility Workers Union of America, AFL-CIO ("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. Entergy agrees to provide to Petitioner, upon receipt of an executed copy of this Agreement, one protected paper copy the Confidential Proprietary Information contained in Entergy's Application relating to the Pilgrim Nuclear Power Station. Such information will include the balance sheet and income statement projections for Pilgrim, including "sensitivity" analyses, and the projections for NewCo, which is to provide a financial Support Agreement for the benefit of Pilgrim. 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 Confidentiality and Non-Disclosure Agreement.**" Any storage medium used for an electronic file will be marked in the same manner.

3. Petitioner agrees to limit the possession and use of Confidential Proprietary Information provided by Entergy to Petitioner's representatives. For purposes of this Agreement, Petitioner's representatives shall be limited to: (a) counsel to Petitioner; (b) the President of Local 590 and David Berkland, Vice President, Local 590; (c) the President of Local 369 and David Leonardi, Executive Board/Vice President, Local 369; and (d) 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. Petitioner agrees that before disclosing or transmitting Confidential Proprietary Information to its representatives, each representative has read and executed a copy of this Agreement. By signing this Agreement, Petitioner’s representatives acknowledge and agree that they shall be bound by its terms. Petitioner agrees that a copy of any Acknowledgment of the executed Agreement will be sent to Entergy within three (3) days of the date of execution. Petitioner is responsible for ensuring that persons under its supervision or control comply with this Agreement.

4. Petitioner agrees to 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 agrees not to 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 Agreement. Petitioner also agrees that 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 shall constitute and be treated as Confidential Proprietary Information.

6. Petitioner agrees to 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 this Agreement. Petitioner agrees to 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 Confidentiality and Non-Disclosure Agreement.”** 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 Confidentiality and Non-Disclosure Agreement.”** 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 agrees to 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) agree not to copy or reproduce the documents and electronic files containing sensitive financial information provided to it by the Applicant

except as permitted by, and in accordance with the requirements set forth in, this Confidentiality and non-Disclosure agreement.

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 agrees to 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 agrees to 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 agrees to: (i) return to Entergy the paper copy of the Confidential Proprietary Information provided by Entergy to Petitioner pursuant to this Agreement; (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. Petitioner agrees that any threatened or existing violation of this Agreement would cause Entergy irreparable harm for which Entergy would not have an adequate remedy at law, and that Entergy shall be entitled to seek immediate injunctive relief prohibiting such violation in addition to any other rights or remedies, including damages. Any violation of the terms of this Agreement may also result in the imposition of such sanctions as the NRC may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

12. This Agreement becomes effective upon execution by Entergy and Petitioner. This Agreement contains the entire agreement between Entergy and Petitioner concerning the confidentiality and non-disclosure of Confidential Proprietary Information

in Entergy's application and no modifications of this Agreement or waiver of its terms and conditions shall be binding unless agreed to in writing by each party hereto.

/S/

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Scott H. Strauss  
Counsel for Petitioner

February 26, 2008

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Date

A handwritten signature in black ink, appearing to read "John E. Matthews", with a stylized flourish below it.

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John E. Matthews  
Counsel for Entergy

February 25, 2008

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Date

ACKNOWLEDGEMENT BY ADDITIONAL REPRESENTATIVE OF PETITIONER:

I, the undersigned representative of Petitioner, have read the foregoing Confidentiality and Non-Disclosure Agreement (“Agreement”), acknowledge such Agreement, and agree to be bound by its terms.

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Petitioner’s Representative

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Printed Name & Title/Company

---

Date

Executed copy of this page to be forwarded to:

Counsel for Entergy Nuclear Operations, Inc.

John E. Matthews  
Morgan, Lewis & Bockius LLP  
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