

March 18, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247-LR/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

NRC STAFF'S RESPONSE TO
THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF MARCH 7, 2008
CONCERNING THE SERVICE AND CONTENT OF WESTCAN'S FEBRUARY 15, 2008
REPLY TO THE RESPONSES FILED BY ENTERGY AND THE NRC STAFF

The NRC Staff ("Staff") hereby provides the following information in response to the Licensing Board's "Order (Relating to the Service and Content of WestCAN's Reply Dated February 15, 2008)," issued on March 7, 2008 ("Order").

BACKGROUND

On January 22, 2008, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant") and the NRC Staff filed their answers to the petition for leave to intervene which had been filed by Westchester Citizen's Awareness Network, *et al.* ("WestCAN"), on December 10, 2007. In a document dated February 15, 2008, WestCAN filed its reply to those answers.¹ On February 22, 2008, Entergy filed a motion to strike WestCAN's February 15 Reply.²

¹ "Reply of Petitioners Westchester Citizen's Awareness Network (WestCAN), [*et al.*]" ("WestCAN's Reply"), dated February 15, 2008.

² "Entergy Nuclear Operations, Inc. Motion to Strike WestCAN, *et al.* Reply to Entergy and the NRC Staff" ("Motion"), dated February 22, 2008.

On March 3, 2008, as supplemented on March 6, 2008, the Staff filed its answer to Entergy's motion to strike WestCAN's Reply.³ In the Staff's Answer of March 3, 2008, the Staff informed the Licensing Board that it had received WestCAN's Reply by E-mail at 12:00 AM on February 16, 2008; subsequently, in its March 6 Supplement, the Staff advised that it had discovered that the 12:00 AM version which it received by E-mail was substantively different from the 12:53 AM version that WestCAN had served on the Applicant and the OGC mailroom (but not counsel for the Staff), and that WestCAN had now informed the Staff that the 12:53 AM document corresponds to the paper version of the document that was delivered by DHL on February 19, 2008 and that it superseded the 12:00 AM version of the document. Based on this information, the Staff filed a Supplement in which it corrected its answer to the motion to strike – stating that “WestCAN's Reply Brief was transmitted by E-mail, without attachments or exhibits, to the OGC mailroom (but not to Staff Counsel) at 12:53 AM on February 16, 2008.” Supplement at 2. Further, the Staff stated that WestCAN's Certificate of Service, accompanying the 12:53 AM transmission of its Reply, was materially incorrect:

WestCAN's Reply Brief was not properly served by E-mail on the Staff. In this regard, the Certificate of Service accompanying WestCAN's Reply Brief of 12:53 AM states that WestCAN transmitted its Reply Brief by E-mail to: sherwin.turk@nrc.gov, beth.mizuno@nrc.gov, Kimberly.sexton@nrc.gov, and Christopher.chandler@nrc.gov. *Id.* at 2, 3. Contrary to this representation, however, none of the above attorneys has any record or recollection of having received such an E-mail transmission from the WestCAN Petitioners – and, in fact, no transmission to these attorneys appears to have been made. Rather, WestCAN transmitted its E-mail to the OGC mailroom, without serving Staff Counsel of record As a result, Staff Counsel only learned belatedly that WestCAN's 12:00 AM transmittal did not constitute its actual Reply Brief.

Further, WestCAN's Certificate of Service appears to be materially incorrect, insofar as it states that WestCAN served its Reply Brief by E-mail upon the four named Staff attorneys. . . .

³ See (1) “NRC Staff's Answer to Entergy's Motion to Strike the Reply of WestCAN, *et al.* to the Responses Filed by Entergy and the NRC Staff” (“Answer”), dated March 3, 2008; (2) “Supplement to ‘NRC Staff's Answer to Entergy's Motion to Strike the Reply of WestCAN, *et al.* to the Responses Filed by Entergy and the NRC Staff’” (“Supplement”), dated March 6, 2008.

Supplement at 2-3; footnotes omitted.

In its Order of March 7, 2008, the Licensing Board directed the Staff and WestCAN to provide responses to certain questions concerning the service and content of WestCAN's Reply. Order at 5-6. The Staff hereby responds to the seven specific questions for which the Board requested a Staff response.

(1) A copy of the document identified as the WestCAN Reply that was received by Staff Counsel via e-mail at 12:00 am on February 16, 2008.

(2) A copy of the e-mail banner identifying to whom the 12:00 am, February 16, 2008, submission was sent.

Staff Response.

Attached hereto as "Attachment 1" is a copy of the E-mail banner which Counsel for WestCAN transmitted to Sherwin Turk and the NRC Hearing Docket at 12:00 AM on February 16, 2008, together with the 122-page Reply that was attached to that E-mail transmission.

(3) A copy of the e-mail banner identifying to whom the 12:53 am, February 16, 2008, submission was sent.

Staff Response.

Attached hereto as "Attachment 2" is a copy of the E-mail banner which Counsel for WestCAN transmitted at 12:53 AM on February 16, 2008, to various recipients including the OGC Mailroom (but not Staff Counsel). The E-mail banner lists the persons to whom WestCAN's E-mail transmission was purportedly sent.

(4) A copy of any documentation that the Staff received indicating that the version of the WestCAN Reply received at 12:00 am, February 16, 2008, was not intended to be the operative pleading.

Staff Response.

Attached hereto as "Attachment 3" are copies of two documents: (a) a letter from Sarah Wagner, Counsel for WestCAN, dated February 15, 2008 (together with its accompanying service list), which WestCAN transmitted in paper form along with the paper copy of its Reply, delivered by DHL on February 19, 2008;⁴ and (b) Ms. Wagner's E-mail message to Sherwin Turk, Counsel for NRC Staff, transmitted on March 5, 2008 at 2:41 PM.

(5) A brief statement explaining how and when NRC Staff Counsel first came to suspect that a nonidentical version of WestCAN's Reply had been sent to any participant in this proceeding.

Staff Response.

The Staff learned accidentally, on March 5, 2008, that WestCAN had filed and/or served two different versions of its Reply. On February 27, 2008, Ms. Wagner, Counsel for WestCAN, filed a lengthy set of "Errata" to WestCAN's Reply of February 15, 2008. On March 5, 2008, in preparing for oral argument on the petitioners' contentions, Staff Counsel Sherwin Turk attempted to manually insert WestCAN's errata into his working copy of WestCAN's Reply; that document (also used by other Staff Counsel) was the version of WestCAN's Reply that Ms. Wagner had transmitted to Mr. Turk at 12:00 AM on February 16, 2008. In attempting to insert the errata into this document, Mr. Turk found that the page and line references provided with the errata did not match the pages and lines in his copy of the document, and that the errata could not be inserted into the document. Mr. Turk then opened the 12:53 AM version of the document which he had received from the OGC mailroom, and found that this document contained substantive differences from the version which was transmitted to him at 12:00 AM.

⁴ It should be noted that this letter substantially differs from the letter by Ms. Wagner that accompanied WestCAN's E-mail transmission of 12:53 AM on February 16, 2008 – which failed to indicate that the 12:53 AM E-mail version differed from or superseded the document which had been E-mailed at 12:00 AM. *Compare* Wagner letter of February 15, 2008 in Attachment 2, *with* Wagner letter of February 15, 2008 in Attachment 3.

Following this discovery, Mr. Turk sent an E-mail message to Ms. Wagner (reproduced in Attachment 3 hereto), in which he informed her of this development; he further stated his belief that the Staff's reply to Entergy's motion to strike, which stated that WestCAN had transmitted its Reply to the Staff by E-mail "at 12:00 AM on 2/16/08, may not be correct, if the version you sent to me at 12:00 AM differs from the later-transmitted document." Mr. Turk asked Ms. Wagner to confirm that the two E-mailed versions are not identical, and inquired whether the "the version delivered by DHL differ[s] in any way from the version E-mailed at 12:53 AM on 2/16/08?" See Attachment 3 hereto. In response, Ms. Wagner advised Mr. Turk that "[t]he Reply Brief which you received in the mail and in adobe is the Petitioners WestCAN's Reply Brief. The email transmittal letter said to discard the potentially corrupt word file. The abode [sic] file is exactly the same as the printed version mailed on the 15th of February." *Id.*, emphasis added.⁵

(6) A brief statement explaining the differences which Staff Counsel believes exist between the version of WestCAN's Reply that was received at 12:00 am, February 16, 2008, and the version of WestCAN's Reply that was sent to the NRC Hearing Docket at 12:53 am, and/or between the version of WestCAN's Reply that was received by Staff Counsel through the mail or via a courier service.

Staff Response.

In Ms. Wagner's March 5, 2008 E-mail response to Mr. Turk's inquiry, she stated that "[t]he abode [sic] file is exactly the same as the printed version mailed on the 15th of February." To the best of the Staff's knowledge, the "adobe" version of WestCAN's Reply, referred to by Ms. Wagner, is the version that WestCAN transmitted to the OGC Mailroom at 12:53 AM on February 16, 2008. Based on Ms. Wagner's representation that the 12:53 AM version is "exactly the same" as the paper version delivered by DHL on February 19, 2008, the Staff has

⁵ Ms. Wagner subsequently corrected this statement in a further E-mail transmission to Mr. Turk at 10:40 AM on March 6, 2008, to indicate that "the cover letter that was sent along with the hard copy of the brief" indicated that "[d]ue to technical difficulties we are concerned the emailed Reply may be corrupted, therefore please delete it, and use the enclosed hard copies and CD-ROM" (emphasis added).

not compared the paper version of WestCAN's Reply with the E-mail versions of the document. Rather, the Staff has now performed a comparison of the two E-mail versions of the document.

Specifically, prior to filing the Staff's Supplement of March 6, 2008, Counsel for the Staff observed that some substantive differences appeared between the 12:00 AM and 12:53 AM E-mail versions of WestCAN's Reply, at page 70 of WestCAN's Reply. In the limited time available prior to oral argument, the Staff was unable to ascertain any other differences between the 12:00 AM and 12:53 versions of WestCAN's Reply. The Staff has now had an opportunity to compare the two E-mail versions in detail, by converting the 12:53 AM Adobe Acrobat transmittal into MS Word format, and performing an electronic comparison of the two E-mailed versions. Based on this comparison, it appears that most of the differences involve formatting changes only; in addition, it now appears that certain substantive changes were made, particularly in WestCAN's arguments concerning Contentions 22-25 (see pages 70, 74-76, and 88) and Contention 41 (page 106). See Attachment 4 hereto.⁶

(7) A brief statement summarizing any other information that Staff Counsel believes that the Board should consider in order to have a complete and accurate understanding of this incident.

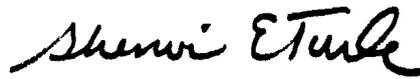
Staff Response.

The Staff's understanding of this matter is summarized in the Staff's Answer to Entergy's motion to strike, filed on March 3, 2008; the Staff's Supplement of March 6, 2008; and the discussion above. The Staff believes that WestCAN, having transmitted its Reply to Staff Counsel and the Hearing Docket by E-mail at 12:00 AM on February 16, 2008, could and should have eliminated any confusion concerning that document by transmitting an E-mail message to Staff Counsel (and any other recipients, such as the Hearing Docket), retracting that transmission. WestCAN failed to send a retraction. Further, WestCAN failed to send its

⁶ It should also be noted that an electronic comparison of two documents may identify certain language as having been inserted or deleted when, in fact, the language was merely moved to a different location in the document. Those differences are non-substantive.

12:53 AM E-mail transmittal to Staff Counsel, contrary to the representations in its Certificate of Service; and it failed to alert the parties that its 12:53 AM E-mail transmission superseded or replaced the 12:00 AM transmission. Only in the cover letter transmitting the paper copy of its Reply did WestCAN state that an unidentified "MS Word" version of its Reply should be disregarded. The Staff respectfully submits that this information, transmitted only in a second cover letter, was simply too vague and presented in too obscure a location to provide effective notice that WestCAN's 12:00 AM electronic transmittal of its Reply had been superseded.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sherwin E. Turk". The signature is written in a cursive, flowing style.

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, MD
this 18th day of March 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO THE ATOMIC SAFETY AND LICENSING BOARD'S ORDER OF MARCH 7, 2008 CONCERNING THE SERVICE AND CONTENT OF WESTCAN'S FEBRUARY 15, 2008 REPLY TO THE RESPONSES FILED BY ENTERGY AND THE NRC STAFF," dated March 18, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 18th day of March, 2008:

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Sherwin E. Turk
Counsel for NRC Staff

Attachment 1 to
NRC Staff's Response of March 18, 2008

12:00 AM, February 16, 2008

E-mail Banner and
Accompanying Version of
WestCAN et al's Reply Brief

Sherwin Turk

From: Sarah Wagner [sarahwagneresq@gmail.com]
Sent: Saturday, February 16, 2008 12:00 AM
To: Sherwin Turk; Hearing Docket; Sherwin Turk
Attachments: WestCAN_Reply_Brief_Final_2.15.08..doc

Att

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

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)	
)	ASLB No. 07-858-03
)	LR-BD01
(Indian Point Nuclear Generating Units 2 and 3))	

REPLY OF PETITIONERS 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 RICHARD L. BRODSKY

PRELIMINARY STATEMENT

The following constitutes the reply of Petitioners 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”). Petitioners assert that they have standing to intervene and have proffered admissible contentions in accordance with 10 C.F.R. 2.309(f).

PROCEDURAL HISTORY

On April 23, 2007, and supplemented on May 3, 2007 and June 21, 2007, Entergy Nuclear Operations, Inc. (hereinafter “Entergy” or “licensee”) filed an application to renew its operating license for an additional twenty year period for Indian Point Nuclear Generating Units 1 and 2. Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing was published in the Federal Register on August 1, 2007 regarding Entergy’s license renewal application. On October 1, 2007, the U.S. Nuclear Regulatory Commission (hereinafter “NRC” or Commission”) extended the period for filing requests for hearings until November 31, 2007. Petitioners were granted an extension to file their Petition on or before December 10, 2007.

On December 10, 2007, Petitioners electronically by email served a Petition for Leave to Intervene with Contentions and a Request for a Hearing. On December 11, 2007, hard copies of said Petition and exhibits were served on the Office of the Secretary at the Nuclear Regulatory Commission (hereinafter “NRC”) by Fed Ex.

By Order dated November 27, 2007, Entergy and the NRC staff were ordered to file answers on or before January 22, 2008. The NRC staff served an Answer to the Petition electronically by email on January 22, 2008, at 11:59pm. The licensee, Entergy, electronically by email served a reply to the Petition on

electronically by email on January 22, 2008, with referenced exhibits arriving on January 27, 2008. Pursuant to Order by the Licensing Board on January 29, 2008, Petitioners replies are due on or before February 15, 2008.

BACKGROUND OF INDIAN POINT LICENSE RENEWAL
APPLICATION AND CONTENTIONS RAISED BY THE COALITION
PETITIONERS

The United States operates 104 nuclear power reactors, which provide nearly 20 percent of the nation's electricity. More than half have had their original 40-year operating licenses renewed for an additional 20 years. Encouraged by billions of dollars in subsidies and incentives in the 2005 Energy Bill, a handful of companies applied for licenses to build new reactors last fall, and other companies are expected to apply later this year. Recurring lessons from the past consistently inform us that unless the Nuclear Regulatory Commission (NRC) undergoes major reforms, nuclear power will remain both riskier and more expensive than necessary. Indian Point is of particular risk to the public assets and the health and safety of the public given its location, age, non-compliant design, and legacy history evidenced by the oversight record by the regulator.

The NRC is the federal agency primarily responsible for establishing and enforcing safety regulations for nuclear power. Whereas this petition does not challenge the adequacy of rulemaking, it does challenge adequacy of articulating

and interpreting the rules by the Applicant and the lack of substantive review by Staff as to whether specific concrete contentions are truly useful in establishing via engineering rigor and examination of the rule of law, confirming there is adequate safety, and lawful environmental protection of the Indian Point plant. This requirement begins with design requirements imposed on the Applicant contained, continues through approval of the original design criteria committed by the applicant by the record decades ago, through a total period of 40 years from construction to decommissioning.

That design lifetime is articulated in the Current Licensing Basis. The regulator has an express time limit presently in effect to operate each reactor. Unit 2 license expires in 2013, and Unit 3 in 2015.

The applicant is now attempting to substantiate that it can continue to operate the plant beyond its engineered life, and the NRC is compelled under law to rigorously evaluate this proposal, and recommend to the commission that commission can meet is statutory mandate of protecting the health and safety of the public and minimizing risk to public assets in granting this extension.

The results of this exceeding important mantel placed upon the Commission is frankly cause for the community to be concerned. Numerous third parties and government oversight agencies agree. The Union of Concerned Scientists has

monitored nuclear power safety issues since the early 1970s. Amongst the 104 operating plants, a disproportionately large segment of its efforts have been directed at getting the NRC to enforce regulations already on the books so as Entergy at Indian Point recognize and adhere to its burden of maintaining a sound record of compliance to its license basis, and maintains the CLB itself as defined under 10 C.F.R. Part 54 section 54.3.

A particular and on point example is the Applicant's description of its fire protection program contained in its application. Entergy's program has significant safety issues presently unresolved, yet a program that must have compliance integrity to count on for limiting the renewal scope. But it does not. See WestCAN et al., Objection to Fire Protection Exemption..." Evaluations conducted by the Government Accountability Office (GAO) and the NRC's Inspector General (IG) confirm our perspective: These reports repeatedly identify inadequate enforcement of existing regulations by the NRC, with the most recent regarding the exact issue at Indian Point, and raised contentions 5 through 11B.

The nexus of a broken present fire protection program cannot be set aside in the renewal process if there is no prospect for correcting the deficient condition. As history shows, the results are catastrophic.

For example, in its May 2004 report, "Nuclear Regulation: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown" , the GAO concluded, "[The] NRC should have but did not identify or prevent the corrosion at Davis-Besse [a nuclear power plant in Ohio] because both its inspections at the plant and its assessments of the operator's performance yielded inaccurate and incomplete information on plant safety conditions."

More recently and on point to license renewal and Entergy's failure to comply with the rule are six apparent violations found by an NRC inspection that took seven unplanned plant shutdowns on Unit 3 in less than a year to trigger.

The core and essential of license renewal is a sound foundation that provides confidence on safely minimizing renewal scope to when all parties will agree is under the rules a very narrow scope. The record demonstrates otherwise, and compels us to raise as acceptable scope a program that is presently deficient but counted on as sufficient so as to exclude it from renewal scope. Where the program, system, structure or component is defective, and is presently unreconciled to correct, we argue under the rules defined in 10 C.F.R. 54 that it cannot be excluded from license renewal. It represents ex post facto material items that bear on the health and safety of the public and minimizing risk to public assets.

The IG's January 2008 report, "NRC's Oversight of Hemyc Fire Barriers" documents the NRC's repeated failure to enforce fire-protection regulations. In March 1993, after problems surfaced with the Thermo-Lag fire barrier used by nearly 100 reactors, the NRC chairman committed to evaluate all fire barriers used in U.S. nuclear reactors. Tests conducted by the National Institute of Standards and Technology in 1993 (and reported to the NRC in 1994) found that the one-hour Hemyc fire barrier, used by 17 nuclear reactors, failed in 23 minutes. The NRC considered these tests too small to be conclusive and stated that larger-scale testing was needed. However, it wasn't until 2005 that the NRC commissioned such testing--even though the NRC acquired yet more evidence of problems with Hemyc in 2000. After an inspection found that Hemyc was used more extensively than assumed at one U.S. plant, the NRC reviewed the Hemyc tests conducted by the vendor and found that they did not demonstrate that Hemyc could meet its one-hour or three-hour ratings. When the larger-scale tests were finally conducted by Sandia National Laboratory, the one-hour Hemyc fire barrier failed in 13 minutes.

According to the IG: "As of December 2007¹, no fire-endurance tests have been conducted to qualify Hemyc as an NRC-approved 1-hour or 3-hour fire barrier for installation at [nuclear power plants]." Thus, the NRC has known since 1994 that 17 U.S. reactors are relying on Hemyc for fire protection and that Hemyc

¹ See Office of Inspector General Report of January 22, 2008.

does not meet NRC standards, but has not enforced the regulations it established in 1980, as a result of the serious fire at the Browns Ferry nuclear plant in Alabama that disabled the power, control, and instrumentation cabling for all the emergency core cooling systems on Unit 1 and most of those systems on Unit 2. The regulations included requirements that cabling for primary and backup safety systems (a) be physically separated by at least 20 feet horizontally, or (b) be protected by a one-hour or three-hour fire barrier to lessen the risk that a single fire disables all emergency systems.

However, the NRC's own assessments of its regulatory meltdowns also repeatedly conclude that the majority of problems stem from inadequate enforcement of adequate regulations as is shown in contentions 5 through 11B

For example, the NRC lessons-learned task force examined the regulatory failures associated with the near-accident at Davis-Besse in 2002², and made 49 recommendations for actions the NRC should take to prevent recurrences. Forty-six of these outlined ways to improve enforcement of existing regulations, while the remaining three dealt with upgrading the underlying regulations. The NRC's

² <http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/lessons-learned/lltf-report.html> (last visited 2.15.08) According to the NRC, Davis-Besse came closer to an accident than any reactor since Three Mile Island. A crack formed in a metal tube entering the reactor vessel's lid and leaked borated water onto the carbon steel. The boric acid residue ate completely through the 6-inch carbon steel vessel to expose a one-quarter-inch stainless steel cladding applied to the vessel's inner surface. The timeline spanned an estimated six years and provided numerous opportunities for the NRC to step in. In the last missed opportunity, NRC staff drafted an order requiring Davis-Besse to shut down immediately on the basis that the reactor failed to satisfy four of the agency's five safety criteria and probably did not meet the fifth. But NRC's senior managers shelved the draft order because it would have cost the company too much money and instead waited to inspect the reactor for several months until it had a scheduled shutdown for refueling

lessons-learned efforts for Indian Point³ provide similar findings--the regulations were in the past not the problem, enforcement is⁴. Finally compliance by Entergy to the regulations is clearly the consequence.

The licensees together with inadequate enforcement have caused significant safety and economic problems to community. In its September 2006 report, "Walking a Nuclear Tightrope: Unlearned Lessons of Year-plus Reactor Outages," UCS described the 36 times since 1966 that U.S. nuclear power reactors remained shut down a year or longer to restore safety levels eroded by accumulated violations. In these cases, more than a year, and cost an average of nearly \$1.7 billion, to bring the reactor back into compliance. On February 22, 1993 Unit 3 was shutdown for over two years to attempt to restore safety levels and was not restarted until July 2, 1995. The magnitude of non-compliance and the consequential costs as well as the risks to the public are unacceptable. Unit 2 was shutdown from February 15, 2000 until January 4, 2001 (slightly less than one full year) over a steam generator tube rupture. This design basis accident is considered one of the most serious DBA's considered in the design, licensing and safe operation of the plant.

³ As well as Millstone (Connecticut), South Texas Project, and other troubled nuclear plants

⁴ However, this is now changing. See for example, proposed rulemaking regarding thermal shock <http://www.nrc.gov/about-nrc/regulatory/rulemaking/proposed-rules.html> (last visited 2/15/08).

Inadequate compliance by the Applicant, as well as inadequate enforcement by the NRC allowed safety levels to erode over decades for Indian Point, resulting in unnecessarily higher risk to the surrounding communities during those years and higher cost to the owners.

It also bears directly on the engineering rigor and current licensing basis compliance status as they impact contemplating an extension of 20 years post engineering design life.

Congress, UCS, GAO, IG, and NRC all identified inadequate enforcement of safety regulations as the root cause of NRC's regulatory breakdowns, and cannot be set aside during these proceedings. The Commission must consider its history with respect to Indian Point concurrently in answering to its core mandate in considering this application for renewal.

Over 140 contentions from 14 separate government or nonprofit organizations have been raised in these proceedings for admissibility. It is noted that not a single contention was accepted by the Applicant as admissible. Only about seven were recommended to be admitted by Staff. This stunningly small fraction is telling—in particular, given that the recent OIG report regarding License renewal called for substantial reform from a rubberstamping process to a process of engineering rigor, and sound regulatory oversight.

The reforms can not be deferred until after the next nuclear plant disaster using the precedent applied at NASA after Columbia, the intelligence community after 9/11, and FEMA after Katrina. The reforms will be the same; their cost will be significantly higher.

SUMMARY OF ARGUMENT

The NRC is responsible for protecting the public from the dangers inherent in nuclear power. Each regulation governing the design of nuclear power plants and any other activity authorized pursuant to the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* ("1954 Atomic Energy Act") must address its subject so as to minimize danger to life or property.⁵ The NRC may not issue a license to a nuclear power plant unless it determines that design, operation, maintenance of the plant will adequately protect the health and safety of the public. 42 U.S.C. § 2232(a). Section 2232(a) further provides that risks to public assets are minimized.⁶ The Petition brought to NRC's attention serious flaws in its current License Renewal Application. Those regulations avoid consideration of issues

⁵ 42 U.S.C. §2201(i)(3)(“General provisions - (i) Regulations or orders. prescribe such regulations or orders as it may deem necessary ... (3) *to govern any activity authorized pursuant to this Act [42 USC §§ 2011 et seq.], including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property.*” (emphasis added).

⁶ See docketed comments, pointing out that regulations governing design of nuclear power plants must minimize danger to life and property, regarding Proposed new Subpart K—“Additional requirements” and proposed 10 Part

related to current plant operation based on the assumption that ongoing regulatory requirements ensure adequate levels of safety. This is a core issue relevant to the scope of potential safety or environmental issues relative to the renewal process in this forum.

The NRC is responsible for protecting the public from the dangers inherent in nuclear power. Each regulation governing the design of nuclear power plants and any other activity authorized pursuant to the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* ("1954 Atomic Energy Act") must address its subject so as to minimize danger to life or property. The NRC must consider whether the process to be performed, the operating procedures, the facility, equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988). The NRC may not issue a license to a nuclear power plant unless it determines that design, operation, and maintenance of the plant will adequately protect the health and safety of the public. 42 U.S.C. § 2232(a).

NRC regulations for license renewal are codified in 10 C.F.R. Part 54 and 10 C.F.R. Part 51. Petitioners brought to NRC's attention serious flaws in Entergy's License Renewal Application. Those regulations avoid consideration of issues

related to current plant operation, aging of components, and site specific impacts of the nuclear plant based on the assumption that ongoing regulatory requirements ensure adequate levels of safety. The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988). Petitioners raise concerns of the adequacy of the environmental impact study and the aging management analysis submitted by Entergy. Petitioners also question the adequacy and ability to maintain a decommissioning fund.

Petitioners submit that a license to operate a nuclear power plant expires or terminates upon a specific a date. The NRC, upon application and thorough review, grants a new license that adheres to the rigorous standards and tests set forth for granting new licenses to operate nuclear power plants to ensure that a plant continues safely operate and adequately protects the surrounding people and environment. Petitioners contend that based on the aging of power plant, a nuclear plant that wishes to renew its license should pass the rigorous criteria set forth for operating new plants. Without these test, renewal of Indian Points operating license poses a significant safety problem.

Witte.

Entergy's license renewal application does not adhere to 10 C.F.R. Part 54. Section 54.30 requires plants to complete an Integrated Plant Assessment as part of renewal application but prohibit NRC from reviewing operational deficiencies during license renewal period. Entergy's LRA fail to consider safety concerns, environmental impacts of the nuclear power plant, continuing problems at the nuclear power plant, and review significant changes not known at the time the initial operating license was issued. Entergy did not state that a full safety review was performed.

Petitioners maintain that in light of the scientific evidence concerning the inadequacies of Hemyc, an exemption to Entergy's operating license should not have been granted during the renewal process. The NRC should also not review applications for license transfers during the renewal process either. Significant changes like these to the applicant's operating license render safety analysis meaningless.

Entergy does not have an adequate emergency plan in place and thus, its renewal license must be denied. For each plant there must be either a plan that complies with NRC's regulatory standards for responding to radiological emergencies or in the alternative, a plan that offers reasonable assurance that public health and safety will not be in danger.

The NRC fails to consider new and significant information that will have environmental impacts. Various contentions raise issues that are site specific, or should have been considered category 2 environmental impacts, and thus included in Entergy's LRA. In several instances Entergy's LRA failed to address these site specific environmental concerns.

Petitioners submit that each contention below meets the admissibility criteria under 10 C.F.R. 3.09(f) and thus, should not be dismissed.

For these contentions to reach admissibility threshold standards, the Board, must use its discretion in considering the NRC license renewal rules in the most favorable light of implementing the congressional mandate placed on the Nuclear Regulatory Commission and the Boards role in adjudicating the rule in the broad nexus to include "all issues not..." for aging nuclear plants and include all evidence regardless of current regulations sometimes unintentionally have inadequately protect the public and impermissibly restrict public and judicial review of NRC actions.

The license renewal proceedings including the application submitted for Indian Point units 2 and 3, and (further use of 55 year old systems from Unit 1) must consider the fundament fundamental nexus of unresolved current license basis issues, two 40 year old plants that were at best designed to operate for forty

years, and the nexus of the legacy of operating and design failures over the past three decades in considering each of the contentions we have filed.

The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988).

Additionally the adequacy of the decommissioning fund must be fully evaluated, light of the unremediated and unidentified leaks first discovered by an independent contractor in 2005.

Each contention put forth by Petitioners meets the admissibility criteria under 10 C.F.R. 3.09(f) and thus, should not be dismissed.

ARGUMENT

I. Petitioners have standing to intervene.

To be a party in this proceeding, Petitioners must demonstrate standing and submit at least one admissible contention within the scope of the license renewal proceedings. NRC acknowledges that Petitioners WestCAN, RCAA, and PHASE have standing to participate in this matter. (NRC brief pp.10-13). Entergy acknowledges that Petitioners all have standing to participate in this matter.

(Entergy's Answer pp. 3-15). NRC disputes the standing of Sierra Club and Richard Brodsky. (NRC brief at pp. 14-19).

In a license renewal proceeding, standing to intervene has been found to exist based on a proximity presumption. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Plant Station)*, LBP-06-23, 64 NRC 257, 271 (2006). The licensing Board has applied to proximity presumption to persons who reside or frequent the area within a 50 miles radius of the nuclear power plant in question. *Florida Power and Light CO (Turkey Point, Units 3 and 4)*, LBP-01-06, 53 NRC 138, 250 (2001). Petitioner Richard Brodsky, as an individual, has standing because he works approximately twenty miles from Indian Point Nuclear Power Plant. (See Declaration of Richard L. Brodsky attached hereto and made a part hereof as Exhibit A.) Accordingly, Mr. Brodsky has standing to intervene.

An organization may establish standing to intervene by demonstrating that its own organizational interests could be adversely affected by the proceeding or based on the standing of its own members. *See e.g. Consumer Energy Co. (Palisades Nuclear Power Plant)*, CLI-07-18, 65 NRC 399, 409 (2007). When an organization seeks to establish "representational standing", based on standing of its members, an organization must show that at least one of its members may be affected by the proceeding, identify that member by name and address, and show

that the members has authority to act on behalf of the organization. *See e.g., Consumer Energy Co., supra.* The organization member must also qualify for standing in his or her own right, the organizations interests must be germane to the organizations purpose, and neither the asserted claim or the requested relief require an individual member to participate in the organization's legal action. *Id.*

The Sierra Club-Atlantic Chapter has demonstrated standing to intervene. The Sierra Club has members who live, work, and recreate within 50 miles of Indian Point. Petitioners now attach provides that declarations of members Allegra Dengler, Joanne Steele, John Gebhards, Diana Krautter, George Klein showing that they have individual standing to intervene and have authorized the Sierra Club to represent them in this proceeding. Based on the declarations of Allegra Dengler, Joanne Steele, John Gebhards, Diana Krautter, George Klein, attached hereto as Exhibits B, SIERRA CLUB is North America's oldest, largest and most influential grassroots environmental organization. is a non-profit, member-supported, public interest organization that promotes conservation of the natural environment through public education, lobbying and grassroots advocacy. Founded in 1892, the Sierra Club Atlantic Chapter has more than 45,000 members who are residents New York States. The Atlantic Chapter applies the principles of the national Sierra Club to the environmental issues facing New York State.

The nature of the Sierra Club's interests will be adversely affected by the issuance of a renewed license for Indian Point Units 2 and 3. Thus, the Sierra Club has representational standing to intervene in this proceeding.

SIERRA CLUB is very concerned that the proposed Indian Point 2, LLC and Indian Point 3, LLC proposed 20 year superseding licenses could increase both the risk and the harmful consequences of an offsite radiological release. Furthermore, SIERRA CLUB is concerned that the radiological contamination resulting from radiological releases that would impact the and interfere with the organizations rightful ability to conduct operations in an uninterrupted and undisturbed manner. *Id.* Certainly, any evacuation would severely disrupt and damage SIERRA CLUB's operations and the residences of its membership. *Id.* SIERRA CLUB therefore qualifies for intervention pursuant to 10 C.F.R. § 2.309(d).

SIERRA CLUB also qualifies for discretionary intervention. 10 CFR § 2.309(e). SIERRA CLUB's participation may reasonably be expected to assist in developing a sound record. It is well versed in the field of nuclear energy and safety. SIERRA CLUB's constituency represents members who have participated in numerous Nuclear Regulatory Commission proceedings and public meetings. The nature of SIERRA CLUB's interests is not only its members' property interests, but the public interest. In particular SIERRA CLUB is a member of the

Indian Point Safe Energy Coalition (IPSEC), a broad coalition of 70 other free standing organizations.

SIERRA CLUB can provide local insight that cannot be provided by the Applicant or other procedural parties. SIERRA CLUB's members are Indian Point 2 and Indian Point 3's neighbors. In addition, as established in this proceeding, this proceeding may have significant affect on PHASE and its members. SIERRA CLUB therefore qualifies for discretionary intervention. 10 C.F.R. § 2.309(e). SIERRA CLUB is entitled to a full adjudicatory hearing with all the rights of discovery and cross-examination provided by 10 CFR Subpart G, because SIERRA CLUB has standing, and in the Petition herein to Intervene and Formal Request for Hearing, SIERRA CLUB raises substantial issues of fact and law that meet the requirements of 10 CFR §2.310 (d).

II. Petitioners contentions are admissible.

The NRC cannot deny a petition to intervene and request for a hearing if Petitioners demonstrate at least one admissible contention. 10 C.F.R. 2.309(a). Section 2.309(f) requires a Petitioner to set forth with particularity the contentions sough to be raised and satisfy the six criteria under section 2.309(f). "[A] petitioner must provide some sort of minimal basis indicating the potential validity of the contention." Final Rule: "Rules of Practice for Domestic Licensing

Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. 33, 168, 33,170 (Aug. 11, 1989). This "brief explanation" of the logical underpinnings of a contention does not require a petitioner "to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention." *Louisiana Energy Services, LP. (National Enrichment Facility)*, CLI-04-35, 60 NRC 619, 623 (2004). The brief explanation helps define the scope of a contention - "[the reach of a contention necessarily hinges upon its terms coupled with its stated bases." *Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2)*, ALAB-899, 28 NRC 93, 97 (1988), *aj'd sub nomn Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991). However, it is the contention, not "bases," whose admissibility must be determined. See 10 C.F.R. § 2.309(a).

An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised, or controverted, *provided further*, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety, (2) provide a brief explanation of the basis for the contention, (3) demonstrate that the issue raised is within the scope of the proceeding, (4) demonstrate that the issue

raised is material to the findings the NRC must make to support the action that is involved in the proceeding; This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief, (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support petitioners contentions, and (6) provide sufficient information to show that a genuine disputes exists with regard to a material issue of law or fact.

The standards for issuance of a renewed license are under section 10 C.F.R. 54.29(a). A renewed license may be issued by the commission as authorized by section 54.31 if the commission finds that if matters identified in (a)(1) and (a)(2) of this section, if there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB are made in accordance with the Act and Commission's regulations. These matters are:

- (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that

have been identified to require review under section 54.21 (a)(1);
and

- (2) time-limited aging analysis that have been identified to require review under section 54.21(c).

See also, Nat'l Whistleblower Center v. NRC et al., 1999 WL 34833798_ (D.C.Cir. June 14, 1999).

Merits of the contention are not part of admissibility. A Licensing Board should not address the merits of a contention when determining its admissibility. *Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2)*, LBP- 82-106, 16 NRC 1649, 1654 (1982), *citing Allens Creek, supra*, 11 NRC at 542; *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1)*, LBP-84-1, 19 NRC 29, 34 (1984); *Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2)*, LBP-85-11, 21 NRC 609, 617 (1985), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986); *Carolina Power and Light Co. and North Carolina Eastern Municipal Power agency (Shearon Harris Nuclear Power Plant)*, ALAB-837, 23 NRC 525, 541 (1986); *Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1)*, ALAB-868, 25 NRC 912, 933 (1987); *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, LBP-88-26, 28 NRC 440, 446 (1988), *reconsidered on other grounds*, LBP-89-6, 29 NRC 127 (1989), *rev'd on other grounds*, ALAB-919, 30 NRC 29

(1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990), request for clarification, ALAB-938, 32 NRC 154 (1990), clarified, CLI-90-7, 32 NRC 129 (1990); *Sierra Club v. NRC*, 862 F.2d 222, 228 (9th Cir. 1988). *See Consumers Power Co. (Midland Plant, Units 1 and 2)*, LBP- 84-20, 19 NRC 1285, 1292 (1984), *citing Allens Creek, supra*, 11 NRC 542; *Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, ALAB-182, 7 AEC 210, 216 (1974), rev'd on other grounds, CLI-74-12, 7 AEC 203 (1974); *Duquesne Light Co. (Beaver Valley Power Station, Unit 1)*, ALAB-109, 6 AEC 243, 244-45 (1973). An intervenor need only state the reasons for its concern. *Seabrook, supra*, *citing Allens Creek, supra*.

Contention 1: Co-mingling three dockets, and three DPR licenses under a single application is in violation of C.F.R. Rules, specifically 10 CFR 54.17 (d), as well as, Federal Rules for Civil Procedure rule 11(b).

Entergy asserts that Petitioners first contention lacks specificity, factual or legal foundation, is beyond the scope of the renewal process, and immaterial. (Entergy brief pp. 38-41). The NRC staff assert that there are no applicable legal requirements that require a single application. (NRC brief at p. 34). Entergy, in support of its argument, cites to instances where commingling of licenses has occurred. (Id.)

The co-mingling three dockets and three DPR licenses under a single application violates of C.F.R. Rules, specifically 10 CFR 54.17 (d), as well as, Federal Rules for Civil Procedure rule 11(b), as explained in the Petition.

The recent Office of the Inspector General report found fault with the process and directly found the Staff reviews to be inadequate reviews of many of the previous applications submitted. Careful examination of this application shows that it can be distinguished from the non-precedent and unchallenged commingling of license renewal applications previously processed by the Staff, and approved by the Commission. Entergy's renewal applications as well as the proceedings are uniquely complex. Petitioners reiterate the uniqueness and challenge Entergy to find a similar example of: (a) the complexity of crediting a retired unit in Safestor, for Unit 2 but in a different manner for Unit 3; (b) the Architect Engineers for the two units were different; (c) the codes and standards were used to construct the two facilities were fundamentally different, and are prima facie challenges to renewal in these proceedings; (d) the owners of the facilities changed twice and therefore responses to the profusely evolved license basis requirements are unique; (e) the mandate of the commission to minimize risk to the public assets is uniquely critical given the location of Indian Point, and proximity of the world financial center within 30 miles of the plant, and the millions of people that reside within the 50

mile proximity of the plant. Each of those millions of residents could have representational standing under these proceedings.⁷

Because of independent license amendments to the extension of portions of unit 1 systems, and proper examination of the decommissioning of the remainder of Unit 1 of Indian Point, and the distinct License Renewal Application for Indian Point Unit 3, separate license renewal applications should have been submitted.

Therefore, a separate license renewal application should required be submitted for each unit at Indian Point.

CONTENTION # 2: The NRC routinely violates § 51.101(b) in allowing changes to the operating license be done concurrently with the renewal proceedings.

Petitioners contend that during the renewal process, the NRC in compliance with section 51.101(b), should not entertain: (1) requests for transfer of a license, (3) license amendments or modifications, and (3) rule making change of thermal shock. These changes to Entergy's operating license permit Entergy to renew an operating license that does not meet current standards.

⁷ In determining whether a petitioner has met the requirements for establishing standing, the Commission has directed us to "construe the petition in favor of the petitioner." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). To this end, in proceedings involving nuclear power reactors, the Commission has recognized a proximity presumption, whereby a petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor. 10 C.F.R. § 2.309(d)(2)(i)-(ii).

The NRC Staff oppose admissibility of this contention on the basis that operating license modifications are outside the scope of license renewal. However, if an operating license that fails to meet current standards, it should not be renewed. Furthermore, a modified license, whether through a legitimate modification or exemption, changes the license to be renewed. Since the operating license to be renewed is altered, the LRA should be supplemented. Any exemption or modification will alter aging management analysis, and thus, the amended, modified or exempted license condition should be examined during the license renewal proceeding.

Petitioners' third example is particular and specific. Both the NRC Staff and Petitioner experts found significant technical errors in the TLAA most recently submitted by Entergy for Vermont Yankee, providing at least the inference of a nexus between renewal at Indian Point and the proposed rulemaking that softens the regulatory requirement.⁸

Thermal shock to reactor internals directly related to TLAA⁹. The Indian Point LRA provided by the Entergy for thermal shock analysis on either Unit 2 or Unit 3 does not provide sufficient information other than a vague reference that appropriate fatigue analysis must be done under NUREG 1801 Revision 1 of the

⁸ The rulemaking surrounding modification to the thermal shock rule regarding reactor internals as published in the federal register, "Notice of Proposed Rulemaking published by the NRC on October 3, 2007, regarding contemplated revisions to 10 C.F.R. § 50.61.

GALL report. Therefore, the contention should be admitted because it falls within scope.

Entergy maintains that extensive use of the argument that “programmatic” environmental impact work is in progress. Under NRC regulations “while work on a required program environmental impact statement is in progress the Commission will not take ... significant action... that may affect the quality of the human environment.” In order for the action not to be halted, three conditions must be met.

In the alternative, the NRC should stop all program related environmental impact statements currently in progress or contemplated during the relicensing proceedings that impact the quality of human environment—or suspend license proceedings until all program level environmental analysis is complete. Without this, the rulemaking petition is clearly inadequate.

The new thermal shock rule relieves the Applicant from stringent criteria with regard to inspection of reactor vessel internals such as baffle bolts required for safe operation of the plant. The new rule relaxes criteria for inspection of components, such as these baffle bolts, which are normally replaced after routine inspections and are replaced due to a number of environmental factors including aging. Thereby reducing unacceptably reducing the margin of safety. This

⁹ The NRC is currently holding back the SER for Vermont Yankee license renewal on this very issue.

Contention including the material dispute of sufficient margin of safety for reactor vessel internal, such as baffle bolts, is an in scope license renewal components.

Therefore under 10 CFR 51.101(b) the regulator cannot change the rule in while license renewal proceedings are in progress.

Thus, Contention # 2 is material, particular, and within scope to be admitted.

CONTENTION 3: The NRC violated its own regulations §51.101(b) by accepting a single License Renewal Application made by the following parties: Entergy Nuclear Indian Point 2, LLC (“IP2 LLC”) Entergy Nuclear Indian Point 3, LLC (“ IP3 LLC”), and Entergy Nuclear Operations, LLC. (Entergy Nuclear Operations), some of which do not have a direct relationship with the license.

Both Entergy and the NRC Staff argue that this contention is not within the scope of a license renewal proceeding. (NRC Staff brief at pp. 37-38); (Entergy brief at pp. 47-51). Furthermore, Entergy responds that this contention is beyond the scope of this proceeding, lacks factual or expert support, and fails under 10 C.F.R. 2.309(f)(1(v) and (vi), and fails to identify any material deficiencies in the licensing renewal application. (Entergy brief at p. 47-51). Petitioners maintain that the NRC license renewal procedure is inadequate because it permits Entergy to apply for a transfer its operating license while a review of renewing the operating license occurs in violation of 10 CFR 51.01 (b).

Entergy's request for the indirect transfer of the Facility Operating Licenses for Indian Point 2 and Indian Point 3 be denied because the transfer violates 10 C.F.R. Part 50; violates 10 C.F.R. 54.35 and 54.37; the intended purpose of the corporate restructure is not met and is unclear; the restructuring potentially violates 10 C.F.R. 50.33(f)(2); the application fails to submit sufficient information concerning the financial qualifications of the proposed shell corporation that is not an electrical utility and the financial adequacy of decommissioning funding; and the transfer violates anti-trust laws. Despite Entergy's claim that financial issues "have no place in this proceeding" the financial viability is relevant to whether Entergy license to operate should be renewed. If Entergy's license is renewed and Entergy fails to make safety related repairs or pay decommissioning expenditures or pay retroactive Price Anderson Act premiums, Entergy cannot give reasonable assurances of health and safety of the public.

Any license transfer during a LRA proceeding brings into scope Entergy's financial qualification review to continue operating the license during the license renewal period. The proposed corporate restructure will affect the financial responsibility and liabilities of Indian Point 1,2, and 3. The proposed restructuring draws question as to whether Entergy can provide reasonable assurances of health and safety of the public. Serious doubts exist as to whether the NRC can hold a parent company responsible for the liabilities incurred by a subsidiary. Therefore,

the owner and its financial status are relevant to the license renewal process to protect the public's health and safety.

The timing of this transfer application creates the opportunity for the NRC staff to do less than an adequate review, as was found by the General Accounting Office in previous reviews performed. (Exhibit C GAO Report to Congress 02-48 dated December 3, 2001). The General Accounting Office has found that the NRC has done an inadequate analysis regarding the fiscal responsibility during license transfers in the past, affecting commitments or lack thereof, including but not limited to such items as the decommissioning funds, specifically relevant to Unit 2 and Unit 3 license renewal. The General Accounting Office found that “NRC did not obtain the same degree of financial assurance in the case of one merger that created a new generating company that is now responsible for owning, operating, and decommissioning the largest fleet of nuclear plants in the United States. The new owner did not provide, and NRC did not request, guaranteed additional sources of revenue above the market sale of its electricity, as other new owners had. Moreover, the NRC did not document its review of the financial information—including revenue projections, which were inaccurate—that the new owner submitted to justify its qualifications to safely own and operate 16 plants.” (GAO Report to Congress 02-48 dated December 3, 2001).

Based on the foregoing and the GAO report, the NRC license renewal procedure is defective because it permits a licensee to transfer its operating license during the pending license renewal process

Thus, Contention 3 is material, particular, raises an issue of law, and therefore is admissible.

CONTENTION 4: The exemption granted by the NRC on October 4, 2007 reducing Fire Protection standards for Indian Point 3 are a violation of §51.101(b), and does not adequately protect public health and safety.

Entergy and the NRC Staff contend that the fire standard exemption granted to licensee is outside renewal scope. (Entergy brief pp. 51-54); (NRC Staff brief at pp 38-39). As noted in the NRC Staff brief, the exemption has become part of the CLB. Furthermore, Entergy has failed to submit expert rebuttal of our expert witness declaration, and therefore their answers are without merit.

Petitioners contend that the NRC exemption granted by the NRC reducing the fire protection standards for Indian Point Unit 3 violates 10 C.F.R. 51.101(b) and does not protect the public health and safety. Under 10 C.F.R. 54.4 “[a]ll systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 C.F.R. 50.48), environmental qualification (10 C.F.R. 50.49), pressurized thermal shock (10 C.F.R. 50.61),

anticipated transients without scram (10 C.F.R. 50.62), and station blackout (10 C.F.R. 50.63).” This clearly includes exemptions to federal law that are specifically mentioned under code for license renewal.

Subsequent to Entergy’s LRA being accepted by the Staff, the application proposed an exemption that substantially modified the in- progress exemption regarding fire protection of power cables and control cables in the electrical cable tunnels. These new requests were done without proper notice in the Federal Register, and constituted a change in Attachment D to Appendix E of Entergy’s LRA.

The exemption modified the Core Damage Frequency calculations as demonstrated in Petitioners contention 5. The exemption permits Entergy to operate although the Units have a 24-minute rated fire barrier for ETN-4, and 30-minute rated fire barrier for PAB-2, in lieu of a 1-hour rated barrier. The result of these new changes that were expeditiously approved under an apparently rushed Safety Evaluation are based upon unsubstantiated analysis, and fly in the face of 2005 EPact, as well as existing rule increasing risk to the health and safety to the public without the most modest analysis as required under 10 C.F.R.50.12.

As demonstrated in contention 5, the issue is particular, and relevant to renewal given the Entergy relies on manual actions suppress a fire in a zone that is

difficult and dangerous to enter during a fire, and is a prerequisite zone to remain operational for associated systems safe shutdown analysis (ASSD).

In a series of letters dated July 24, 2006, and supplemental letters dated April 30, May 23, and August 16, 2007, responding to the NRC staff's request for additional information, Entergy submitted a request for revision of existing exemptions for the Upper and Lower Electrical Tunnels (Fire Area ETN-4, Fire Zones 7A and 60A, (respectively), and the Upper Penetration Area (Fire Area ETN-4, Fire Zone 73A), to the extent that 24-minute rated fire barriers are used to protect redundant safe-shutdown trains located in the above fire areas in lieu of the previously approved 1-hour rated fire barriers per the January 7, 1987 Safety evaluation For the 41" Elevation CCW Pump Area (Fire Area PAB-2, Fire Zone 1) ENO is requesting a revision of the existing exemptions to the extent that a 30-minute rated fire barrier is provided to protect redundant safe shutdown trains located in the same fire area.

Pursuant to 10 C.F.R. 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 C.F.R. Part 50 when (1) the exemptions are authorized by law, *will not present an undue risk to public health or safety, and are consistent with the common defense and security*; and (2) when special circumstances are present. (emphasis added). One of these special circumstances, described in 10 C.F.R.

50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

In this case the NRC has failed to enforce its own regulations. The underlying purpose of Subsection III.G.2 of 10 C.F.R. 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. The provisions of III.G.2.c through the use of a 1-hour fire barrier with fire detectors and an automatic fire suppression system is one acceptable way to comply with this fire protection requirement. The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988).

Contentions identifying and referring to particular documents or studies are sufficiently specific for the purpose of admission. *Sierra Club v. U.S. Nuclear Regulatory Com'n*, 862 F.2d 222 (9th Cir. 1988)(Sierra Club submitted with its contention a copy of the BNL report and made clear title in the title and text of its contention that it wished to litigate issues contained in that report was held sufficient although the contention itself did not contain any specific accident scenario, the BNL report, which was attached to the Sierra's Club contention, more

than adequately identified such scenarios). The relevant inquiry is whether the contention adequately notifies the other parties of the issues to be litigated; whether it improperly invokes the hearing process by raising non-justiciable issues, such as the propriety of statutory requirements or agency regulation; and whether it raises issues that are appropriate for litigation in the particular proceeding. *Sierra Club, supra*.

Therefore, the exemption granted by the NRC, which will be carried over into the proposed license period fails to protect the health and safety of the public and does not provide an adequate aging management plan for this in scope system. Therefore Contention 4 additionally raises significant issues of fact and law regarding safety concerns and aging management that should must be admitted and heard.

CONTENTION 5: The Fire Protection Program described in the Current License Basis Documents including the unlawfully approved exemptions to Appendix R, the Safety Evaluation and the amended license for Indian Point 3 fail to adequately protect the health and safety of the public, and fail to meet the requirements of 10 CFR 50 and Appendix R.

Petitioners assert that the fire protection exemption granted to Entergy fails to adequately protect the health and safety of the public and fails to meet to the requirements of 10 C.F.R. 50 and Appendix R.

The NRC Staff oppose this contention because it is outside the scope of the license renewal proceedings. (NRC brief at p.40). Entergy asserts that this contention does not raise a factual or legal matter and is not within the scope of the license renewal process. However, As noted in the NRC Staff brief, the exemption has become part of the CLB. Moreover, neither Entergy nor the NRC Staff have submitted expert rebuttal of Petitioners expert witness declarations and therefore their arguments are baseless. Petitioners maintain that this contention meets the six part test for admissibility. The fire standard exemption granted to Entergy does protect the health and safety of the public.

Petitioners' Contention 5 raises a factual and legal issue. NRC's standards for licenses state that the use of the facility and the facility itself must not endanger the health and safety of the public. 10 C.F.R. 50.40(a). Issuance of a license must not "be inimical to the common defense and security or to the health and safety of the public." Section 50.40(c). The fire standard exemption granted is inimical to the common defense and security or to the health and safety of the public. Petitioners question whether the Indian Point Units can safely operate.

The Fire Protection exemption is without question within scope as required under § 2.309(f)(iii). The contention raises a particular and material issue the application containing contradictory, incomplete, and evolving core damage frequency analysis regarding the probability of a fire (even disregarding the nature

of the incendiary cause and (excluding a saboteur for example) the contention meets the threshold of admissibility. See § 2.309(f)(iv), in to the license basis that was available, and the pertinent sections of Appendix E to the LRA¹⁰ provides within Attachment D, analysis methodology and results suggesting that the specific area in question i.e. the electric cable tunnels described in specificity below, contain a CDF (core damage frequency) sufficiently low¹¹ so as to not be listed as major core damage frequency initiators.

However, the list that provides the Probabilistic Safety Analysis model Core Damage Frequency (these are results by each of the Entergy's opinion as to what are the major initiators) is absent of these tunnels but includes less likely initiators. The list which includes loss of non-essential service water, transients, station blackout, and others all have probabilities that are *greater than* the Entergy own calculation for CDF in the tunnels. This discrepancy *notably* precedes the Entergy then revising the physical characteristics of the tunnel components itself with a reduction from one hour to 24 minutes of burn time prior to cable failure and loss of emergency core cooling systems power and control running in close proximity in those fire areas.

¹⁰ This examination does not include substantial changes to the LICENSING RENEWAL APPLICATION submitted on about December 18, that may alter this contention—however, WestCANs petition was submitted prior to December 18, and no notification was made in the Federal Register regarding a substantial revision to the Application's LRA. See motion for stay of renewal proceedings until publication of the December 18th amendment, and a public comment period.

The contention disputes genuine material facts as clarified above. The compilation of law violated as provided on pages 40 through 44 of the petition stand. Entergy's erroneously stated that Petitioner failed to establish a regulatory linkage between 10 C.F.R.50.48 and 10 C.F.R.73. One has only to look at the words plainly in 10 C.F.R.50.12: "alternatives for the exemption...must be grounded in meaningful and not superficial examination...including measures impacting the "common defense and security..." This was not done for the existing, analysis, and failure to provide adequate analysis , invalidates statements in the LRA regarding of fire protection. It is the cornerstone of the core damage frequency analysis provided in Entergy's above cited reports.

Broken current programs that are within scope and that are to credited during the new license period, including this Fire Protection exemptions, raise significant issue of fact and law. Thus Contention 5 must be admitted and heard by the ASLB.

CONTENTION 6: Fire Protection Design Basis Threat. The Applicant's License Renewal Application fails to meet the requirements of 10 CFR54.4 "Scope," and fails to implement the requirements of the Energy Policy Act of 2005.

Entergy and the NRC Staff submit that contention 6 is not admissible because it is not within scope. (NRC Staff brief at pp. 40-42); (Entergy brief at pp. 55-56). Petitioners maintains that contention 6 meets the six part test for

admissibility. Current law supersedes scope limitations by the Commission regarding exclusion of design basis threat as part of license renewal. Design Basis Threat (hereinafter “DBT”), while excluded by the Commission as part of License Renewal process, current precedence in the Ninth Circuit provides that fire intentionally set must be considered a required element of relicensing.

Entergy’s LRA fails to address this issue. The Commission regulation codified on March 12, 2007¹² is applicable. Moreover, Entergy has not submitted expert rebuttal of our expert witness declarations and therefore their answer is without basis

Therefore, Contention 6 raises material issues of fact and law regarding aging management of Indian Point 2 and 3, is within scope, and should be admitted.

CONTENTION #7: Fire initiated by a light airplane strike risks penetrating vulnerable structures.

The NRC Staff contend that this contention fails to satisfy 10 C.F.R. 2.309(f)(1)(v)-(vi). (NRC Staff brief at p. 43). Petitioners need only state the reasons for its concern. *Seabrook, supra, citing Allens Creek, supra*. Petitioners refer to various studies and reports in their exhibits, and this have provided sufficient facts in support of contention 7.

The response provided by Entergy misses the issue entirely. Core Damage Frequency analysis provided in attachment D, to Appendix E of the LRA excludes fire incendiary sources beyond a limited scope. Under Contention 5, a CDF of $7.14\text{E-}07$ per reactor year. If one assumes fire ignition and fuel is available via aircraft crashes, the entire set of models for PRA regarding fire needs revision. The plant specific IPEE excluded any “transportation accident” on the basis that would not lead to a core melt frequency of greater than $1.0\text{E-}06$ per reactor year. This value is *more* frequent than about half of those listed in table 3.1-2 in Attachment D to Appendix E. None of the models¹³ examined included accidental aircraft crashes as an ignition entry point into the model. Examination of industry surveys of aircraft crashes in the region surrounding the plant provide extensive evidence that fires from aircraft accident are far from remote (Exhibit D).

Second, the recent rulemaking petition drafted by the NRC, §52.500 “Aircraft Impact Assessment”, raises questions regarding the mandate of the agency to minimize risk to the public assets including threats of aircraft triggered fires. Petitioners question why the NRC would codify the most modest protection for 8 plants that may never be constructed, and yet set aside protection of the

¹² 72 Fed. Reg. 12705.

¹³ FIVE analysis, DBT methodology,

public health and safety for the existing 104 plants, and in particular Indian Point Plant being considered for an additional 20 year extension¹⁴.

Finally, the following precedence provides that CDF for fire related events has a much broader uncertainty than claimed via credit under such methods as “Monte Carlo” or others. All one has to do is look at the actual record of fires at this plant, and the frequency input can be shown as invalid. A brief summary is provided in Attachment 1. Domestic fire frequency is about 1 per 100 reactors per year. Indian Point Unit 3 only recently had a fire in a transformer. A good test to the uncertainty is to correlate the actual fire frequency, multiplied to core damage threat, to those predicted. They do not correlate.

Petitioners are not challenging the rule—Petitioners are challenging the enforcement of 10C.F.R.54 to cover not to exclude, just wind, tornado, and seismic on faulted premise. Excluding these phenomena based upon incomplete PRA is questionable analysis, and appears yield a clear error in table in Appendix E.

Finally, Petitioners question how Entergy can conclude that its fire protection program as required by 10 C.F.R.54.4 is sufficient, when the existing CLB does not include compliance to the DESIGN BASIS THREAT rule—and compliance to the rule is in a state of flux. Further, Entergy has not submitted

¹⁴ Petition filed December 17th for example.

expert rebuttal of our expert witness declarations and therefore their answer is without basis

Thus, Contention #7 is material, particular, and within scope and thus admissible.

CONTENTION 8: The NRC improperly granted Entergy's modified exemption request reducing fire protection standards from 1 hour to 24 minutes while deferring necessary design modifications.

In contention 8, Petitioners contend that the NRC improperly granted Entergy's modified exemption allowing a reduction of the fire standards, while deferring necessary design modifications. The rationale is identical as in Contention 6. NRC's standards for licenses state that the use of the facility and the facility itself must not endanger the health and safety of the public. 10 C.F.R. 50.40(a). Issuance of a license must not "be inimical to the common defense and security or to the health and safety of the public." Section 50.40(c). The fire standard exemption granted is inimical to the common defense and security or to the health and safety of the public. Petitioners question whether the Indian Point Units can safely operate. Here, careful examination indicates that the Entergy is failing to meet its current licensing basis pro tem—and must rely on hourly fire watches.

Numerous other discrepancies add to the uncertainty. For example, the 480 volt EDG output is unique requires different cable sizing, different heat dissipation, and additional analysis to show circuit integrity through the event. Under 10 C.F.R.10.12(c) an alternative analysis of simply replacing the hemyc wrap was not presented. There is no test data or analysis examined or the configuration qualified. Petitioners question why the cost benefit analysis performed could not support upgrading the firewrap to a 1 hour rating.

“Indian point Unit 3 Case study” provides an abundant history of distinct fire related events at Indian Point 3. Included are 20% of the fire dampers were found to fail due to improper installation, cable tunnel separation criteria failed to meet separation requirements, , design regarding lighting for fire related remote shutdown. There are 11 more all significant.

Further, Entergy has not submitted expert rebuttal of our expert witness declarations and therefore their answer is without basis, Thus this contention is material, particular, and within scope to be admitted and heard.

CONTENTION 9: In violation of promises made to Congress the NRC did not correct deficiencies in fire protection, and instead have reduced fire protection by relying on manual actions to save essential equipment.

Entergy and the NRC Staff argue that contention 9 is not within scope of a renewal proceeding. Petitioners maintain that the exemption granted by NRC

granting the use of HemyC thereby reducing the fire protection standard to 24 minutes at Indian Point 3 from the standard of one hour, is carried into the new license period. (NRC Staff brief at p. 45); (Entergy brief at pp. 57-58). In fact the exemption, though omitted from the LRA, will be continued during the proposed new license period and therefore is within scope, as it directly impacts the aging management of the plant. By granting this exemption the NRC did not correct deficiencies in fire protection and instead reduced fire standards by relying on manual action to save essential equipment. (Pet. pp. 95-98) (Entergy brief pp. 57-58), which will impact material and particular issues directly related to the aging management of the plant.

Petitioners reassert that this contention raises specific and defined actions regarding retrofitting the plant to bring it into compliance, in order for the NRC to allow this exemption to be carried into the proposed license period. Entergy failed to include such retrofits, and failed to amend it's LRA to include this exemption-as required under 10 CFR Part 54.

Entergy has not submitted expert rebuttal of our expert witness declarations and therefore Entergy's answer is without basis. Based on the foregoing, Contention 9 is material, particular, and within scope. Therefore, contention 9 should be admitted and be heard.

CONTENTION No. 10: (Unit 2) Cable separation for Unit 2 is non-compliant, fails to meet separation criteria and fails to meet Appendix R criteria. This has been a known issue since 1976; and again in 1984, yet remains non-compliant today.

Petitioners contend that the cable separation for Unit 2 is non-compliant, fails to meet the criteria for separation and for Appendix R. (Pet. at pp. 98-99). Entergy and the NRC Staff assert that Contention 10 is not admissible. (Entergy brief at pp. 58-61); (NRC Staff brief at pp. 46-47).

Petitioners assert that the electrical separation of Unit 2 at Indian Point was constructed under unapproved criteria. (Pet. at pp. 98-99). As a result, a single electric tunnel houses both safety related trains within approximately 12 inches of each other, which violates general design criteria and does not comply with Appendix R criteria. (Id.) Entergy's LRA fails to present adequate and lawful design measures to provide a reasonable assurance to protect the health and safety of the public; therefore, the aging program in Entergy's LRA is meaningless. (Id.)

As discussed earlier, the merits of the contention are not part of admissibility. See e.g., *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), *supra*. Petitioners need only state the reasons for its concern. *Seabrook, supra, citing Allens Creek, supra*. Consequently, Petitioners have met the criteria under 10 C.F.R. 2. 309(f).

Entergy further states that Indian Point Units 2 and 3 construction permits were issued on October 14, 1966, and August 13, 1969, respectively and thus, the

General design criteria does not apply to those plants. (Entergy's brief at p. 59). This is a substantial error. The NRR Office Instruction No. LIC 100, Licensing Basis for Operating Reactors has no legal basis. There are numerous places in the license basis where the Entergy does either directly or by inference state that it intends to comply with the GDC in question.

“The Indian Point 2 (P2) Control Room Ventilation System (CRVS) meets the applicable General Design Criteria (GDC). Indian Point 2 was initially licensed based on the proposed GDCs issued for comment by the Atomic Energy Commission on July 11, 1967. Since that time, the NRC issued a Confirmatory Order on February 11, 1980, which included a requirement to conduct a study regarding compliance with the regulations of 10 CFR 50. The study performed in response to this Order included a review of the GDCs contained in Appendix A of 10 CFR 50. The results of this study were reported in Reference 1 and NRC acceptance of this response was provided in Reference 2. The applicability of the GDCs to P2 is also described in the Updated Final Safety Analysis Report (Reference 3). (See Exhibit G. p. 10).

Under the admissibility criteria of Section 2.309(f)(1), this contention is admissible. Petitioners have provided a specific statement of the legal or factual issue sought to be raised --- that the cable separation for unit 2 is non-compliant. Petitioners have provided a brief explanation of the basis for the contention – the

cable separation violates GDC. Petitioners have raised an issue within the scope of the proceeding because it involves the GDC's and aging management. Petitioners have demonstrated that the issue is material and stated that it was not referenced in the LRA; thus, Petitioners could not cite to specific portions of the application. Petitioners have provide sufficient information to show that a genuine disputes exists with regard to a material issue of law or fact. (Pet. at p. 98).

Moreover, Entergy and the NRC Staff have not submitted expert rebuttal of Petitioners expert witness declarations, and therefore, the answers are without basis. As a result, Contention 10 should be admitted and heard.

CONTENTION No. 11A (Unit 2 and Unit 3): The Fire protection program as described on page B-47 of the Appendix B of the Applicant's LRA does not include fire wrap or cable insulation as part of its aging management program.

Contention 11A asserts that the fire protection program described on page B-47 of Appendix B of the LRA does not include fire wrap or cable insulation in its aging management program. (Pet. at. pp. 99- 101). Without maintaining minimum criteria for age management of fire wraps, beyond visual inspections, the actual scope of fire barrier/insulation supplied in the application is insufficient. The NRC Staff concedes that the portion of this contention relating to the fire protection aging management program is admissible. (NRC Staff brief at p. 47).

The specific elements noted in tables provided by the Entergy are vague, incomplete, and without substance. There exists ambiguity between insulation with the word “none” inserted for aging management. In other one word entries on the table 3.5.2-4, there is simply a reference to fire protection, but no aging management program described.

Therefore, the fire protection aging management program submitted by Entergy is insufficient and thus Petitioners contention 11A must be admitted.

CONTENTION 11B: Environmental Impact of an increase in risk of fire damage due to degraded cable insulation is not considered thus the Applicants’ LRA is incomplete and inaccurate, and the Safety Evaluation supporting the SAMA analysis is incorrect.

Petitioners argue that Entergy failed to assess the increased risk of fire damage due to degraded cable insulation and thus, Entergy’s LRA and the safety evaluation supporting the SAMA are incomplete and inaccurate. SAMA issues are material issues of fact that should be considered during this license renewal proceeding. Furthermore, neither Entergy nor the NRC Staff have submitted expert rebuttal of Petitioners expert witness declarations, as such, their answers should not be considered. Since contention 11A is material, particular, and within scope, the contention should be admitted and subject to a hearing.

CONTENTION 12: Entergy either does not have, or has unlawfully failed to provide the Current License Basis' (CLB) for Indian Point 2 and 3, accordingly the NRC must deny license renewal.

Entergy argues that contention 12 is not within scope of the renewal process.

THE NRC Staff argue that Petitioners failed to identify an error or omission in the application. (NRC Staff brief at pp. 49-50). Petitioners maintain that the current license basis is within scope, and must be available for a petitioner during the period allowed by rule 2.336 for intervention. Petitioners have a legal right to the pertinent parts of the licensing basis. 10 C.F.R.2.309 Moreover, under 10 C.F.R. §§ 54.19 and 54.21(c), Entergy failed to provide a comprehensive list of plant-specific exemptions, as noted by the NRC Staff. (NRC Staff brief at p. 50). Therefore, Entergy's LRA currently is not in compliance with NRC regulations.

Under section 2.309(f)(1)(iv) of the Code of Federal Regulations, the contention is material to the findings the NRC must make to support the action that is involved in the proceeding. An issue is only "material" if "the resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172. This means that there must be some link between the claimed error or omission regarding the proposed licensing action and the NRC's role in protecting public health and safety or the environment. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 (2004), *aff'd* CLI-04-36, 60 NRC 631 (2004).

Finally, the CLB is not a “term of art” as described by the Entergy. The CLB is precisely defined in §54.3. Even if Petitioners acknowledge the amorphous nature of the CLB and the dynamic state—Entergy is required under the rules to have the pertinent elements and they don’t. This is another example that is relevant is the stunning oversight by Entergy -- their repeated statements in their reply [to contentions 10, 11B and others] that Entergy(s) for the plants are not bound to the GDC’s. By them even making that statement, Entergy is attempting to change the CLB.

Entergy argues that the ASLB should “not be expected to sift unaided through large swaths” of exhibits. Petitioners argue that Petitioners should not be expected to sift unaided through 40 years of exemptions, deviations, exceptions to piece together the current CLB. Applicant’s have an obligation to provide both Petitioners/Stakeholders and the ASLB a CLB that is not a vague idea, but a concrete written document. A complete and non-vague CLB is the very basis by which Petitioners and the ASLB can evaluate whether the aging management of components, systems, and structures are adequately addressed in the LRA. Entergy did not provide a complete and accurate CLB to adequately assess the aging management program.

Entergy does not challenge the in-scope status of this contention. Thus, 10 pursuant to C.F.R. 2.309(f)(1)(vi), contention 12 must be admitted.

CONTENTION 13: The LRA is incomplete and should be dismissed, because it fails to present a Time Limiting Aging Analysis and an Adequate Aging Management Plan, and instead makes vague commitments to manage the aging of the plant at uncertain dates in the future, thereby making the LRA a meaningless and voidable “agreement to agree.”

The contention is admissible under the six part test. The Applicants are required to provide a complete application as required under the standards promulgated within §54.29, Entergy has failed to do so because the commitments are made in the LRA that contain language that are void under contract law. The very essence and scope of aging management programs is based on the commitments made in the LRA, the voidable nature of such commitments is clearly within scope of the relicensing proceedings. Petitioners are particular, or specific as to where the application is incomplete.

Petitioners need not argue the merits, just show the absence of information is relevant to a few of our contentions. A properly pled contention must contain "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1). Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. *See* 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in

affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." Id. at 33,171.

On page 71 of the Applicant's response there are a number of statements regarding commitments that are completely incorrect. Licensee commitments can number in the thousands. Only a fraction have legal enforceability. The remainder are not tracked as commitments, and generally not maintained. The precise set of ongoing or onetime commitments that are docketed and in affect must be maintained by the applicant and is required by §54.3(a).

Petitioners assert that anything that is currently capable of being described in sufficient detail should be. Programs for aging management, *by contract law* can be precisely articulated—the Applicant proffers no rationale for delaying disclosure. Examples of the Applicant's failure of full disclosure include Flow Accelerated Corrosion¹⁵, Equipment qualification¹⁶, buried piping¹⁷, and in

¹⁵ For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 202L Rev 2 is not specific. There are examples of plants were they credit EPRIs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piant piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events where not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years.

¹⁶ See contention 27.

¹⁷ See contention 35

particular, the undisclosed refurbishment plan for the reactor heads¹⁸. (See Exhibit E, OIG Report, and Exhibit F, Declaration of Ulrich Witte).

By avoiding the issues, the Applicant avoids the Environmental Reporting. And thereby avoid, intervention, and foreclose the opportunity for the public to be heard and made aware of the risks.

In response the NRC Staff state that Petitioners contention is “vague, lacks expert support, fails to specify portion of the application with which it disagrees, and fails to state an admissible issue.” (NRC Staff brief at pp. 51-52). Entergy claims that this contention is not supported by facts or expert opinion, fails to raise a genuine dispute on a material issue of law or fact, and impermissibly challenges 10 C.F.R. Parts 50 and 54. (Entergy brief at pp. 70-71).

Petitioners contention is that Entergy’s LRA is incomplete; therefore, it cannot point to specific portion of the LRA with which it disagrees because the entire LRA is incomplete. The applicant is required to include all information in its LRA and thus the burden of proof is on the applicant to show that the LRA is complete. Since the application is required to address all EE&D’s being carried over into the new licensing period, the LRA is complete if it does not include a plan for aging management of the plants degradation and fails to provide AMP’s.

Therefore contention 13 must be admitted and heard.

¹⁸ See contention xx reactor head replacement.

CONTENTION 14: The LRA submitted fails to include Final License Renewal Interim Staff Guidance. For example, LR-ISG 2006-03, “ Staff guidance for preparing Severe Accident Mitigation Alternatives.”

Petitioners point to numerous material inadequacies found in the Entergy submittal. (Pet. at pp. 112-113). Entergy insists that LR-ISG-2006-03 is included in their LRA at 2.1-21, (Entergy’s brief at 72-73), whereas the NRC Staff argue that contention 14 lacks specificity and basis. (NRC Staff brief at p. 53).

Essentially, the inherent weaknesses found throughout the submittal would have been at least partly avoided had they followed this guidance. Second, the guidance whether draft of final is immaterial – a point apparently considered important in the response by the Entergy. Plants were built to *draft* GDCs in 1967. That is better than no GDCs at all, which is what Entergy now is actually claiming in responses to our contention 10, 11B, and 22-25.

The date LR-ISG-2006-03 was finalized is immaterial. The NRC notes that it intends to roll this guide into NUREG 1555. This action gives it more strength – and more compelling that it be used. But there are others that are in existence and yet only one guideline was cited—and only in general terms. The licensee appears to have cherry picked the guidance at best. Where it pointed to NEI such as NEI-05-01, the Entergy used the resource to limit the extent it believed would be necessary for applying regulations to SAMA submittal. This is flawed. SAMA vulnerability (for example due to a large pipe break coolant accident) is

incomplete—given that consideration is not made for steam generators that are less than 100% functional. By following the guidance—for example, LR-ISG-2006-02, “Staff guidance for environmental reports for license renewal applications” (published as a draft document in February, 2007) the following flaws would have also been avoided.

A list of the inadequacies, as compared to several EIS scoping documents submitted on October 12, 2007 is provided in Exhibit H. “Incomplete Scoping under IGS-2006-02 Guidance.”

Contention 14 meets the admissibility criteria. Entergy does not challenge the in-scope nature of this Contentions. Contention 14 raises a genuine dispute with the Applicant on materials issues of law or fact as per 10 C.F.R. 2.309(f)(1) and must be admitted.

CONTENTION 15: Regulations provides that in the event the NRC approves the LRA, then old license is retired, and a new superseding license will be issued, as a matter of law § 54.31. Therefore all citing criteria for a new license must be fully considered including population density, emergency plans and seismology, etc.

Petitioners maintain that this Contention meets the 6 part test for admissibility. Petitioners maintain that under NRC regulations, when the LRA is approved, the old operating license terminates and a new superseding license is issued pursuant to 10 C.F.R. 54.31. (Pet. at p. 155). Consequently, before a new operating license

can be issued, the NRC must assess the nuclear power plant and its location under the same criteria as an application for a new operating license. (Pet. at p. 116).

License Renewal (as codified in 10C.F.R.54 and 10C.F.R.51) can be simplified to address four things—and four things only: (a) Aging of the plant structures, systems, and components will be sufficiently managed – where one cannot argue they are already addressed within the current license basis; (b) review of time limited aging evaluations; (c) environmental impact analysis that is clearly plant specific and not generic, (for example, severe accident risk is out of scope but alternatives to severe accidents are in scope; (d) anything else that one can prove is only possible during the renewal period but not during the current license period. (10 C.F.R. 54.21(b)).

“A contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem. That would be enough to raise an issue under the general requirement for operating licenses (10 C.F.R. § 50.57(a)(3)) for finding of reasonable assurance of operation without endangering the health and safety of the public.” *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, LBP-82-116, 16 NRC 1937, 1946 (1982).

As numerous agencies¹⁹ and states²⁰ have asserted, as well as the Office Of The Inspector General²¹, the current application bypasses a plethora of issues that start

¹⁹ NYS petition, letter signed by six state attorneys general,

from current unresolved problems and are expected (by engineering rigor and not mere speculation) to either not be resolved at the end of the current license period, or more importantly, reflect a failed implementation of design criteria, operational criteria; or design basis accident mitigation that actually worsen by extending the operating license.

Examples that meet these criteria include:

1. Probable water contamination, with the announced intention to use the Hudson River as a source of drinking water...water.
2. Changes to the environment that are forthcoming. Weather systems, river water level and flow rates, and temperatures,
3. Probabilistic assessments of sabotage, action: cite report that shows likelihood of attack etc—and that it is likely to increase further.
4. Whether operating Indian Point for 50% longer creates new and different failure modes—as yet unpredicted but real. For example, the casual affect of the pipe break at Surry, and the consequences were entirely unpredicted,

²⁰ Letter dated October 24, 2007 for the EPA requesting criteria consistent with a new operating license be applied.

²¹ September report

and outside the design basis accident that the plant was designed, engineered, and operated to withstand.

5. Design Basis Threat

6. The added cost of decommissioning the site with 20 *more* years of additional soil contamination, water contamination, and airborne contamination—where the Entergy has shown itself to be the nation’s worst operator²².

Finally, the material condition of the plant is critical, which depends heavily on how the plant was designed, operated, modified, and maintained compliant. For instance, the efficacy of the physical plant through the past 45 years since construction needs to be provable by the docketed record including compliance to the historical and current license bases by the Entergy. Compliance to the rules and case law by themselves must establish the sufficiency of the license bases record so as to adequately implement the congressional enacted statutes governing the protection of the health and safety of the public, as well as minimizing risk to the public assets. In contention after contention Petitioners show (along with the NEW YORK STATE Attorney Generals Office Petition) wholesale violation of the rules. One does not need to look any further than Entergy’s response: “Indian Point is not required to comply with the GDC’s stated regarding our petition and

²² Reference coming... Indian Point is the dirtiest plant in the domestic fleet.

stated to other petitioners. A clear example of what lies ahead of the risks of the public assets, and the protection of the health and safety of the public.

The Entergy relies heavily on the GALL report to support their suggestion that the LRA provided is complete and compliant to law. The GALL report is guidance- not law. The question of law raised in this contention is precisely how does the Entergy interpret and apply the rules as codified in 10 C.F.R.54 and 10 C.F.R.51 so as to actually meet congressional statutory authority as prescribed the Atomic Energy Act, together with the following statutory authority²³. This contention turns on resolution of the ambiguities.

Petitioner contend that without a superseding license by these particular facts and law, the matter not covered by a specific rule but by the particular and specific conditions found, does allege that the renewal of Indian Point poses a significant safety problem. Because there is no definition listed in for “license renewal” or “relicensing” in the NRC regulations, Petitioners reason that the criteria for obtaining a initial operating license are just as applicable for relicensing. Alternatively, the aging management analysis covers the same review that is necessary for obtaining a renewed license.

Thus, contention 15 should be admitted.

CONTENTION 16: An Updated Seismic Analysis for Indian Point must be Conducted and Applicant must Demonstrate that Indian Point can avoid or mitigate a large earthquake. Indian Point Sits Nearly on Top of the Intersection of Two Major Earthquake belts.

Contention 16 urges the NRC to consider the site specific conditions at Indian Point and perform an updated seismic analysis. Indian Point is right on top of two major earthquake belts that intersect and each is approximately twenty feet wide. Since Entergy's LRA failed to include a seismic analysis, the NRC should order Entergy to do so. In reply, Entergy argues that this issue is beyond the scope of this proceeding, immaterial to license renewal, the contention lacks factual or expert support, and fails to show a genuine dispute exists. (Entergy brief at pp. 77-79). The NRC Staff also state that this issue is beyond the scope of license renewal. (NRC Staff brief at pp. 58-60).

Contention 16 raises the issue of whether a seismic analysis, a site-specific environmental issue relating to Indian Point, should be required before a new operating license is approved. Petitioners Argue that an analysis should be conducted because there are site specific considerations removing seismic analysis from a category one environmental issue to a category two issue. Petitioners need only state the reasons for its concerns. *Seabrook, supra, citing Allens Creek, supra.* Due to the site specific conditions of Indian point a seismic analysis should be conducted because it is a category 2 environmental issue.

Petitioners explain several severe consequences if an earthquake were to occur, particularly in light of the aging equipment. Under 10 C.F.R.54.21, the licensee must evaluate the aging of the plant structures, systems, and components will be sufficiently managed, where not addressed in the current license basis, and perform an environmental impact analysis that is clearly plant specific and not generic. Entergy's LRA does not.

The issues raised in contention 16 are particular and specific. (Pet. at p. 134). For example, ISFI issues were admitted in recent precedence²⁴.

Once Petitioner is admitted as a party, Petition will seek a waiver to compel reanalysis of Class 1 piping, and Class 2 piping.

This could be accomplished while saving the Entergy substantial costs in the generally overly conservative seismic analysis performed in the late 1970's and early 1980's. It is likely, that snubbers can be removed, and substantial costs of maintaining or replacing those snubbers be avoided. Given that the plant is required to maintain a complete design record, including the "asbuilt" configuration of each facility, specifically including piping schematics and isometrics. It is also possible to show that the existing analysis is conservative against the revised seismic OBE and SSE criteria. If on the other hand, the analysis is non-conservative, and the Entergy is aware, and chooses not to disclose

²⁴ Pet. at p. 10, contention 6

configurations that are currently do not meet design basis accident requirements. Then other enforcement rules come into play, and Entergy has a compliance issue much bigger than Seismic analysis of safety related systems components and structures.

The engineering requirements including thermohydraulic fatigue analysis is specifically required under §54. There is significant ASME code case relief available since 1978, for example Code Case N-597, and others. However, given Entergy's position that it is not bound by any GDCs associated with pipe stress etc, this contention provides another example of the incomplete LRA. How can one prove adequate engineering management of aging and degradation of class 1 piping, when, the Entergy states that it is not bound to the GDCs?

The aging management of the systems, components and structures are within scope and therefore an updated seismology report should be required. This contention raises material issue of fact and law which are in dispute and therefore should be admitted and heard.

CONTENTION 17: The population density within the 50 mile Ingestion Pathway EPZ of Indian Point is over 21 million, the population within in the 10 mile plume exposure pathway EPZ exceeds 500,000.

Entergy and the NRC Staff argue that the population density issue is outside the scope of renewal proceedings. (Entergy brief at p. 79-81); (NRC Staff brief at p. 61). Entergy failed to address increased population density surrounding Indian Point²⁵ in their inadequate environmental report.

For the reasons stated in contention 16, the population density surrounding Indian Point is site specific and should be heard. NEPA empowers the NRC to require an environmental study of the environmental impact of a proposed action if the action would significantly affect the quality of the human environment. 42 U.S.C. 4332(2)(C). A license renewal application is a significant and major event under the NEPA. The applicant's environmental report must include "any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware." 10 C.F.R. 51.53(c)(3)(iv). Changes in factual and legal circumstances may impose upon an agency obligation to reconsider a settled policy or explain its failure to do so. *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C.Cir. 1992); *AHPA v. Lyng*, 812 F.2d 1 (D.C. Cir. 1987). As stated in Petitioners contention 17, Indian Point is surrounded by one of the most densely populated areas in the U.S. and 21 million people live within 50 miles of Indian Point. (Pet.

at. p. 140-142). Entergy responds that changes in population density do not require reassessment because this issue is not in the scope of 10 C.F.R. Part 54.

Petitioners need only state the reasons for its concerns. *Seabrook, supra*, citing *Allens Creek, supra*. The increasing population density surrounding Indian Point, as explained in contention 17, is new and significant information that should have been addressed in Entergy's environmental report. The dense population is an issue that is site specific and should be evaluated in accordance with 10 C.F.R. Part 100. Because this issue is site specific and known to Entergy, it should be included in its environmental report as a category two issue. Contention 17 should be admitted and heard because it raises genuine material issues of fact and law that are dispute.

CONTENTION 18: Emergency Plans and evacuation plans for the four counties, surrounding are inadequate to protect public health and safety, due to limited road infrastructure, increased traffic and poor communications.

Entergy and the NRC Staff state that this issue is outside of the scope of the aging management considerations relative to license renewals. (Entergy brief at p. 81).; (NRC Staff brief at p. 62). Again, for the reasons stated in contention 16, contention 18 raises a site specific issue and thus should be admitted. Entergy's

²⁵ There is a 1982 study that shows Indian point property values within the 50 mile zone as being by far the highest of any of the 104 operating plants in the country. In 1982 dollars it was of the order of 400 billion.

failure to adopt an adequate emergency and evacuation plan does not protect the health and safety of the public. Entergy's emergency and evacuation plans have held inadequate by the James Lee Witt and Associated Report commissioned by Governor Pataki of New York, and endorsed by Congressional leadership including Hillary Clinton, Edward Markey and Bernie Sanders.

Furthermore, Entergy's non-working sirens is an aging management issue.

The failure of Entergy to install a functional siren system mandated by Congress is clear evidence, that Entergy inadequate management of emergency and evacuation systems and emergency plans hindered by limited roads and increased traffic. (Pet. at p. 142). The LRA does not address how Entergy will adequately manage the aging evacuation and emergency systems during the proposed new license period. The site specific issues, at Indian Point with regard to Emergency Planning must be fully evaluated as Category 2 issues, including the inability for Indian Point install sirens with backup power, as required by Congressional law. Entergy attempts to claim that this contention is outside the scope of the aging-management matter considered in license renewal proceedings. (Entergy brief at 81). Entergy cites to *Millstone*, CLI-05-24, 62 NRC at 560-561 in which the Board stated that "emergency planning is, by its very nature, neither germane to age related degradation nor unique to the period covered by [a] license renewal application." (Entergy brief at p. 81-82).

However, the very mandate of the NRC is to adequately protect the public. Without a functional evacuation plan Indian Point cannot continue to operate for an additional 20 years. Thus contention 18 should be admitted.

CONTENTION: 19 Security Plans Petitioners contend that the way the force-on-force (FOF) tests are conducted do not prove that the Indian Point security force is capable to defend the facility against a credible terrorist attack or sabotage. The LRA does not address how Security, as required under section 10 C.F.R. 100.12(f) and 10 C.F.R. Part 73, will be managed during the proposed additional 20 years of operation against sabotage/terrorist forces with increasing access to sophisticated and advance weapons.

Along the same lines as Contention 16-18, contention 19 raises questions about the adequacy of Entergy's security plans at Indian Point. (Pet. at. 149-157). Entergy and the NRC Staff respond that security plans are outside the scope of license renewal proceedings citing to *Vermont Yankee*, LBP-06-20, 64 NRC at 172-173. (Entergy brief at 82-83); (NRC brief at p. 63-64).

In accordance with 10 C.F.R. 2.309(f)(3) and *Consolidated Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001), where both Petitioners independently established standing, the Presiding Office has the discretion to permit Petitioners to adopt the others' contention early in the proceeding. Petitioners join and adopt contention of parties raising this same issue.

CONTENTION 20: The LRA does not satisfy the NRC's underlying mandate of Reasonable Assurance of Adequate Protection of Public Health and Safety.

Entergy claims that the issues raised in contention 20 are outside the scope of license renewals. (Entergy brief at pp. 83-84). Petitioners reassert that the very mandate of the NRC is not adequately protect the public. However, Applicant's LRA is void of aging management plans to address systematic failures as evidence by many issues, including, but not limited to, the radioactive leaks, deficiencies in emergency planning, boric acid corrosion of the vessel heads for both Unit 2 and 3, steam generator issues, impending failure of the steel containment plate.

The very mandate of the NRC is to adequately protect the public. The LRA does not address how Entergy will prevent adequately protect the public functional evacuation plan Indian Point cannot continue to operate for an additional 20 years. Thus, Contention 20 raises materials issues of fact and law that are in dispute as per 10 CFR 2.309(f)(1) (vi) must be heard and omitted. Precedents on point supporting the admissibility of this Contention include the following:

- *Louisiana Energy Services, L.P.*, CLI-05-20 (2005)- Petitioner was seeking review of Atomic Safety and licensing board decision on

environmental uranium disposal- held board should admit it for a hearing

- *Exelon Generation Co., LLC*, CLI-05-17 (2005) – mandatory hearings under 10 C.F.R. 103, 1046 of AEA (42 U.S.C. 2239(a))

The very mandate of the NRC is to adequately protect the public. The LRA does not address how Entergy will prevent adequately protect the public functional evacuation plan Indian Point cannot continue to operate for an additional 20 years.

The NRC Staff contend that “[m]ost of the issues that the Petitioners bring up have nothing to do with the GEIS or the Supplemental to the GEIS.” (emphasis added) (NRC brief at p. 66). The NRC Staff also state that Petitioners have failed to seek a waiver of the regulations. Under the NRC regulations, only a party can seek a waiver of a regulation. Until at least one contention is admitted, a Petitioner is not a party. Thus, once Petitioners are parties, we will seek waiver of the issues that should be considered as category 2 environmental issues.

Thus contention 20 should be admitted.

Contention 21 was omitted from the Petition.

Contention 22

Entergy contents that Petitioners have not satisfied the admissibility criteria under 10 C.F.R. 2.309(f)(1). (Entergy brief at p. 84-85). The NRC Staff oppose admission of this contention because it is alleged to be outside the scope of license renewal. (NRC Staff brief at pp. 68-69).

The regulatory rules for obtaining a new superseding license, as delineated in the code of federal regulations, specifically rules under 10 C.F.R. Part 54, License Renewal, and 10 C.F.R. Part 51, Aging Management, were set aside by the Applicant in lieu of suggested criteria promulgated by the trade industry. The Applicant misrepresented the specific General Design Criteria which formed the basis of the Safety Evaluation Report granting the Unit 2 operating license and subsequently remained in violation of the terms of its operating license and with the federal rules for four decades. Hence, the Applicant placed economics before the health and safety of the public.

The Applicant, as well the federal agency, willfully and knowingly violated the Administrative Procedures Act, and as a result, now has prostituted the license renewal application for Indian Point Unit 2. The aging Management Programs proposed by the Applicant are based upon misrepresentations of the actual general design criteria to which Indian Point Unit 2 was license. The as-built construction

of the facility does not comply with the safety evaluation report, the operating license or to the code of federal regulations.

The NRC is currently assessing the need to review the 41 older nuclear power plant units referred to as the Systematic Evaluation Program Phase III (SEP-III) plants. Generic Safety Issue (GSI) 156-6.1 (R. Emrit, et al., 1993) deals with whether the effects of pipe break inside containment have been adequately addressed in these plants' designs. The NRC originally evaluated a majority of the SEP-III plants before they issued Regulatory Guide (RG) 1.46 in May 1973 (AEC, 1973b). Although the NRC reviewed these plants, there is a potential lack of uniformity in those reviews due to the absence of documented acceptance criteria. The NRC is now attempting to assess the impact of not having such criteria in place.

The extent of the violations are breathtaking, and involve a substantial prima facie breach of Administrative Procedures Act (APA) by the Federal Agencies over almost four decades for Indian Point 2. Beginning in 1968, the Nuclear Regulatory Commission acted in direct defiance of the Administrative Procedures Act by approving Amendment Nine of the Operating License, (contained in exhibit I) in which the Licensee acknowledged commitments to *trade comments* to draft General Design Criteria for its new plant. In addition, the Licensee committed to trade comments to the proposed General Design Criteria, and erroneously claimed

that the trade organization comments were published in the Federal Register for public comment in July, 1967, when in fact they were never properly published. (See Exhibit J).

The Licensee claimed adherence to a General Design Criteria required for the licensing of Indian Point 2 facility, and committed to such General Design Criteria in the 1970 SER. In actuality, the plant design, programs and procedures *were licensed to trade industry-endorsed commentary* as opposed to the General Design Criteria for the LRA and subsequently approved by the Atomic Energy Commission under the 1970 Safety Evaluation Report. (See Exhibit K). bypassed the federal rules as found under the rule making process. The draft GDC's were published and approved for use more than 13 months prior. This fundamental failure of oversight by the regulator was subsequently set aside and festered, while the commission quietly authorized by retroactive fiat that the licensing process proscribed under federal rules for Indian Point 2 could remain in violation of law. This series of events is evidenced by close examination of documents cited or submitted in the applicant's LRA. The commission dealt with the design basis and license failures with a stroke of a pen in 1992. (See Exhibit L).

The table below best provides the chronology as well as the facts, and the implications to the renewal license application fidelity. In simplest terms the Licensee and NRC with the acceptance of the GDC defined in Amendment 9 to the

original application for license accepted a draft industry GDC in place of the actual GDC for IP2. Table 1 Timeline of proposed trade design criteria and misrepresented as conforming to federal law:

Date:	Docketed Activity	Reference	Implications to fidelity of the License Amendment
November 22, 1965	Early draft General Design Criteria published by AEC for comment	November 22, 1965 Press release from AEC. No FR notice	For consideration by Con Ed in decision to Construct Indian Point 2
October 14, 1966	By application dated December 6, 1965, and amendments thereto (the original application), the applicant applied for the necessary licenses to construct and operate a nuclear power reactor at the applicant's site at Indian Point, Village of Buchanan, Westchester County, New York.	The Commission, after a public hearing and after an initial decision by the Atomic Safety and Licensing Board (the Board), established by the Commission, issued Construction Permit CPPR-21 for this facility	The application was evaluated by the Commission's regulatory staff and independent Advisory Committee on Reactor Safeguards (ACRS), both of which concluded that there was reasonable assurance that the facility could be operated at the proposed site without undue risk to the health and safety of the public. On October 14, 1966,
July 11, 1967	AEC publishes draft General Design Criteria under federal rule making processes.	Federal Register 32 FR 10213	Note that the draft GDCs were never made a part of Appendix A of 10CFR50.
October 2, 1967	Atomic Industry Forum, a trade organization, provides significant comments regarding draft GDCs published.	Provided directly to Atomic Energy Commission without publication in the federal register	AIF general proposed removal of conservatism in draft General Design Criteria. These changes were never approved by the AEC.
October 15, 1968	Former owner of Unit 2 submits Amendment 9 of application of license	AEC Docket No. 50-247-- correspondence from Con Ed to Director of Division	Facility that was now more than 2 years into construction was being constructed following unapproved trade documents – however, the letter states on page 1.3-1 that the

Date:	Docketed Activity	Reference	Implications to fidelity of the License Amendment
		of Reactor Licensing Atomic Energy Commission	unapproved "general design criteria tabulated explicitly in this report comprised of the proposed AIF versions of the criteria issued for comment in July 1967."
February 1970		See January 28, 1971 NRC discussion of AIF GDC comments.	The staff met with an ad hoc AIF group, which included representatives of reactor manufacturers, utilities and architect engineers to discuss the revised General Design Criteria. The comments of this group were reflected in a June 4, 1970 draft of the revised General Design Criteria that was forwarded to the AIF for comment. The AIF forwarded comments and stated it believed the criteria should be published as an effective rule after reflecting its comments. These comments have been reflected in the GDC in Appendix "A".
November 16, 1970	<p>Safety Evaluation Report</p> <p>Commission grants operating license based upon amendments 9-25 of application for license by Con Edison.</p>	Incorporated License amendments 9-25 to the application and the FFDSAR -includes ALSB, ACRS review et al.	<p>"Our technical safety review of the design of this plant has been based on Amendment No. 9 to the application, the Final Facility Description and Safety Analysis Report (FFDSAR), and Amendments Nos. 10-25, inclusive. All of these documents are available for review at the Atomic Energy Commission's Public Document Room at 1717 H Street, Washington, D.C. The technical evaluation of the design of this plant was accomplished by the Division of Reactor Licensing with assistance" from the Division of Reactor Standards and various consultants to the AEC.</p> <p>This document gave them authority to operate the facility under the draft GDCs but without the AIF comments specifically for the Reactor Protection and Control System.</p>

Date:	Docketed Activity	Reference	Implications to fidelity of the License Amendment
			As noted, "Specifically, for the reactor protection system instrumentation for -Indian Point Unit 2 is the same as that installed- at the Ginna plant. The adequacy of the protection system instrumentation was evaluated by comparison with the Commission's proposed general design criteria published on: July 11, 1967, and the proposed IEEE criteria for nuclear power plant protection system (IEEE-279 Code), dated August 28, 1968. The basic design has been reviewed extensively in the past and we conclude that the design for Indian Point 2 is acceptable".
February 20 1971 through July 11 1971	Formerly Draft GDCs are approved Final GDCs and become part of Appendix A to 10 CFR 50. They are amended the same year.	Published in FR. on February 20 1971, and amended on July 11, 1971	These are the first legal standards for which the plant is required to comply or under federal rules, or be granted an exemption.
November 4, 1971	A third modified construction permit was issued for Units #1 and #2. The proposed relocation of the intake structures by Con Edison was a significant improvement and entered into this decision.		The USAEC is urged to require Consolidated Edison to establish a firm schedule for implementing this proposed modification because of changes in the design of the adjustable discharge ports and slide gates.
September 28, 1973	Unit 2 Operating License Received		SER states that the plant is licensed to 1967 draft general design criteria without endorsement of AIF comments.
Commission issues a confirmatory order on February 11, 1980	Unit 2 FSAR dated June 2001 states that the detailed results of the order indicate that the plant is in compliance with the then current General Design Criteria established in 10CFR50		The commission concurred on January 1982.

Date:	Docketed Activity	Reference	Implications to fidelity of the License Amendment
	Appendix A.		
September 18, 1992	SECY 92-223, "resolutions of deviations identified during the systematic evaluation program"	Letter to James Taylor, Executive Director for Operations	<p>The Commission approved the staff proposal in which the plant was not required to comply with federally approved General Design Criteria, if construction permits were issued prior to May 2, 1971.</p> <p>This is a clear and flagrant violation of the Administrative Procedures Act.</p>
June 2001	Unit 2 FSAR states incorrectly that the General Design Criteria tabulated explicitly in the pertinent systems comprised the proposed trade organization general design criteria.	Section 1.3 General Design Criteria, Unit 2 UFSAR, and indicates under a footnote that the safety analysis report added trade organization comments in the change to the FSAR. (see footnote within Section 1.3.)	<p>The license with collateral endorsement of the federal regulatory agency bypassed the administrative rules act, and thus reduced its commitments made to obtain its operating license to less than the minimum legal requirements of 10 CFR 50 Appendix A which were made law more than two years prior to the NRC granting the applicant an operating license for Unit 2.</p> <p>The reductions of safety margin and reasonable assurance of protection of the health and safety of the public have been compromised for over three decades, without the public understanding of the loss of margin in safety. Subsequently, Entergy allowed the error to remain and is actually currently committing Unit 2 to trade organization design criteria.</p>

Consequences of these actions: The Licensee's failure to adhere to a legally enforceable General Design Criteria substantially reduces safety margins for safe

plant operation, by severely reducing detection of and the consequential mitigation of accident conditions resulting in substantial reduction in protecting the health and safety of the public.

The Nuclear Regulatory Commission continued this pattern of bypassing the Administrative Procedures Act in 1992, in which the regulator relieved the Applicant of *all compliance* enforcement to any General Design Criteria, without any attempt to abide by the Administrative Procedures Act. The Commission belief that it could use guidance documents from trade organizations in lieu of rules as was adjudicated in *Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1) ("TMI")* ALAB-698, 16 NRC 1290, 1298-99 (October 22, 1982), affirming *LBP-81-59, 14 NRC 1211, 1460 (1981)*, where it was established that the criteria described in NUREG-0654 were intended to serve solely as regulatory guidance, not regulatory requirements). Indeed, the Commission's mere reference to NUREG-0654 in a footnote to 10 C.F.R. § 50.47 was found to be insufficient to incorporate that guidance document by reference as a part of a federal regulation, even if the Commission had intended to do so.

The Nuclear Regulatory Commission continues this approach today without any hint of complying with the rules of the Administrative Procedures Act (APA). In summary, the Applicant is obligated to meet the requirements of the General Design Criteria as published on July 11, 1967. In fact, the Applicant falsely states

that it is in compliance on page 3 of the LRA. Indian Point 2 LLC plant was designed, constructed and is being operated on the basis of the proposed General Design Criteria, published July 11, 1967. Construction of the plant was already underway when the Final Facility Description and Safety Analysis Report was filed on December 4, 1970, and when the Commission published its revised General Design Criteria in February 1971, and final version of the General Design Criteria in July 1971, which included the false statement. As a result, we did not require the applicant to reanalyze the plant on the basis of the revised criteria. However, our technical review assessed the plant against the General Design Criteria now in effect and we have concluded that the plant design conforms to the intent of these newer criteria.

The Applicant was not in compliance with 10 C.F.R. 50 Appendix A then, and is not in compliance with 10 C.F.R. 50 Appendix A now, as provided in current 2006 Unit 2 UFSAR submitted as a part of its relicensing application. Subsequent to the issuance of the Operating License, the Nuclear Regulatory Commission issued many Bulletins, Orders, Generic Letters, and Regulatory Guides. Most of the Regulatory Guides address the Nuclear Regulatory Commission's interpretation of the meaning of the requirements of the 1971 General Design Criteria. Inference could be made that regardless of the legal basis of these orders, if one accepts them as legal, one must also accept the legal

requirement of compliance to the specific relevant 1971 General Design Criteria. However, the process clearly violated the Administrative Procedures Act regarding the incorporation by reference on regulations such as violation of 10 C.F.R. 50.21₂, regarding equipment aging 10 C.F.R. 50.21²⁶ program scope by using a methodology that is entirely addressed under NUREGS prepared and promulgated outside rulemaking procedures and industry trade guidelines such as NEI 95-10 Rev. 6, each of which has no legal force. Neither public involvement nor the most fundamental steps required under the Administrative Procedures Act were adhered to by either the Applicant or the Federal Agency.

Pursuant to section 3(a)(1) of the Administrative Procedure Act, 5 U.S.C. § 552(a)(1), as implemented by the regulations of the Office of the Federal Register, 10 C.F.R. Part 51, no material may be incorporated into a rule by reference unless the agency expressly intends such a result, 10 CFR. § 51.9, requests and receives the approval of the Director of the Office of Federal Register, 10 C.F.R. §§ 51.1,

²⁶ (1) Safety-related systems, structures, and components which are those relied upon to remain functional during and following design-basis events (as defined in 10 CFR 50.49 (b)(1)) to ensure the following functions-- (i) The integrity of the reactor coolant pressure boundary; (ii) The capability to shut down the reactor and maintain it in a safe shutdown condition; or (iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable. (2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1)(i), (ii), or (iii) of this section. (3) All systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63). (b) The intended functions that these systems, structures, and components must be shown to fulfill in § 54.21 are those functions that are the bases for including them within the scope of license renewal as specified in paragraphs (a)(1) - (3) of this section. [60 FR 22491, May 8, 1995, as amended at 61 FR 65175, Dec. 11, 1996; 64 FR 72002, Dec. 23, 1999]

51.3, and the Federal Register notice indicates such specific approval, 10 C.F.R. § 51.9.

A brief review of statutory/regulatory construction confirms the method for incorporating Regulatory Guides. Here 10 C.F.R. Part 50, Appendix E, n.1; NRC Staff Regulatory Guide 1.101, Rev. 2 (October, 1981) specifically endorses the incorporation by reference to the criteria and recommendations in NUREG-0654 as "generally acceptable methods for complying" with the standards in 10 C.F.R. § 50.47. The NRC's emergency planning rules, however, include neither such a designation nor any express intention that NUREG-0654 be incorporated by reference.

In the absence of other evidence, adherence to NUREG-0654 may be sufficient to demonstrate compliance with the regulatory requirements of 10 CFR § 50.47(b). However, such adherence to NUREG-0654 is not required, because regulatory guides are not intended to serve as substitutes for regulations. *TMI, ALAB-698, supra, 16 NRC at 1298-99*. Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a permit or license by the Commission." *Id.* at 1299, quoting *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 937 (1981)*. Petitioners believe the atomic licensing board erred in this decision. This error was confirmed in the

recent ruling regarding storage of spent fuel requiring a NEPA proceeding compliance prior to the NRC approval. See *San Luis Obispo Mothers v. NRC* 03-74628.

Examples include certain Regulatory Guides that provide requirements for post-accident monitoring of the TMI incident. These Regulatory Guides describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations and delineate an acceptable means of meeting the General Design Criteria as contained in 10 C.F.R. 50 Appendix A. More than 100 Regulatory Guides have been issued, amplifying the requirements of the General Design Criteria. The NRC developed Regulatory Guide 1.97 to describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations with respect to satisfying criteria for accident monitoring instrumentation in nuclear power plants. Specifically, the method described in this Regulatory Guide relates to General Design Criteria 13, 19, and 64, as set forth in Appendix A to Title 10, Part 50, of the Code of Federal Regulations (10 C.F.R. Part 50), —Domestic Licensing of Production and Utilization Facilities:

Criterion 13, —Instrumentation and Control, requires operating reactor licensees to provide instrumentation to monitor variables and systems over their anticipated ranges for accident conditions as appropriate to ensure adequate safety.

Criterion 19, —Control Room, requires operating reactor licensees to provide a control room from which actions can be taken

to maintain the nuclear power unit in a safe condition under accident conditions, including loss-of-coolant accidents (LOCA's). In addition, operating reactor licensees must provide equipment (including the necessary instrumentation), at appropriate locations outside the control room, with a design capability for prompt hot shutdown of the reactor. Criterion 64, —Monitoring Radioactivity Releases, requires operating reactor licensees to provide the means for monitoring the reactor containment atmosphere, spaces containing components to recirculate LOCA fluids, effluent discharge paths, and the plant environs for radioactivity that may be released as a result of postulated accidents. The licensee has responded to these communications and states compliance with these communications and makes a commitment in the UFSAR.

In these examples, the Applicant included the NUREG language in the FSAR, and by inference one could argue compliance in this case with General Design Criteria 1971. The Applicant could not, however, use the Aging Management Program to argue compliance with other cases, and certainly cannot use the program exclusively. The Applicant is potentially holding open options that should be eliminated under the Aging Management Rule. (See Contention 4).

A dispositive example is “General Design Criteria Criterion” 35-Emergency core cooling:

A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts. Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not

available) and for offsite electric power system operation (assuming onsite power is available) the system safety function can be accomplished, assuming a single failure. *See* General Design Criteria 35, Final design criteria (10 C.F.R. 50 appendix A approved 1971, (36 FR 3256, Feb 20, 1971)).

The IP2 Final Safety Analysis Report (FSAR) does not address Criterion 35 at all. In neglecting to do so, the IP2 FSAR leaves the General Design Criteria meaningless in its intent to protect the health and safety of the public, and places the plant in clear violation of 10C.F.R. 50 Appendix A. A detailed list of specific violations contained within 10 C.F.R. Part 54 will be provided in supplemental submittal to this contention.

Contention 23

An example is provided below from review of the limited material available to Petitioner by the Licensee, and the regulator.

Criterion 10, Reactor design, in which the reactor core and associated coolant, control, and protection systems must be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. FSAR Section 5.1.1.1.5, Reactor Containment substantiates the Criterion with the following additions:

The containment structure shall be designed (a) to sustain, *without undue risk to the health and safety of the public*, the initial effects of gross equipment failures, such as a *large reactor coolant pipe break*, without loss of required integrity, and (b) together with other engineered safety features as may be necessary, to retain for as long as

the situation requires, the functional capability of the containment to ***the extent necessary to avoid undue risk to the health and safety of the public.*** [italics and bold added] These additions provide latitude and judgment to the Applicant as to what the Architects and Engineers need to do in order to minimally satisfy the criteria ***but do not support the right for public review of the pertinent documents in a public forum.***

A brief review of Tech Spec requirements contained in Exhibit O confirms that the misrepresented statement in the FSAR regarding General Design Criteria for Unit 2 is followed through with improper implementation. See e.g., Reactor Coolant Leakage. In LCO 3.4.13, reactor containment pressure leakage from primary to secondary systems ***is allowed in quantities up to 150 gallons per day.*** Such quantities are much larger than reasonable limits implicit under General Design Criterion 35. This non-conservative quantity may have contributed to the root cause of the 2000 tube rupture accident and is intolerable as an acceptable quantity for age management of the RCS leakage.

Contention 24

A second example may be found in examination of General Design Criterion 45, through General Design Criterion 6.2.1.2. Inspection of Emergency Core Cooling System Criterion is the following: Design provisions shall, where practical, be made to facilitate inspection of physical parts of the emergency core cooling system, including reactor vessel internals and water injection nozzles.

(General Design Criteria 45). Here the trade organization inserted the words “where practical.” (See Exhibit L page 14).

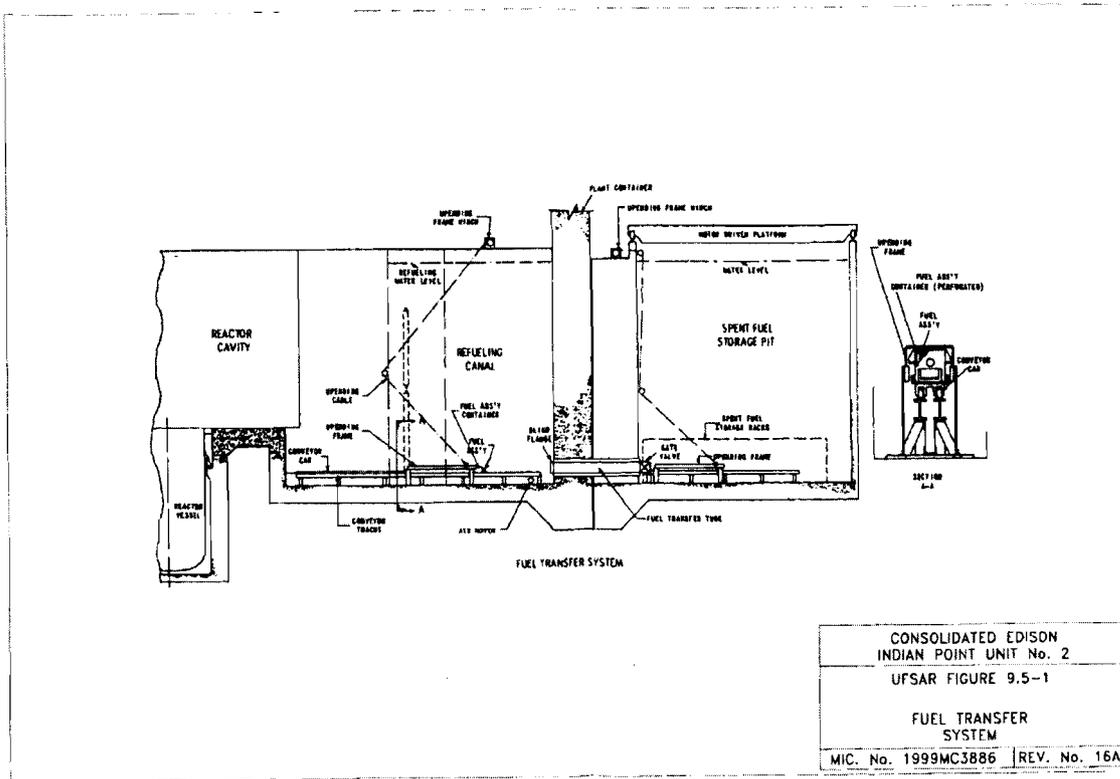
The Applicant bypasses the rules, by failing to properly examine or replace reactor core internal components with known susceptibility to failure on multiple occasions. For example, the components such as baffle bolts that hold down springs, lower core barrel, and lower core plate are routinely UT or VT'd during outages and often replaced. (See Exhibit P). The process involves a machine that typically removes and replaces bolts in an automated procedure which adds two weeks to an outage. Despite the higher reliability of such a process, Indian Point 2 has chosen instead to rely on water chemistry tests which are meaningless for assessing bolt integrity. The reasoning behind the reliance on an inferior method of testing is financial: Water chemistry tests enable Indian Point 2 to substantially reduce lost revenue by shortening the outage time (some estimates are in the order of millions of dollars per outage day), despite the fact that the health and safety of the public is sacrificed. See exhibit P and the declaration of Ulrich Witte, Exhibit Q. This is a prima facie violation of 10 C.F.R. 50 Appendix A.

The Applicant attempts to placate the issue with the following words contained in the LRA —to manage loss of fracture toughness, cracking, change in dimensions (void swelling), and loss of preload in vessel internal components, the site will (1) participate in the industry programs for investigating and managing

aging effects on reactor internals; (2) evaluate and implement the results of the industry programs as applicable to the reactor internals; and (3) upon completion of these programs, but not less than 24 months before entering the period of extended operation, submit an inspection plan for reactor internals to the NRC for review and approval. (See section A.2.1.141 of the LRA report).

This language essentially removes this entire matter from the public's right of input and participation. It is another example of —Agree to agree and bypasses the procedures required by law through the Administrative Procedures Act. Alternative methods that act as proposals to comply with the federal rules for license renewal represent guidance only, unless explicitly cited, and developed within the confines of the Administrative Procedures Act. The above examples meet the standards for specific contentions as cited above.

This serious and deliberate practice of rewriting federal code without public input is in clear violation of the Administrative Procedures Act and invalidates the plans proposed for the technical, safety, and environmental aspects of entire LRA, even setting aside the issues of a lack of completeness and vagueness of the description. The misrepresentation has become routine, and the violations so acceptable, that the NRC only days ago published a notice regarding a leaking and aging 20-inch pipe, described by the media as a —conduit with a pinhole leak.



Misrepresentation does violence to the entire intent of the agency, and the Applicant's failure to comply with specific rules of 10 C.F.R. 54, and further violates the Administrative Procedures Act. For example, the 20-inch —conduit is not considered part of the Aging Management Program or part of the environmental program, and the lack of inspection and maintenance of it is not considered unlawful. (See Exhibit R).

Contention 25

The breadth and depth of these contentions are extreme. Even if each issue is classified in the narrow confines of the scope of the Rule (however not 42

the GALL Report (but see NUREG 1801 Rev. 1) the egregious conduct by the applicant and the regulatory failure raises questions about any statement made in the LRA, or the Current Licensing Basis for Unit 2. The Current Design Basis for Indian Point 2 is unknown, unmonitored, and the materiel condition also unknown. These conditions associated with the CLB were the exact bases for permanent closure of Millstone Unit 1.

These findings for Indian Point 2 are clearly analogous and a new superseding license has insufficient ground for approval. For those issues raised here, no distinct and independent forum is available to adjudicate the magnitude of the misrepresentation and unlawful acts. Clearwater questions how a Board selected by the Commission can be allowed to judge the acts by the very Commission that selected it (such as the 1992 letter contained in Exhibit M). The Administrative Procedures Act under chapter 5 provides for adjudication in the federal court for exactly this kind of broad unlawful act.

CONTENTION 27: The LRA for Indian Point 2 & Indian Point 3 is insufficient in managing the environmental Equipment Qualification required by federal rules mandated that are required to mitigate numerous design basis accidents to avoid a reactor core melt.

This is a dispute over material facts- not applicable law. Petitioners challenge Entergy's LRA for Indian Point Units 2 and 3 because it fails to comply with (a) 10 C.F.R. § 50.49(e)(5) & Part 54, and (b) the federal rules mandated

after the Three Mile Island tragedy to protect the health and safety of the public. (Pet. at p. 187). Entergy opposes contention 27 on the basis that they claim the contention is outside the scope. (Entergy brief at p. 96). The NRC Staff state that this contention is not admissible because it “fails to identify any error or omission in the application. It is vague and unfocused, and thus fails to meet the requirements of §2.309(f)(1)(i) and (vi)...PHASE does not explain how 10 C.F.R. §50.49(e)(5) is violated, or why these assertion establish a dispute with the LRA.” (NRC Staff brief at p. 71).

Although Entergy attacks credibility of Petitioner’s expert witness, Mr. Witte, Entergy does not submit expert rebuttal, and therefore their allegations must not be considered. Mr. Witte’s expertise is well documented in his CV.

Petitioners have met the 6 part test. Entergy responses argument regarding processes is engineering nonsense. The current EQ systems that are out of compliance, cannot be credited towards the proposed new license term. The Applicant credits a rudimentary economic analysis which concluded that a 50% change of multiple equipment failure as acceptable. It is obviously not. The Advisory Committee on Reactor Safeguards (ACRS) found that this economic analysis evidenced a disregard of federal rules regarding Entergy’s CLB, 10 C.F.R. 50.49 and 10 C.F.R. 50.4. The issue is thus within scope. Although we are not

conceding that the contention as written does not meet the six part test, Exhibit I provides additional items of particularity.

Petitioners assert that the scientific methodology that was stretched to reach 40 years and cannot be stretched to 60 years. The Applicant's LRA has failed to address the aging effects are cumulative and issues of limited functionality and integrity of in-scope components such as Instrumentation and Control cables. Contention 27 is within scope and must be admitted.

Contention 28-32 The License's ineffective Quality Assurance Program violates fundamental independence requirements of Appendix B, and its ineffectiveness furthermore triggered significant cross cutting events during the past eight months that also indicate a broken Corrective Action Program, and failure of the Design Control Program, and as a result invalidate statements crediting these programs that are relied upon in the LRA.

Petitioners assert that Entergy's Quality Assurance Program violates the requirements in 10 C.F.R. 50, Appendix B. (Pet. at p. 204). Specifically, Petitioners maintain that Entergy's Quality Assurance Program for Aging Management is ineffective. (Pet. at p. 204).

Entergy opposes admission of this contention because it falls outside the scope of this proceeding. (Entergy brief at p. 99). Additionally, the NRC Staff contend that Petitioners failed to demonstrate that the issues raised are material to

the findings the NRC must make and that Petitioners fail to provide sufficient information that a genuine dispute exists. (NRC Staff brief at pp. 73-74).

Petitioners need only show that the Appendix B program translates to inadequate oversight and the consequences are fundamental to the operational safety of Indian Point 2 and Indian Point 3. Entergy does not assert that their Quality Assurance Program is in compliance, rather they attempt to claim that the condition or failure of the QA program should not be considered in the NRC's safety review.

Petitioners argue that a managed program for aging of equipment cannot be credit to a program that there is some nexus between the alleged omission and the protection of the health and safety of the public. *Millstone, supra*. The failed Appendix B program translates to inadequate oversight and the consequences are yet again fundamental. You can't get to a managed program for aging of equipment, when the plant has , a "broken" track record of maintenance, operational issues, corrosion, design basis accidents, have in their roots the Appendix B program that is not independent in violation of 10 C.F.R. 50 Appendix B.

Where the Entergy intends to fully credit an existing program as adequate, and it is fundamentally failing to comply with Appendix B, Petitioner and the ASLB have the right and the obligation to bring it into renewal consideration. To

ignore this, creates conditions which place the public assets and their health and safety at risk. Entergy does not dispute that the Quality Control at Indian Point has been seriously reduced and that they have credited this reduced program to be carried into the proposed 20 year additional license term. Therefore the Quality Control program is within scope. Because contention 28 raises material and particular issues of fact and law in dispute, it is therefore admissible.

Contention 29: Failed Quality Assurance Program

Petitioner's Response to Contention 28 is reference and incorporated fully, as if set forth herein.

Contention 29 raises the specific failures during the second quarter of 2007, regarding an attempt to clear interference of sumps while implementing modifications to the vapor containment and recirculation pumps is an example of a cross cutting issue, were the root cause was improperly attributed and the quality assurance failure was not addressed. This failure and the methodology used that is being credit to be carried over into the proposed 20 year license period is not addressed in the LRA. The root cause of the failure of the current Quality Control program has been brought into scope. Contention raises material and particular issues of fact and law in dispute and therefore is admissible.

Contention 30

Petitioner's Response to Contention 28 is reference and incorporated fully, as if set forth herein.

Contention 30 is a second example that supports contention 28, but is its own contention. It raises a separate and distinct issue that procedure regarding temporary modifications are inadequate. This contention is unchallenged by the Applicant. It meets the six part test with specificity and particularity. Temporary modifications will be a substantial element of modifications required if the LRA is granted. A deficient temporary modification program is fatal a safe transition to license renewal.

Applicant's Appendix B program translates to inadequate oversight and the consequences are fundamental to the operational safety of Indian Point 2 and Indian Point 3. Entergy does not assert that their Quality Assurance Program is in compliance, rather they attempt to claim that the condition or failure of the QA program should not be considered in the NRC's safety review. Petitioner's argue that a managed program for aging of equipment cannot be credit to a program that has , a "broken" track record of maintenance, operational issues, corrosion, design basis accidents, that is in violation of 10 C.F.R. 50 Appendix B.

Where the Entergy intends to fully credit an existing program as adequate, and it is fundamentally failing to comply with Appendix B, Petitioner and the

ASLB have the right and the obligation to bring it into renewal consideration.. To ignore this, creates conditions which place the public assets and their health and safety at risk. Entergy does not dispute that the Quality Control at Indian Point has been seriously reduced and that they have credited this reduced program to be carried into the proposed 20 year additional license term. Therefore the Quality Control program is within scope.

Contention 30 raises material and particular issues of fact and law in dispute and therefore is admissible to be heard.

Contention 31

Contention 31 is a separate and distinct contention that raises procedures regarding the failure to establish corrective actions associated with monitoring the service intake bay level. Failure of Entergy to take corrective action, without the issue being re-identified by the NRC indicates that the current configuration management and control of the facility is insufficient, yet Entergy is crediting their corrective action program for the proposed additional 20 year term. This contention is unchallenged by Entergy. It meets the six part test with specificity and particularity. Configuration management and corrective action programs are substantial systems required if the LRA is granted. A configuration management and corrective action program is fatal to an safe transition to renewal. Therefore

Contention 31 raises material and particular issues of fact that are in dispute, which are admissible and should be heard.

Contention 31 raises the issue that there appears to be no configuration management control program at either facility., even though Unit 3 had a commitment to have a bona fide program in place their keys back in 1996 after being shut down for over a year, and after being on the NRC's watch list Unit 3. Based on the examples provided in Contentions 28,29, 30, and 31 Petitioners argue that the required program has become completely obliterated and broken, therefore Entergy cannot take credit for it in it's LRA. Omission of an adequate aging management configuration management control program raises material and particular issues of fact that are in dispute, which are admissible and should be heard.

The examples provided in contentions 28, 29, 30, and 31 all support the notion that if the program is there, it is broken. Therefore, contentions 28, 29, 30, and 31 should be admissible.

Contention 32: Indicators of a failed Safety Culture Work Environment

Contention 32 is a separate and distinct contention that raises serious issues with regard to the failure of safety culture assessment and confidence by workers in raising safety concerns. This contention is unchallenged by Entergy. It meets

the six part test with specificity and particularity. Substantial safety work culture being credited in the LRA is a substantial element in license renewal proceedings. A deficient safety work culture is fatal to an safe transition to renewal. Therefore Contention 32 should be heard.

CONTENTION 33: The EIS Supplemental Site Specific Report of the LRA is misleading and incomplete because it fails to include refurbishment plans meeting the mandates of NEPA, 10 C.F.R. 51.53 post-construction environmental reports and of 10 C.F.R. 51.21.

The contention meets the six part test for admissibility in spite of Entergy's attempt to discredit the evidence. The NRC Staff "do not oppose the admission of PHASE Contention 33 for the limited purpose of verifying whether the Applicant has omitted plans to replace the reactor vessel head as a refurbishment item associated with license renewal." (NRC Staff brief p. 75).

The contention meets the six part test for admissibility in spite of Entergy's attempt to discredit the evidence. Although Entergy does not deny that a RPV head was purchased, Entergy does not deny they it may replace the heads during the 20 year license period and that will constitute major refurbishment Inspection indicated streaks of brown stains, and there are issues with upper head injection nozzles that are unique to Indian Point Westinghouse Reactors. This is a major

design evolution. Extensive engineering work is required to establish integrity between an embrittled vessel barrel, and a new head.

Even if Entergy did not deliberately omit the information regarding the RPV and refurbishment contemplated during the proposed additional 20 year term, the Doosan “slide show” evidences such information should have been included in the LRA, and have not been left to be brought to the attention of the ASLB by Petitioner’s discovery.

Petitioners have raised a concise statement of fact, have raised material issue of law and fact that are in dispute, and are within scope, therefore Contention 33 is admissible.

CONTENTION 34: Petitioners contend that accidents involving the breakdown of certain in scope parts, components and systems are not adequately addressed Entergy's LRA for Indian Point 2 and Indian Point 3.

Petitioners contend that accidents involving the breakdown of certain equipment, parts, components, and systems are not adequately addressed in Entergy’s LRA for Indian Point Units 2 and 3. (Pet. at p. 226). Specifically, Entergy’s LRA fails to include aging management of the following, including but not limited to, boric acid corrosion, internal bolting, fuel rod control system, duty valve failure, briny reactor water coolant environment, cable degradation, cumulative effect of constant exposure of the reactor vessel to neutron irradiation

and reduction in the fracture toughness and ductility of the PWR internal, refurbishment issues, primary water stress corrosion cracking, fatigue of metal components, heat and shell exchange replacement, accident analysis, digital upgrade of the rod control logic and power cabinets, risks of low temperature flow accelerated corrosion, industry wide problem of securing hand contingency spare parts, shortage of engineers with knowledge of pools, premature failure of containment coatings, increasing obsolescence issues of original equipment, reactor vessel issues, and cables. (Pet. at pp. 226-233). Entergy's LRA does not address certain accidents associated with breakdown of components. Based upon *Mass v. United States* precedence and the rules that the burden indicated as the petitioner's actually is out of context.

The scope meets the threshold of admissibility any of the following:

- (a) Aging of the plant structures, systems, and components will be not sufficiently managed – where one cannot argue they are already sufficiently addressed within the current license basis.
- (b) review of time limited aging evaluations
- (c) environmental impact analysis that is clearly plant specific and not generic, (for example, severe accident risk is out of scope but alternatives to severe accidents are in scope)

(d) anything else that one can prove is only possible during the renewal period but not during the current license period.

Significantly, expert opinion on this particular topic given Mr. Witte's known expertise in configuration management which was not challenge by expert witness rebuttal.

The contention is admissible under the six part test. NRC regulations require that an applicant provide a complete application under the Section 54.29. Entergy's LRA does not address certain accidents associated with breakdown of components.

Petitioners have sufficiently pled sufficient information to show a genuine dispute. 10 C.F.R. § 2.309(f)(1). Specifically, a contention "must include references to specific portions of the application... that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. *See* 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in

affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." *See* 54 Fed. Reg. at 33,170-71.

Entergy counters that the contention is beyond the scope of renewal proceedings and that it is not particular, or specific regarding where the application is incomplete. (Entergy brief at p. 106). The NRC Staff add that the contention is not supported. (NRC brief at p. 77).

The contention is admissible under the six part test. NRC regulations require that an applicant provide a complete application under the Section 54.29. Petitioners have sufficiently pled sufficient information to show a genuine dispute. 10 C.F.R. § 2.309(f)(1). Specifically, a contention "must include references to specific portions of the application... that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. *See* 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." *See* 54 Fed. Reg. at 33, 170-71. The recent report provided by

the Office of the Inspector General regarding deficiencies in licensing renewal proceedings support with question the substance of this contention. (Exhibit N).

Petitioners assert that anything that is currently capable of being described in sufficient detail should be. Programs for aging management, *by contract law* can be and should be precisely articulated— Entergy proffers no rationale for delaying disclosure. Examples of such programs include Flow Accelerated Corrosion²⁷, Equipment qualification²⁸, buried piping²⁹, and in particular, the undisclosed refurbishment plan for the reactor heads³⁰.

Contention 35

Withdrawn.

²⁷ For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 202L Rev 2 is not specific. There are examples of plants where they credit EPRIs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events where not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years.

²⁸ See contention 27.

²⁹ See contention 35

Contention 36: FAC

In this contention, Petitioners claim that Entergy's program does not include an adequate plan to monitor and manage aging of plant piping due to flow-accelerated corrosion of during the extended period of operation.

Management of FAC fails to comply with 10 C.F.R. § 54.21(a)(3).²⁰⁵ Section 54.21(a)(3) which requires that, for each structure and component identified in Section 54.21(a)(1), the Applicant "demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation." The contention and its related basis is related upon three things. These are the program as described in the LRA, which the applicant credits as being affective and in place today, (2) the record of the so called effective program to date, and (3) expert opinion provided by Declaration on Ulrich Witte.

The issue of the efficacy of the checwork program is challenged. Efficacy can only be confirmed by actual current performance as examined its use at Indian Point. The program is designed as essentially a trending tool, and based upon trending of wear, then provides selection points for inspection of wall thinning events. Entergy has since about 2005 implemented a generic procedure (See Exhibit Q) and has not had success in this program being effective. Examples of

³⁰ See contention regarding reactor head replacement.

failures of the implementation are provided in Exhibit R. We maintain that the applicant 's program is deficient because it, and there is insufficient benchmarking of the program to correlate a mechanistic examination with an empirical analysis.

In this same vein, Petitioners further claim that Entergy has failed to demonstrate "a good track record with use of CHECWORKS." We note with interest that this same program implemented another Entergy plant currently in renewal proceedings, and was not just admitted, but also denied motion for summary disposition only months ago. See Exhibit S.

We fundamentally take issue as to the contention meeting the six part test, and the facts we bring clearly show a genuine dispute with the applicant.

Finally, we note that yet again vague indelible summary of the program provided in the LRA, and that the LRA "fails to specify the method and frequency of component inspections or criteria for component repair or replacement." We assert that the program provided in the LRA leaves the petitioner forced to conclude that there Entergy has no meaningful program to address FAC aging phenomena." This content is admissible because it establishes a genuine dispute with the applicant on a material issue of law or fact, and without question raises Issues within the Scope of this Proceeding.

Finally the expert, Mr. Witte, is also the expert on the faulted identical program (See Exhibit T) scheduled for trial at Vermont Yankee this summer.

Therefore, while Petitioners note the NRC Staff criticism of Mr. Witte, it should not be considered. (NRC Staff brief at pp. 85-86).

Despite Entergy's and the NRC Staff's assertion of admissibility, (Entergy brief at pp 113- 118) based on the foregoing, contention 36 is admissible.

CONTENTION 37

Withdrawn.

CONTENTION 38: Microbial action potentially threatens all the stainless steel components, pipes, filters and valves at Indian Point (issue 99 of EIS).

Entergy does not deny the microbial corrosion issues raised by Contention 38. The seriousness of the eyewitness account should not be ignored by the ASLB, especially in light of the recent corrosion issues with the new, yet to be installed siren system, in which the manufacture has claims that the corrosive nature of the Hudson River has caused the unexpected corrosion. Microbial corrosion was omitted from the LRA and therefore Entergy does not have an aging management program to address this during the 20 year license period.

In Contention 38 Petitioners have raised issues of fact that are in dispute and should be admitted and heard.

CONTENTION 39

Withdrawn.

CONTENTION 40

Withdrawn because it is a duplicate of Contention 14.

CONTENTION 41: Entergy's high level, long-term or permanent, nuclear waste dump on the bank of the Hudson River.

Contention 41 meets the six part test for admissibility. The passive components, structure and systems of the Interim Storage Fuel Installation (ISF) for spent fuel storage is site specific and within scope.

At Diablo Canyon, the ASLB panel acknowledged that the petitioners had submitted substantial evidence that the proposed ISFSI presents a significant safety issue. The proposed expansion of the spent fuel storage facility is inherently risky. Especially if sited in a seismically active area. Like Indian Point both the power generation and spent fuel storage facilities at Diablo Canyon present targets for cataclysmic acts of terrorism and sabotage. As such, the safety and environmental risks inherent in the proposed expansion of DCCP's spent fuel storage facility must — to the extent consistent with plant security — be evaluated carefully and publicly

Additionally Entergy has not demonstrated that it is financially able to cover the costs of constructing, operating and decommissioning the proposed ISFSI which is necessary in during the 20 year new license period, due to the additional high level

radioactive waste that will be produced during that time. Therefore the environmental impacts of the ISFI are within scope, yet Entergy does not identify an aging management program to handle such impacts.

The 2,000,000 pounds of high level radioactive waste is currently maintained on site. During the proposed 20 year additional license approximately 1,000,000 pounds will be added to that, yet there a solution to disposal of this waste does not exist. This is an issue of fact that must be raised and fully adjudicated during the relicensing proceedings, as it directly impacts the aging management of the plant and the environmental impact of the site. In fact the proposed license period increases the long term waste storage by 50%. Petitioners have submitted the expert testimony of Gordon Thompson with regard to Robust Spent Fuel Storage.

The Waste Confidence Rule was written in 1995 many years prior to the contemplation of dry cask storage as the only option for increasing spent fuel. Therefore the dry cask storage is an in scope component necessary to the new license term, and therefore site specific issues caused by the new use of Indian Point cite for long term high level radioactive was storage, will be carried into the proposed new license period.

Contentions 41 raises particular issues of law and fact that are within scope and are in dispute, and which Entergy failed to address in the LRA; thus Contention 41 is admissible and should be heard.

CONTENTION 42: Dry Cask Storage (Issue 83)

The Independent Spent Fuel Storage Installation (SFSI) being constructed at Indian Point for the purpose of holding the overflow of nuclear waste on site for decades, and probably more than a century, must be fully delineated and addressed in the aging management plan and, moreover constitutes an independent licensing issue.

Contention 42 meets the six part test for admissibility. The passive components, structure and systems of the dry cast storage are site specific and within scope.

The Waste Confidence Rule was written in 1995 many years prior contemplation of dry cask storage as the only option for increasing spent fuel. Therefore the dry cask storage is an in scope component necessary to the new license term, and therefore site specific issues caused by the new use of Indian Point cite for long term high level radioactive was storage, will be carried into the proposed new license period. The specificity of the need for additional dry cask storage as set forth in this Contention is based on conference with staff and is not speculation as Entergy proposed.

Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue.

At Diablo Canyon the ASLB panel acknowledged that the petitioners had submitted substantial evidence that the proposed ISFSI presents a significant safety issue, The proposed expansion of the spent fuel storage facility is inherently risky. Especially if sited in a seismically active area. Like Indian Point both the power generation and spent fuel storage facilities at Diablo Canyon present targets for cataclysmic acts of terrorism and sabotage. As such, the safety and environmental risks inherent in the proposed expansion of DCP's spent fuel storage facility must — to the extent consistent with plant security — be evaluated carefully and publicly.

Additionally Entergy has not demonstrated that it is financially able to cover the costs of constructing, operating and decommissioning the proposed dry cask storage required to continue operation of the plant for an additional 20 year new license period. Therefore the environmental impacts of the dry cask storage are within scope, yet Entergy does not identify an aging management program to handle such impacts.

The 2,000,000 pounds of high level radioactive waste is currently maintained on site. During the proposed 20 year additional license approximately 1,000,000 pounds will be added, yet there no longer term solution to disposal of

this waste. This is an issue of fact and law that must be raised and fully adjudicated during the relicensing proceedings, as it directly impacts the aging management of the plant and the environmental impact of the site. In fact the proposed license period increases the long term waste storage by 50%. The current dry cask pad is inadequate to hold the additional waste and yet the Applicant's LRA fails to consider this and address the aging management program for this additional waste.

Since long term and potential permanent dry cask storage was not a contemplated use of the site when it was initially sited, before this use can be credited and carried into the proposed additional 20 year license term a full review and evaluation of the site, including public comment is required. This is new information and the reality of dry cask storage on site for an unknown term brings it within scope as it is a major component that must be included and must be reviewed as site specific material issue of fact.

Contentions 42 raises particular, concise material issues of law and fact of components, and systems that are passive and necessary for the continued operation of Indian Point, which Entergy failed to address in its LRA. Such material issues of law and fact are in dispute, thus Contention 42 is admissible and should be heard.

Contention 43: The closure of Barnwell will turn Indian Point into a low level radioactive waste storage facility, a reality the GEIS utterly fails to address, and a fact which warrants independent application with public comment and regulatory review.

This Contention satisfies the six part test. Entergy does not contest that in scope nature of this issue. The new information that Barnwell will no longer be accepting low- level radioactive waste from Indian Point is not addressed in the LRA, nor is an aging management program identified to handle low level waste. The Applicant's failure to include this material issue of fact in the LRA does not excuse it from being a material issue that is in dispute.

The Applicant has the obligation to submit an LRA that addresses aging management issues, to fail to address the handling of low level waste disposal for the 20 year license period at Indian Point, is evidence of the incompleteness of the LRA. The LRA is mute on this. Because the Applicant omitted low level waste management from the LRA does not prevent it from being a material issue of dispute.

The Applicant's attempt to characterize Petitioner's contention as speculative, and place in question the industry known reality that Barnwell is closing its doors to Indian Point in 2008, is evidence of the Applicant failure to provide necessary information. Low level waste management is an essential in

scope systems for which a functional aging management plan is required and planned for during the superseding license period.

Since low level waste storage was not a contemplated use of the site when it was initially sited, before this use can be credited and carried into the proposed additional 20 year license term a full review and evaluation of the site, including public comment is required.

Staff's quote regarding Oconee only deals with "high level waste." Low level waste management is an essential in scope systems required to be function and planned for during the superceding license period.

The LRA is mute on this. Because it is omitted from the LRA, as if it doesn't exist, or as if there was a plan to dispose of the waste does not prevent it from been a material issue of dispute. Staff does not refute the fact that Barnwell is closing and that there is no plan to dispose of the low level waste.

Therefore Contention 43 raises an issue of fact that is within, and thus, is admissible.

CONTENTION 44: The Decommissioning Trust Fund is inadequate and Entergy's plan to mix funding across Unit 2, 1 and 3 violates commitments not acknowledged in the application and 10 CFR rule 54.3.

In light of the massive underground leaks of strontium, tritium and cesium c Indian Point is one of the dirtiest sites in the country. Additionally, Indian Point is

location in the middle of some of the most expensive real estate in the nation. As such, the adequacy of the decommissioning funds is a material issue and is relevant to the ASLB's approval of a 20 year license extension.

Petitioners contend that the decommissioning funds have not been adjusted to take into account the evidence of these leaks as report in the January 7, 2007 GZA report. Additionally the funds have not been recalibrated on decommissioning costs derived from 60 years of non-linear growth in contamination. The applicant does not present concrete evidence that it has adequate funds to clean up the site.

Applicant also claims that the decommissioning is not related to the extended operation of the plant. Petitioners assert Applicant's statement is short sighted and self serving, when it is an issue of fact the recalibrated decommissioning costs must be adjusted from 60 years of non-linear growth in contamination. Entergy's claim that 50.75 offers adequate monitoring and oversight of the adequacy of the decommissioning funds is refute when the calculations of the biennial reports evidence that the decommissioning funds have only been adjusted by 1% a year, rather adjusted as required to the cost of living increases at the rate of 3% a year. This short fall, extended over the 20 year proposed additional license period will cause disparity in 2035 dollars by approximately 40%, which would substantially reduce Entergy's ability to properly

and fully decommission the plant. A mismanaged fund is the same as no management at all.

Entergy's position contradicts Commission's determination in prior action that WestCAN can raise adequacy of Decommissioning Fund in Relicensing proceedings. (Pet. at pp. 293) (NRC Staff brief at p. 101). This argument by Entergy is one of convenience and attempts to thwart Petitioner's ability to address a substantive issue of aging management a system necessary for the safe decommissioning of the plant. Entergy's claim that the only time to raise this is after the LRA is approved greatly reduces and limits Petitioner's right to the point of making Petitioner's concerns ineffectual. The record in CL1-00-22 is clear, that the Commission refused to hear issues of the adequacy of the decommissioning fund in the license transfer application and said that it should be raised under relicensing.

Entergy alleges that the Commission was disingenuous in making such a statement and really never meant that decommissioning could be raised under relicensing Under Entergy's assertion the Commission was only using it as a ruse to prevent Petitioners from raising the adequacy of decommissioning fund in either meaningful proceeding Petitioner's do not accept that the Commission would act in such an unjust manner, and therefore Entergy's assertion much be rejected.

The decommissioning fund is not only a current license issues, but pertains to and is carried into the superseding license period. The NRC regulations require that an adequate decommissioning fund be available prior to the issuance of a license.

Staff's position contradicts Commission's determination in prior action regarding license transfer of Indian Point 3 where it stated that WestCAN can raise adequacy of decommissioning fund during Relicensing proceedings. (P 293 of our Petition or p 101 of Staff response). This argument by Staff is one of convenience and attempts to thwart Stakeholders rights to address a substantive issue. Staff claims that the only time to raise this is after the LRA is approve is self serving and would cause Petitioner's rights to be greatly limited and made ineffectual. Decommissioning in not only a current license issue, but pertains to and is carried in to the superseding license period.

Contention 44 is pled with specificity and raises material issues disputing fact and law regarding the adequacy of the decommissioning required under 10 C.F.R. 54.3 and 10 C.F.R. 50.75 in order for approval of the proposed 20 year license.

Contention 45: Non-Compliance with NYS DEC Law – Closed Cycle Cooling “Best Technology Available” Surface Water Quality, Hydrology and Use (for all plants).

This contention is within scope, and Entergy does not assert otherwise. Entergy’s assertion that until the matter pending in New York with respect to Entergy’s discharge permit is resolved with finality, the NRC is constrained to assess the pending LRA on the basis of the currently- permitted system, is inaccurate. NRC staff has acknowledged that without a discharge permit the NRC cannot grant a operating license to Entergy, and New York State DEC has already determined that a retrofit with close cycle cooling is required to meet EPA standards. Thus, Petitioner’s assert that until the matter is resolved there is a matter of law in dispute that is specific and particular, and clearly meets the threshold of admissibility and should be heard.

Finally until the matter pending in New York with respect to Entergy’s discharge permit is resolved with finality, the NRC is constrained to assess the LRA on the basis of the currently permitted system” seems dead wrong for a basis for not admitting the contention. The opposite should be argued. Until the matter is resolved we have a matter of law in dispute that is specific and particular, and clearly meets the threshold of admissible.

CONTENTION 46: Omitted

Contention 47: Cancer rates surrounding the plant: The Environmental Report Fails to Consider the Higher than Average Cancer Rates and Other Health Impacts in Four Counties Surrounding Indian Point.

Entergy claims “other than unsupported speculation regarding releases in the future”, however Petitioners assert that the new information regarding the projected future radiological leaks provided in the leak study by GZA for Entergy of January 7, 2008, must be incorporated into the EIS with regard to projected future leaks and the Cumulative site specific health issues.

Petitioners have cited New York State Cancer zip code studies as evidence that thyroid cancer rates in the two miles surrounding Indian Point is 70% higher than areas further away. This is clear evidence that the health impacts of Indian Point currently and credited into the proposed new licensing period is not small, but significant and therefore cannot be considered a Category 1 issue.

Entergy fails to challenge Petitioner expert witness, Joseph Mangano with expert rebuttal, and only cites unrelated and distinct studies. Therefore Entergy’s challenge to Mr. Mangano’s declaration is without basis and must be dismissed.

Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue.

Thus, Contention 47 raises material issues of law and fact that are dispute and therefore is admissible.

CONTENTION 48: Environmental Justice - Corporate Welfare

Petitioner's reassert that the issue of fair trade is a material issue of fact and law that is relevant to the proposed 20 year license. Entergy and the nuclear industry are spending billions of dollars, including millions of taxpayer dollars, to promote false propaganda about how inexpensive, renewable and clean. The Commission may use it's discretion to consider the true carbon foot print of nuclear power from mining to decommissioning, which is comparable to coal fire plants and to require a comparative study of the true costs, specifically the tax dollars used to support nuclear vs. any other energy technology in order to even the playing field.

Large communities of sustenance fisherman are ingesting and feeding life threatening tritium and strontium laced fish and shellfish to their families caused by the ongoing leaks at Indian Point. These leaks will continue during the proposed 20 year license period, rather than decommissioning and cleaning up the site to prevent such contamination.

In accordance with 10 C.F.R. 2.309(f)(3) and *Consolidated Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001), where both Petitioners independently established standing, the Presiding Office has the discretion to permit Petitioners to adopt the others' contention early in the

proceeding. Petitioners join and adopt Clearwater's contention number on this issue.

Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue.

In accordance with 10 C.F.R. 2.309(f)(3) and *Consol. Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001) where both Petitioners have independently established standing, the Presiding Officer may permit Petitioners to adopt the others' contention early in the proceeding. Petitioners join and adopt Clearwater's, and any other parties, contention(s) on this issue.

Contention 49: Global warming- Withdrawn

CONTENTION 50: Replacement Options: Stakeholders contend that the energy produced by Indian Point can be replaced without disruptions as the plants reach the expiration dates of their original licenses.

Applicant have failed to consider reasonable alternatives for 2158 MW of electricity, as required by 10 CFR 51. They on consider solar and wind as options to carry base load, and totally ignore the stability of geothermal and wave generated power. Additionally they incorrectly repeat in their answer that answer solar and wind are not always available and is speculative. Energy's refusal to acknowledge the ability of alternative energy to replace Indian Point is both short

sighted and self-serving. They ignore current state of art technologies, including nanosolar and small wind generation which produces energy on cloudy and rainy days, and on days with little or no wind.

The failure of the Applicant and Staff to consider reasonable replacement energy is evidenced a narrow and closed minded approach that denies the current feasibility sustainable energy.

The Levitan Associates report and the Academy of Science report sponsored by Congresswoman Nita Lowey serve as expert reports that support Petitioners reasonable approach to replacement energy as a reasonable alternative to Indian Point continued operation during the proposed 20 year license period.

Simply if the incentives and tax subsidies granted to the nuclear industry and Entergy specifically was used to build sustainable energy systems the energy produced by Indian Point could be completely replaced. This is not speculative but factual.

Entergy's failure to provide a comprehensive study of replacement energy is inadequate and self serving. Entergy's conclusionary statement that "alternative simply cannot with current technology, provide the necessary amount of baseload power" is misleading and unsupported by expert witness rebuttal. Communities in the United State such as Sacramento have closed nuclear plants and have produced more than sufficient replacement energy, as well as created new jobs and

economies. Energy's failure to present reasonable alternative fails to fulfill the requirements of 10 CFR 51 and is complete inadequate.

Thus, contention 50 meets the criteria for admissibility and must be admitted.

CONTENTION 50-1: Failure to Address Environmental Impacts of Intentional Attacks & Airborne Threats

Entergy's failure to address the environmental impacts and costs of intentional attacks and airborne threats of terrorism is unjustified especially at Indian Point the uniquely most attractive and vulnerable terrorist targets in the nation. The fact that the 9/11 terrorist flew directly over Indian Point and considered it as a target prior to settling on the World Trade Center causes this issue to be germane to the relicensing proceedings.

For the Commission not to require the Applicant to comply with the Ninth's Circuit's remand in the Diablo Canyon proceeding, is unreasonable in relicensing proceedings for Indian Point. The Commission refusal not to require the consideration of the impacts of a terrorist attack is a failure of the Commission to uphold their organizing mandate to adequately protect the public health and safety in violation of the Administration Procedure Act. Therefore, this Contention raises material issues of fact and law that are admissible and should be heard.

Contention 51: Inability to Access Proprietary Documents Impedes Adequate Review of Entergy Application for License Renewal of IP2 LLC and IP3 LLC.

Entergy claims that Petitioners assertion that proprietary information was withheld is incorrect. Petitioner's reiterate with specificity that the documents Entergy failed to provide are: the CLB including all modifications, exemptions, exceptions and deviations, and additions to such commitments over the life of the license, and appendices thereto; orders, license conditions, exemptions, exceptions and deviations; and technical specification and extensive redactions in the FSAR, UFSAR, including leak reports and leak maps that were shown at public meetings, but specifically denied to Susan Shapiro and other Petitioners, upon multiple requests to Entergy and the NRC dated 6/29/07, 7/6/07 and 9/4/07 (attached hereto). Entergy claims that Petitioners never contacted Entergy, when in fact Susan Shapiro had attempted through numerous communications attached hereto to obtain such information. NRC representative Richard Barkley of the NRC has told FUSE that the maps are proprietary property of Entergy. They will not become available until after the NRC receives Entergy's leak report later this fall, which makes the October 1, 2007 deadline to file Intervener Petitions highly prejudicial in favor of the licensee at the expense of the Stakeholders and other citizens whose best interests are supposed to be served by this Federal regulatory body.

Clearly, these leak maps and the upcoming leak report contain vital information directly related to potential environmental impacts and infrastructure aging issues, and consequently Entergy's LRA. The maps are necessary for Stakeholders to file properly and fully documented Intervener contentions.

In fact, the NRC used these maps to discuss the leaks in public meetings with representatives of Riverkeeper, Clearwater and IPSEC. In addition these maps, minus the Cesium map, were displayed in the lobby of a public meeting, however copies were unavailable.

Documents that have been made unavailable under the claim of proprietary information denying Petitioners their constitutional rights to redress, as required in the guidelines of the NRC Code of Regulations meant to protect human health and safety.

Therefore, this contention must be admitted.

Attachment 2 to
NRC Staff's Response of March 18, 2008

February 16, 2008, 12:53 AM, E-mail Banner,
Letter and Certificate of Service
Accompanying WestCAN et al's 12:53 AM Reply Brief

Sherwin Turk

From: Leslie Vincent on behalf of OGCMailCenter Resource
Sent: Tuesday, March 18, 2008 2:29 PM
To: Sherwin Turk
Subject: FW: WestCAN reply brief to Entergy's and Staff's Response to Petition to Intervene
Attachments: WestCAN_Reply_Brief_Final_+.zip

From: Palisadesart@aol.com [mailto:Palisadesart@aol.com]
Sent: Saturday, February 16, 2008 12:53 AM
To: Hearing Docket; ASLBP_HLW_Adjudication Resource; OCAAMAIL Resource; jmatthews@morganlewis.com; vzabielski@morganlewis.com; annette.white@morganlewis.com; sarahwagneresq@gmail.com; Leslie Vincent; ksutton@morganlewis.com; Zabelle.Zakarian@spiegelmc.com; Palisadesart@aol.com; Tom Ryan; OGCMailCenter Resource; Christine Pierpoint; martin.oneill@morganlewis.com; OCAAMAIL Resource; Kenny Nguyen; Evangeline Ngbea; mlemoncelli@morganlewis.com; rjkoda@earthlink.net; Emile Julian; Nancy Greathead; Rebecca Giitter; Ron Deavers; Adria Byrdsong; sburdick@morganlewis.com; pbessette@morganlewis.com; Andrew Bates
Subject: RE: WestCAN reply brief to Entergy's and Staff's Response to Petition to Intervene

Offices of Assemblyman Richard Brodsky
Legislative Office Building, Room 422
Albany, New York 12248

February 15, 2008

Office of the Secretary
U.S. Nuclear Regulatory Committee
Sixteenth Floor One White Flint North
11555 Rockville Pike Rockville, Maryland 20852

Re: Indian Point License Renewal, Docket No. 50-247/286-LR

To Whom It May Concern:

Enclosed please find Petitioners 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 Reply Brief in response to the NRC Staff and Entergy. Exhibits are being sent by courier.

Sincerely, /s/ Sarah L. Wagner

The year's hottest artists on the red carpet at the Grammy Awards. Go to AOL Music.
(<http://music.aol.com/grammys?NCID=aolcmp00300000002565>)

Offices of Assemblyman Richard Brodsky
Legislative Office Building, Room 422
Albany, New York 12248
February 15, 2008

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U.S. Nuclear Regulatory Committee
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Sincerely,

/s/

Sarah L. Wagner

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR

(Indian Point Nuclear Generating))
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply of WestCAN et al. dated February 15, 2008, have been served upon the following by electronic mail where email address provided, this 15th day of February, 2008 and a signed original and two paper copies have been deposit with a courier service on the Office of the Secretary, U.S. Nuclear Regulatory, Sixteenth Floor, One Flint North, 11555 Rockville Pike Rockville, Maryland 20852, and a courtesy paper copy has been sent to Staff:

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Sarah L. Wagner, Esq.

Attachment 3 to
NRC Staff's Response of March 18, 2008

(a) Letter from WestCAN, et al.
Transmitted by WestCAN via DHL Courier,
Received by OGC Mailroom on February 19, 2008,
Accompanying Paper Copy of WestCAN et al's Reply Brief,

and

(b) E-mail message from Sarah Wagner to Sherwin Turk,
Transmitted at 2:41 PM on March 5, 2008.



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD L. BRODSKY
Assemblyman 92ND District

Westchester County

CHAIRMAN
Committee on
Corporations, Authorities
and Commissions

February 15, 2008

Office of the Secretary
U.S. Nuclear Regulatory Committee
Sixteenth Floor
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Re; Indian Point License Renewal, Docket No. 50-247/286-LR

To Whom It May Concern:

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Also enclosed is the original signed hard copy of the Reply, the Certificate of Service, Table of Contents, Exhibits. A courtesy CD-ROM is being sent separately.

As you are aware I was experiencing problems with the NRC's server as we discussed with Rebecca Gitter. We transmitted the document as a word file, but are concerned it may be corrupted, if it arrived at all. We transmitted an Adobe PDF file via another office which we believe successfully went to all the parties. Therefore please delete the first transmittal, the "word document", and consider the Adobe PDF file the Reply.

Sincerely,

Sarah L. Wagner

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY NUCLEAR OPERATIONS, INC.) Docket Nos. 50-247/286-LR

(Indian Point Nuclear Generating))
Units 2 and 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply of WestCAN et al. dated February 15, 2008, have been served upon the following by electronic mail where email address provided, this 15th day of February, 2008 and a signed original and two paper copies have been deposit with a courier service on the Office of the Secretary, U.S. Nuclear Regulatory, Sixteenth Floor, One Flint North, 11555 Rockville Pike Rockville, Maryland 20852, and a courtesy paper copy has been sent to Staff.

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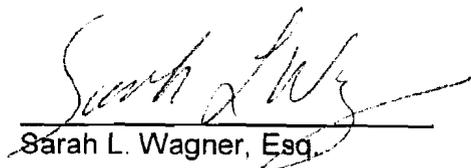
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 Sarah L. Wagner, Esq.

Sherwin Turk

From: Sarah Wagner [sarahwagneresq@gmail.com]
Sent: Wednesday, March 05, 2008 2:41 PM
To: Sherwin Turk
Cc: Bessette, Paul; Brodsky(2), Richard; Brodsky, Richard; Burton, Nancy; Curran, Diane; Delaney, Michael; Dennis, William; Greene, Manna; Hearing Docket; Kaye Lathrop; Kremer(2), Arthur; Kremer, Arthur; Lawrence McDade; LeKay, John; Marcia Carpentier; Matthews, Joan; Musegaas, Phillip; OCAAMAIL Resource; O'Neill, Daniel; O'Neill, Martin; Parker, John Louis; Pruyne, Justin; Richard Wardwell; Riesel, Daniel; Shapiro, Susan; Sipos, John; Snook, Robert; Steinberg, Jessica; Sutton, Kathryn; Tafur, Victor; Zachary Kahn; Zoli, Elise
Subject: Re: Different versions of WestCAN's 2/15/08 Reply

Dear Mr. Turk:

The Reply Brief which you received in the mail and in adobe is the Petitioners WestCAN's Reply Brief. The email transmittal letter said to discard the potentially corrupt word file. The abode file is exactly the same as the printed version mailed on the 15th of February.

Sincerely,
Sarah L. Wagner

On 3/5/08, **Sherwin Turk** <Sherwin.Turk@nrc.gov> wrote:

Dear Ms. Wagner:

I am writing with regard to the Reply filed by Petitioners WestCAN, et al., dated February 15, 2008, which you transmitted to me and the NRC Hearing Docket by E-mail at 12:00 AM on Saturday, 2/16/08. Apparently, WestCAN, et al. sent a second E-mail of that Reply to other persons on the service list (including the Applicant, the NRC Hearing Docket, and the OGC mailroom, but not Staff Counsel) at 12:53 AM on 2/16/08.

Until now, I was not aware that the E-mail version that you sent me at 12:00 AM on 2/16/08 differed from the version sent by E-mail at 12:53 AM. However, in attempting to insert WestCAN, et al.'s errata of 2/27/08 into WestCAN's Reply of 2/15/08, I noticed that the E-mailed version of the Reply that you sent to me contains substantive differences from 12:53 AM and signed versions of that document. For example, see the discussion of Contentions 22-25, commencing on page 70 of each document.

In the Staff's March 3, 2008 Answer to the Applicant's motion to strike WestCAN's Reply, I stated that WestCAN had sent its Reply to the Staff by E-mail at 12:00 AM on 2/16/08. *See id.* at 2. Apparently, my statement may not be correct, if the version you sent to me at 12:00 AM differs from the later-transmitted document.

Am I correct that the two E-mailed versions are not identical? Further, does the version delivered by DHL differ in any way from the version E-mailed at 12:53 AM on 2/16/08? I would appreciate your prompt reply.

Thank you.

Sincerely,

Sherwin Turk

Counsel for NRC Staff

--

Sarah L. Wagner
Legal Counsel for Assemblyman
Richard L. Brodsky
L.O.B. Room 422
Albany, N.Y. 12248
518-455-5753

Attachment 4 to
NRC Staff's Response of March 18, 2008

Redline Comparison of the February 16, 2008
12:00 AM and 12:53 AM, E-mailed versions of
WestCAN et al's Reply Brief

(Additions Are Underlined, Deletions are Noted in Side Bar Balloons)

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

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
ENERGY NUCLEAR OPERATIONS, INC.)
_____) ASLB No. 07-858-03,
_____) LR-BD01,
(Indian Point Nuclear Generating Units 2 and 3))

**REPLY OF PETITIONERS 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 RICHARD L. BRODSKY,**

PRELIMINARY STATEMENT

_____ The following constitutes the reply of Petitioners 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"). Petitioners assert that they have standing to intervene and have proffered admissible contentions in accordance with 10 C.F.R. 2.309(f),

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PROCEDURAL HISTORY

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On April 23, 2007, and supplemented on May 3, 2007 and June 21, 2007, Entergy Nuclear Operations, Inc. (hereinafter "Entergy" or "licensee") filed an application to renew its operating license for an additional twenty year period for Indian Point Nuclear Generating Units 1 and 2. Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing was published in the Federal Register on August 1, 2007 regarding Entergy's license renewal application. On October 1, 2007, the U.S. Nuclear Regulatory Commission (hereinafter "NRC" or Commission") extended the period for filing requests for hearings until November 31, 2007. Petitioners were granted an extension to file their Petition on or before December 10, 2007.

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On December 10, 2007, Petitioners electronically by email served a Petition for Leave to Intervene with Contentions and a Request for a Hearing. On December 11, 2007, hard copies of said Petition and exhibits were served on the Office of the Secretary at the Nuclear Regulatory Commission (hereinafter "NRC") by Fed Ex.

By Order dated November 27, 2007, Entergy and the NRC staff were ordered to file answers on or before January 22, 2008. The NRC staff served an Answer to the Petition electronically by email on January 22, 2008, at 11:59pm. The licensee, Entergy, electronically by email served a reply to the Petition on

electronically by email on January 22, 2008, with referenced exhibits arriving on January 27, 2008. Pursuant to Order by the Licensing Board on January 29, 2008, Petitioners replies are due on or before February 15, 2008.

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BACKGROUND OF INDIAN POINT LICENSE RENEWAL APPLICATION AND CONTENTIONS RAISED BY THE COALITION PETITIONERS

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The United States operates 104 nuclear power reactors, which provide nearly 20 percent of the nation's electricity. More than half have had their original 40-year operating licenses renewed for an additional 20 years. Encouraged by billions of dollars in subsidies and incentives in the 2005 Energy Bill, a handful of companies applied for licenses to build new reactors last fall, and other companies are expected to apply later this year. Recurring lessons from the past consistently inform us that unless the Nuclear Regulatory Commission (NRC) undergoes major reforms, nuclear power will remain both riskier and more expensive than necessary. Indian Point is of particular risk to the public assets and the health and safety of the public given its location, age, non-compliant design, and legacy history evidenced by the oversight record by the regulator.

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The NRC is the federal agency primarily responsible for establishing and enforcing safety regulations for nuclear power. Whereas this petition does not challenge the adequacy of rulemaking, it does challenge adequacy of articulating

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and interpreting the rules by the Applicant and the lack of substantive review by Staff as to whether specific concrete contentions are truly useful in establishing via engineering rigor and examination of the rule of law, confirming there is adequate safety, and lawful environmental protection of the Indian Point plant.

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This requirement begins with design requirements imposed on the Applicant contained, continues through approval of the original design criteria committed by the applicant by the record decades ago, through a total period of 40 years from construction to decommissioning.

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That design lifetime is articulated in the Current Licensing Basis. The regulator has an express time limit presently in effect to operate each reactor. Unit 2 license expires in 2013, and Unit 3 in 2015.

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The applicant is now attempting to substantiate that it can continue to operate the plant beyond its engineered life, and the NRC is compelled under law to rigorously evaluate this proposal, and recommend to the commission that commission can meet is statutory mandate of protecting the health and safety of the public and minimizing risk to public assets in granting this extension.

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The results of this exceeding important mantel placed upon the Commission is frankly cause for the community to be concerned. Numerous third parties and government oversight agencies agree. The Union of Concerned Scientists has

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monitored nuclear power safety issues since the early 1970s. Amongst the 104 operating plants, a disproportionately large segment of its efforts have been directed at getting the NRC to enforce regulations already on the books so as Entergy at Indian Point recognize and adhere to its burden of maintaining a sound record of compliance to its license basis, and maintains the CLB itself as defined under 10 C.F.R. Part 54 section 54.3.

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A particular and on point example is the Applicant's description of its fire protection program contained in its application. Entergy's program has significant safety issues presently unresolved, yet a program that must have compliance integrity to count on for limiting the renewal scope. But it does not. See WestCAN et al., Objection to Fire Protection Exemption..." Evaluations conducted by the Government Accountability Office (GAO) and the NRC's Inspector General (IG) confirm our perspective: These reports repeatedly identify inadequate enforcement of existing regulations by the NRC, with the most recent regarding the exact issue at Indian Point, and raised contentions 5 through 11B.

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The nexus of a broken present fire protection program cannot be set aside in the renewal process if there is no prospect for correcting the deficient condition. As history shows, the results are catastrophic.

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For example, in its May 2004 report, "Nuclear Regulation: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown", the GAO concluded, "[The] NRC should have but did not identify or prevent the corrosion at Davis-Besse [a nuclear power plant in Ohio] because both its inspections at the plant and its assessments of the operator's performance yielded inaccurate and incomplete information on plant safety conditions."

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More recently and on point to license renewal and Entergy's failure to comply with the rule are six apparent violations found by an NRC inspection that took seven unplanned plant shutdowns on Unit 3 in less than a year to trigger.

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The core and essential of license renewal is a sound foundation that provides confidence on safely minimizing renewal scope to when all parties will agree is under the rules a very narrow scope. The record demonstrates otherwise, and compels us to raise as acceptable scope a program that is presently deficient but counted on as sufficient so as to exclude it from renewal scope. Where the program, system, structure or component is defective, and is presently unreconciled to correct, we argue under the rules defined in 10 C.F.R. 54 that it cannot be excluded from license renewal. It represents ex post facto material items that bear on the health and safety of the public and minimizing risk to public assets.

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The IG's January 2008 report, "NRC's Oversight of Hemyc Fire Barriers"

documents the NRC's repeated failure to enforce fire-protection regulations. In March 1993, after problems surfaced with the Thermo-Lag fire barrier used by nearly 100 reactors, the NRC chairman committed to evaluate all fire barriers used in U.S. nuclear reactors. Tests conducted by the National Institute of Standards and Technology in 1993 (and reported to the NRC in 1994) found that the one-hour Hemyc fire barrier, used by 17 nuclear reactors, failed in 23 minutes. The NRC considered these tests too small to be conclusive and stated that larger-scale testing was needed. However, it wasn't until 2005 that the NRC commissioned such testing--even though the NRC acquired yet more evidence of problems with Hemyc in 2000. After an inspection found that Hemyc was used more extensively than assumed at one U.S. plant, the NRC reviewed the Hemyc tests conducted by the vendor and found that they did not demonstrate that Hemyc could meet its one-hour or three-hour ratings. When the larger-scale tests were finally conducted by Sandia National Laboratory, the one-hour Hemyc fire barrier failed in 13 minutes.

According to the IG: "As of December 2007¹, no fire-endurance tests have been conducted to qualify Hemyc as an NRC-approved 1-hour or 3-hour fire barrier for installation at [nuclear power plants]." Thus, the NRC has known since 1994 that 17 U.S. reactors are relying on Hemyc for fire protection and that Hemyc

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¹ See Office of Inspector General Report of January 22, 2008.

does not meet NRC standards, but has not enforced the regulations it established in 1980, as a result of the serious fire at the Browns Ferry nuclear plant in Alabama that disabled the power, control, and instrumentation cabling for all the emergency core cooling systems on Unit 1 and most of those systems on Unit 2. The regulations included requirements that cabling for primary and backup safety systems (a) be physically separated by at least 20 feet horizontally, or (b) be protected by a one-hour or three-hour fire barrier to lessen the risk that a single fire disables all emergency systems.

However, the NRC's own assessments of its regulatory meltdowns also repeatedly conclude that the majority of problems stem from inadequate enforcement of adequate regulations as is shown in contentions 5 through 11B.

For example, the NRC lessons-learned task force examined the regulatory failures associated with the near-accident at Davis-Besse in 2002², and made 49 recommendations for actions the NRC should take to prevent recurrences. Forty-six of these outlined ways to improve enforcement of existing regulations, while the remaining three dealt with upgrading the underlying regulations. The NRC's

² <http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/lessons-learned/llrf-report.html> (last visited 2.15.08) According to the NRC, Davis-Besse came closer to an accident than any reactor since Three Mile Island. A crack formed in a metal tube entering the reactor vessel's lid and leaked borated water onto the carbon steel. The boric acid residue ate completely through the 6-inch carbon steel vessel to expose a one-quarter-inch stainless steel cladding applied to the vessel's inner surface. The timeline spanned an estimated six years and provided numerous opportunities for the NRC to step in. In the last missed opportunity, NRC staff drafted an order requiring Davis-Besse to shut down immediately on the basis that the reactor failed to satisfy four of the agency's five safety criteria and probably did not meet the fifth. But NRC's senior managers

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1 See Office of Inspector General Report of January 22, 2008. ¶
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<http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/lessons-learned/llrf-report.html> (last visited 2.15.08)
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Lessons-learned efforts for Indian Point³ provide similar findings--the regulations were in the past not the problem, enforcement is⁴. Finally compliance by Entergy to the regulations is clearly the consequence.

The licensees together with inadequate enforcement have caused significant safety and economic problems to community. In its September 2006 report, "Walking a Nuclear Tightrope: Unlearned Lessons of Year-plus Reactor Outages," UCS described the 36 times since 1966 that U.S. nuclear power reactors remained shut down a year or longer to restore safety levels eroded by accumulated violations. In these cases, more than a year, and cost an average of nearly \$1.7 billion, to bring the reactor back into compliance. On February 22, 1993 Unit 3 was shutdown for over two years to attempt to restore safety levels and was not restarted until July 2, 1995. The magnitude of non-compliance and the consequential costs as well as the risks to the public are unacceptable. Unit 2 was shutdown from February 15, 2000 until January 4, 2001 (slightly less than one full year) over a steam generator tube rupture. This design basis accident is considered one of the most serious DBA's considered in the design, licensing and safe operation of the plant.

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3 As well as Millstone (Connecticut), South Texas Project, and other troubled nuclear plants ¶
4 However, this is now changing. See for example, proposed rulemaking regarding thermal shock <http://www.nrc.gov/about-nrc/regulatory/rulemaking/proposed-rules.html> (last visited 2/15/08). ¶

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shelved the draft order because it would have cost the company too much money and instead waited to inspect the reactor for several months until it had a scheduled shutdown for refueling

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⁴ However, this is now changing. See for example, proposed rulemaking regarding thermal shock <http://www.nrc.gov/about-nrc/regulatory/rulemaking/proposed-rules.html> (last visited 2/15/08).

Inadequate compliance by the Applicant, as well as inadequate enforcement by the NRC allowed safety levels to erode over decades for Indian Point, resulting in unnecessarily higher risk to the surrounding communities during those years and higher cost to the owners.

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It also bears directly on the engineering rigor and current licensing basis compliance status as they impact contemplating an extension of 20 years post engineering design life.

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Congress, UCS, GAO, IG, and NRC all identified inadequate enforcement of safety regulations as the root cause of NRC's regulatory breakdowns, and cannot be set aside during these proceedings. The Commission must consider its history with respect to Indian Point concurrently in answering to its core mandate in considering this application for renewal.

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Over 140 contentions from 14 separate government or nonprofit organizations have been raised in these proceedings for admissibility. It is noted that not a single contention was accepted by the Applicant as admissible. Only about seven were recommended to be admitted by Staff. This stunningly small fraction is telling—in particular, given that the recent OIG report regarding License renewal called for substantial reform from a rubberstamping process to a process of engineering rigor, and sound regulatory oversight.

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5 42 U.S.C. §2201(i)(3)(“General provisions - (i) Regulations or orders prescribe such regulations or orders as it may deem necessary ... (3) to govern any activity authorized pursuant to this Act [42 USC §§ 2011 et seq.], including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property.” (emphasis added). ¶
6 See docketed comments, pointing out that regulations governing design of nuclear power plants must minimize danger to life and property, regarding Proposed new Subpart K—“Additional requirements” and proposed 10 Part
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The reforms can not be deferred until after the next nuclear plant disaster using the precedent applied at NASA after Columbia, the intelligence community after 9/11, and FEMA after Katrina. The reforms will be the same; their cost will be significantly higher.

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SUMMARY OF ARGUMENT

The NRC is responsible for protecting the public from the dangers inherent in nuclear power. Each regulation governing the design of nuclear power plants and any other activity authorized pursuant to the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* ("1954 Atomic Energy Act") must address its subject so as to minimize danger to life or property.⁵ The NRC may not issue a license to a nuclear power plant unless it determines that design, operation, maintenance of the plant will adequately protect the health and safety of the public. 42 U.S.C. § 2232(a). Section 2232(a) further provides that risks to public assets are minimized.⁶ The Petition brought to NRC's attention serious flaws in its current License Renewal Application. Those regulations avoid consideration of issues

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⁵ 42 U.S.C. §2201(i)(3) ("General provisions - (i) Regulations or orders. prescribe such regulations or orders as it may deem necessary ... (3) to govern any activity authorized pursuant to this Act [42 USC §§ 2011 *et seq.*], including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property." (emphasis added).

⁶ See docketed comments, pointing out that regulations governing design of nuclear power plants must minimize danger to life and property, regarding Proposed new Subpart K—"Additional requirements" and proposed 10 Part

related to current plant operation based on the assumption that ongoing regulatory requirements ensure adequate levels of safety. This is a core issue relevant to the scope of potential safety or environmental issues relative to the renewal process in this forum.

The NRC is responsible for protecting the public from the dangers inherent in nuclear power. Each regulation governing the design of nuclear power plants and any other activity authorized pursuant to the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* ("1954 Atomic Energy Act") must address its subject so as to minimize danger to life or property. The NRC must consider whether the process to be performed, the operating procedures, the facility, equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988). The NRC may not issue a license to a nuclear power plant unless it determines that design, operation, and maintenance of the plant will adequately protect the health and safety of the public. 42 U.S.C. § 2232(a).

NRC regulations for license renewal are codified in 10 C.F.R. Part 54 and 10 C.F.R. Part 51. Petitioners brought to NRC's attention serious flaws in Entergy's License Renewal Application. Those regulations avoid consideration of issues

52.500 "Aircraft Impact assessment" Docket No. RIN-3150-A119, submitted dated December 17, 2007, by Ulrich

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52.500 "Aircraft Impact assessment"
Docket No. RIN-3150-A119, submitted
dated December 17, 2007, by Ulrich ¶

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related to current plant operation, aging of components, and site specific impacts of the nuclear plant based on the assumption that ongoing regulatory requirements ensure adequate levels of safety. The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988).

Petitioners raise concerns of the adequacy of the environmental impact study and the aging management analysis submitted by Entergy. Petitioners also question the adequacy and ability to maintain a decommissioning fund.

Petitioners submit that a license to operate a nuclear power plant expires or terminates upon a specific a date. The NRC, upon application and thorough review, grants a new license that adheres to the rigorous standards and tests set forth for granting new licenses to operate nuclear power plants to ensure that a plant continues safely operate and adequately protects the surrounding people and environment. Petitioners contend that based on the aging of power plant, a nuclear plant that wishes to renew its license should pass the rigorous criteria set forth for operating new plants. Without these test, renewal of Indian Points operating license poses a significant safety problem.

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Entergy's license renewal application does not adhere to 10 C.F.R. Part 54. Section 54.30 requires plants to complete an Integrated Plant Assessment as part of renewal application but prohibit NRC from reviewing operational deficiencies during license renewal period. Entergy's LRA fail to consider safety concerns, environmental impacts of the nuclear power plant, continuing problems at the nuclear power plant, and review significant changes not known at the time the initial operating license was issued. Entergy did not state that a full safety review was performed.

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Petitioners maintain that in light of the scientific evidence concerning the inadequacies of Hemyc, an exemption to Entergy's operating license should not have been granted during the renewal process. The NRC should also not review applications for license transfers during the renewal process either. Significant changes like these to the applicant's operating license render safety analysis meaningless.

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Entergy does not have an adequate emergency plan in place and thus, its renewal license must be denied. For each plant there must be either a plan that complies with NRC's regulatory standards for responding to radiological emergencies or in the alternative, a plan that offers reasonable assurance that public health and safety will not be in danger.

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The NRC fails to consider new and significant information that will have environmental impacts. Various contentions raise issues that are site specific, or should have been considered category 2 environmental impacts, and thus included in Entergy's LRA. In several instances Entergy's LRA failed to address these site specific environmental concerns.

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Petitioners submit that each contention below meets the admissibility criteria under 10 C.F.R. 3.09(f) and thus, should not be dismissed.

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For these contentions to reach admissibility threshold standards, the Board, must use its discretion in considering the NRC license renewal rules in the most favorable light of implementing the congressional mandate placed on the Nuclear Regulatory Commission and the Board's role in adjudicating the rule in the broad nexus to include "all issues not..." for aging nuclear plants and include all evidence regardless of current regulations sometimes unintentionally have inadequately protect the public and impermissibly restrict public and judicial review of NRC actions.

The license renewal proceedings including the application submitted for Indian Point units 2 and 3, and (further use of 55 year old systems from Unit 1) must consider the fundamental fundamental nexus of unresolved current license basis issues, two 40 year old plants that were at best designed to operate for forty

years, and the nexus of the legacy of operating and design failures over the past three decades in considering each of the contentions we have filed.

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The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988).

Additionally the adequacy of the decommissioning fund must be fully evaluated, light of the unremediated and unidentified leaks first discovered by an independent contractor in 2005.

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Each contention put forth by Petitioners meets the admissibility criteria under 10 C.F.R. 3.09(f) and thus, should not be dismissed.

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I. Petitioners have standing to intervene.

To be a party in this proceeding, Petitioners must demonstrate standing and submit at least one admissible contention within the scope of the license renewal proceedings. NRC acknowledges that Petitioners WestCAN, RCAA, and PHASE have standing to participate in this matter. (NRC brief pp.10-13). Entergy acknowledges that Petitioners all have standing to participate in this matter.

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(Entergy's Answer pp. 3-15). NRC disputes the standing of Sierra Club and Richard Brodsky. (NRC brief at pp. 14-19).

In a license renewal proceeding, standing to intervene has been found to exist based on a proximity presumption. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Plant Station)*, LBP-06-23, 64 NRC 257, 271 (2006). The licensing Board has applied to proximity presumption to persons who reside or frequent the area within a 50 miles radius of the nuclear power plant in question. *Florida Power and Light CO (Turkey Point, Units 3 and 4)*, LBP-01-06, 53 NRC 138, 250 (2001). Petitioner Richard Brodsky, as an individual, has standing because he works approximately twenty miles from Indian Point Nuclear Power Plant. (See Declaration of Richard L. Brodsky attached hereto and made a part hereof as Exhibit A.) Accordingly, Mr. Brodsky has standing to intervene.

An organization may establish standing to intervene by demonstrating that its own organizational interests could be adversely affected by the proceeding or based on the standing of its own members. *See e.g. Consumer Energy Co. (Palisades Nuclear Power Plant)*, CLI-07-18, 65 NRC 399, 409 (2007). When as organization seeks to establish "representational standing", based on standing of its members, an organization must show that as least one of its members may be affected by the proceeding, identify that member by name and address, and show

that the members has authority to act on behalf of the organization. *See e.g., Consumer Energy Co., supra.* The organization member must also qualify for standing in his or her own right, the organizations interests must be germane to the organizations purpose, and neither the asserted claim or the requested relief require an individual member to participate in the organization's legal action. *Id.*

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The Sierra Club-Atlantic Chapter has demonstrated standing to intervene. The Sierra Club has members who live, work, and recreate within 50 miles of Indian Point. Petitioners now attach provides that declarations of members Allegra Dengler, Joanne Steele, John Gebhards, Diana Krautter, George Klein showing that they have individual standing to intervene and have authorized the Sierra Club to represent them in this proceeding. Based on the declarations of Allegra Dengler, Joanne Steele, John Gebhards, Diana Krautter, George Klein, attached hereto as Exhibits B, SIERRA CLUB is North America's oldest, largest and most influential grassroots environmental organization. is a non-profit, member-supported, public interest organization that promotes conservation of the natural environment through public education, lobbying and grassroots advocacy. Founded in 1892, the Sierra Club Atlantic Chapter has more than 45,000 members who are residents New York States. The Atlantic Chapter applies the principles of the national Sierra Club to the environmental issues facing New York State.

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The nature of the Sierra Club's interests will be adversely affected by the issuance of a renewed license for Indian Point Units 2 and 3. Thus, the Sierra Club has representational standing to intervene in this proceeding.

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SIERRA CLUB is very concerned that the proposed Indian Point 2, LLC and Indian Point 3, LLC proposed 20 year superseding licenses could increase both the risk and the harmful consequences of an offsite radiological release.

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Furthermore, SIERRA CLUB is concerned that the radiological contamination resulting from radiological releases that would impact the and interfere with the organizations rightful ability to conduct operations in an uninterrupted and undisturbed manner. *Id.* Certainly, any evacuation would severely disrupt and damage SIERRA CLUB's operations and the residences of its membership. *Id.*

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SIERRA CLUB therefore qualifies for intervention pursuant to 10 C.F.R. § 2.309(d),

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SIERRA CLUB also qualifies for discretionary intervention. 10 CFR § 2.309(e). SIERRA CLUB's participation may reasonably be expected to assist in developing a sound record. It is well versed in the field of nuclear energy and safety. SIERRA CLUB's constituency represents members who have participated in numerous Nuclear Regulatory Commission proceedings and public meetings.

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The nature of SIERRA CLUB's interests is not only its members' property interests, but the public interest. In particular, SIERRA CLUB is a member of the

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Indian Point Safe Energy Coalition (IPSEC), a broad coalition of 70 other free standing organizations.

SIERRA CLUB can provide local insight that cannot be provided by the Applicant or other procedural parties. SIERRA CLUB's members are Indian Point 2 and Indian Point 3's neighbors. In addition, as established in this proceeding, this proceeding may have significant affect on PHASE and its members. SIERRA CLUB therefore qualifies for discretionary intervention. 10 C.F.R. § 2.309(e). SIERRA CLUB is entitled to a full adjudicatory hearing with all the rights of discovery and cross-examination provided by 10 CFR Subpart G, because SIERRA CLUB has standing, and in the Petition herein to Intervene and Formal Request for Hearing, SIERRA CLUB raises substantial issues of fact and law that meet the requirements of 10 CFR §2.310 (d).

II. Petitioners contentions are admissible.

The NRC cannot deny a petition to intervene and request for a hearing if Petitioners demonstrate at least one admissible contention. 10 C.F.R. 2.309(a). Section 2.309(f) requires a Petitioner to set forth with particularity the contentions sought to be raised and satisfy the six criteria under section 2.309(f). "[A] petitioner must provide some sort of minimal basis indicating the potential validity of the contention." Final Rule: "Rules of Practice for Domestic Licensing

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Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. 33, 168, 33,170 (Aug. 11, 1989). This "brief explanation" of the logical underpinnings of a contention does not require a petitioner "to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention." *Louisiana Energy Services, LP. (National Enrichment Facility)*, CLI-04-35, 60 NRC 619, 623 (2004). The brief explanation helps define the scope of a contention - "[the reach of a contention necessarily hinges upon its terms coupled with its stated bases." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1, and 2), ALAB-899, 28 NRC 93, 97 (1988), *aj'd sub nomn Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991). However, it is the contention, not "bases," whose admissibility must be determined. See 10 C.F.R. § 2.309(a),

_____ An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised, or controverted, *provided further*, that the issue of law or fact to be raised in a request for hearing under 10 CFR 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety, (2) provide a brief explanation of the basis for the contention, (3) demonstrate that the

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issue raised is within the scope of the proceeding, (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief, (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support petitioners contentions, and (6) provide sufficient information to show that a genuine disputes exists with regard to a material issue of law or fact.

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The standards for issuance of a renewed license are under section 10 C.F.R. 54.29(a). A renewed license may be issued by the commission as authorized by section 54.31 if the commission finds that if matters identified in (a)(1) and (a)(2) of this section, if there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB are made in accordance with the Act and Commission's regulations. These matters are:

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- (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that
- (1) have been identified to require review under section 54.21 (a)(1); and
- (2) time-limited aging analysis that have been identified to require review under section 54.21(c).

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See also, *Nat'l Whistleblower Center v. NRC et al.*, 1999 WL 34833798 (D.C.Cir. June 14, 1999),

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Merits of the contention are not part of admissibility. A Licensing Board should not address the merits of a contention when determining its admissibility.

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Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP- 82-106, 16 NRC 1649, 1654 (1982), citing *Allens Creek, supra*, 11 NRC at 542; *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1)*, LBP-84-1, 19 NRC 29, 34 (1984); *Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2)*, LBP-85-11, 21 NRC 609, 617 (1985), rev'd and remanded on other grounds, CLI-86-8, 23 NRC 241 (1986); *Carolina Power and Light Co. and North Carolina Eastern Municipal Power agency (Shearon Harris Nuclear Power Plant)*, ALAB-837, 23 NRC 525, 541 (1986); *Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1)*, ALAB-868, 25 NRC 912, 933 (1987); *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power*

Station), LBP-88-26, 28 NRC 440, 446 (1988), reconsidered on other grounds, LBP-89-6, 29 NRC 127 (1989), rev'd on other grounds, ALAB-919, 30 NRC 29 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990), request for clarification, ALAB-938, 32 NRC 154 (1990), clarified, CLI-90-7, 32 NRC 129 (1990); *Sierra Club v. NRC*, 862 F.2d 222, 228 (9th Cir. 1988). See *Consumers Power Co. (Midland Plant, Units 1 and 2)*, LBP- 84-20, 19 NRC 1285, 1292 (1984), citing *Allens Creek, supra*, 11 NRC 542; *Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, ALAB-182, 7 AEC 210, 216 (1974), rev'd on other grounds, CLI-74-12, 7 AEC 203 (1974); *Duquesne Light Co. (Beaver Valley Power Station, Unit 1)*, ALAB-109, 6 AEC 243, 244-45 (1973). An intervenor need only state the reasons for its concern. *Seabrook, supra*, citing *Allens Creek, supra*.

Contention 1: Co-mingling three dockets, and three DPR licenses under a single application is in violation of C.F.R. Rules, specifically 10 CFR 54.17 (d), as well as, Federal Rules for Civil Procedure rule 11(b),

Entergy asserts that Petitioners first contention lacks specificity, factual or legal foundation, is beyond the scope of the renewal process, and immaterial. (Entergy brief pp. 38-41). The NRC staff assert that there are no applicable legal requirements that require a single application. (NRC brief at p. 34). Entergy, in

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support of its argument, cites to instances where commingling of licenses has occurred. (Id.)

The co-mingling three dockets and three DPR licenses under a single application violates of C.F.R. Rules, specifically 10 CFR 54.17 (d), as well as, Federal Rules for Civil Procedure rule 11(b), as explained in the Petition.

The recent Office of the Inspector General report found fault with the process and directly found the Staff reviews to be inadequate reviews of many of the previous applications submitted. Careful examination of this application shows that it can be distinguished from the non-precedent and unchallenged commingling of license renewal applications previously processed by the Staff, and approved by the Commission. Entergy's renewal applications as well as the proceedings are uniquely complex. Petitioners reiterate the uniqueness and challenge Entergy to find a similar example of: (a) the complexity of crediting a retired unit in Safestor, for Unit 2 but in a different manner for Unit 3; (b) the Architect Engineers for the two units were different; (c) the codes and standards were used to construct the two facilities were fundamentally different, and are prima facie challenges to renewal in these proceedings; (d) the owners of the facilities changed twice and therefore responses to the profusely evolved license basis requirements are unique; (e) the mandate of the commission to minimize risk to the public assets is uniquely critical given the location of Indian Point, and proximity of the world financial center

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within 30 miles of the plant, and the millions of people that reside within the 50 mile proximity of the plant. Each of those millions of residents could have representational standing under these proceedings.⁷

Because of independent license amendments to the extension of portions of unit 1 systems, and proper examination of the decommissioning of the remainder of Unit 1 of Indian Point, and the distinct License Renewal Application for Indian Point Unit 3, separate license renewal applications should have been submitted,

Therefore, a separate license renewal application should required be submitted for each unit at Indian Point.

CONTENTION # 2: The NRC routinely violates § 51.101(b) in allowing changes to the operating license be done concurrently with the renewal proceedings.

Petitioners contend that during the renewal process, the NRC in compliance with section 51.101(b), should not entertain: (1) requests for transfer of a license, (3) license amendments or modifications, and (3) rule making change of thermal shock. These changes to Entergy's operating license permit Entergy to renew an operating license that does not meet current standards.

⁷ In determining whether a petitioner has met the requirements for establishing standing, the Commission has directed us to "construe the petition in favor of the petitioner." *Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia)*, CLI-95-12, 42 NRC 111, 115 (1995). To this end, in proceedings involving nuclear power reactors, the Commission has recognized a proximity presumption, whereby a petitioner is presumed

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7 In determining whether a petitioner has met the requirements for establishing standing, the Commission has directed us to "construe the petition in favor of the petitioner." *Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia)*, CLI-95-12, 42 NRC 111, 115 (1995). To this end, in proceedings involving nuclear power reactors, the Commission has recognized a proximity presumption, whereby a petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor. 10 C.F.R. § 2.309(d)(2)(i)-(ii). ¶

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8 The rulemaking surrounding modification to the thermal shock rule regarding reactor internals as published in the federal register, "Notice of Proposed Rulemaking published by the NRC on October 3, 2007, regarding contemplated revisions to 10 C.F.R. § 50.61.

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The NRC Staff oppose admissibility of this contention on the basis that operating license modifications are outside the scope of license renewal. However, if an operating license that fails to meet current standards, it should not be renewed. Furthermore, a modified license, whether through a legitimate modification or exemption, changes the license to be renewed. Since the operating license to be renewed is altered, the LRA should be supplemented. Any exemption or modification will alter aging management analysis, and thus, the amended, modified or exempted license condition should be examined during the license renewal proceeding.

Petitioners' third example is particular and specific. Both the NRC Staff and Petitioner experts found significant technical errors in the TLAA most recently submitted by Entergy for Vermont Yankee, providing at least the inference of a nexus between renewal at Indian point and the proposed rulemaking that softens the regulatory requirement.⁸

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Thermal shock to reactor internals directly related to TLAA⁹. The Indian Point LRA provided by the Entergy for thermal shock analysis on either Unit 2 or Unit 3 does not provide sufficient information other than a vague reference that

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to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor. 10 C.F.R. § 2.309(d)(2)(i)-(ii).

⁸ The rulemaking surrounding modification to the thermal shock rule regarding reactor internals as published in the federal register, "Notice of Proposed Rulemaking published by the NRC on October 3, 2007, regarding contemplated revisions to 10 C.F.R. § 50.61.

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appropriate fatigue analysis must be done under NUREG 1801 Revision 1 of the

GALL report. Therefore, the contention should be admitted because it falls within scope.

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9 The NRC is currently holding back the SER for Vermont Yankee license renewal on this very issue. ¶

Entergy maintains that extensive use of the argument that “programmatic” environmental impact work is in progress. Under NRC regulations “while work on a required program environmental impact statement is in progress the Commission will not take ... significant action... that may affect the quality of the human environment.” In order for the action not to be halted, three conditions must be met,

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In the alternative, the NRC should stop all program related environmental impact statements currently in progress or contemplated during the relicensing proceedings that impact the quality of human environment—or suspend license proceedings until all program level environmental analysis is complete. Without this, the rulemaking petition is clearly inadequate,

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The new thermal shock rule relieves the Applicant from stringent criteria with regard to inspection of reactor vessel internals such as baffle bolts required for safe operation of the plant. The new rule relaxes criteria for inspection of components, such as these baffle bolts, which are normally replaced after routine inspections and are replaced due to a number of environmental factors including

⁹ The NRC is currently holding back the SER for Vermont Yankee license renewal on this very issue.

aging. Thereby reducing unacceptably reducing the margin of safety. This

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Contention including the material dispute of sufficient margin of safety for reactor vessel internal, such as baffle bolts, is an in scope license renewal components. Therefore under 10 CFR 51.101(b) the regulator cannot change the rule in while license renewal proceedings are in progress,

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Thus, Contention # 2 is material, particular, and within scope to be admitted,

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CONTENTION 3: The NRC violated its own regulations §51.101(b) by accepting a single License Renewal Application made by the following parties: Entergy Nuclear Indian Point 2, LLC (“IP2 LLC”) Entergy Nuclear Indian Point 3, LLC (“ IP3 LLC”), and Entergy Nuclear Operations, LLC. (Entergy Nuclear Operations), some of which do not have a direct relationship with the license,

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Both Entergy and the NRC Staff argue that this contention is not within the scope of a license renewal proceeding. (NRC Staff brief at pp. 37-38); (Entergy brief at pp. 47-51). Furthermore, Entergy responds that this contention is beyond the scope of this proceeding, lacks factual or expert support, and fails under 10 C.F.R. 2.309(f)(1(v) and (vi), and fails to identify any material deficiencies in the licensing renewal application. (Entergy brief at p. 47-51). Petitioners maintain that the NRC license renewal procedure is inadequate because it permits Entergy to apply for a transfer its operating license while a review of renewing the operating license occurs in violation of 10 CFR 51.01 (b).

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Entergy's request for the indirect transfer of the Facility Operating Licenses

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for Indian Point 2 and Indian Point 3 be denied because the transfer violates 10 C.F.R. Part 50; violates 10 C.F.R. 54.35 and 54.37; the intended purpose of the corporate restructure is not met and is unclear; the restructuring potentially violates 10 C.F.R. 50.33(f)(2); the application fails to submit sufficient information concerning the financial qualifications of the proposed shell corporation that is not an electrical utility and the financial adequacy of decommissioning funding; and the transfer violates anti-trust laws. Despite Entergy's claim that financial issues "have no place in this proceeding" the financial viability is relevant to whether Entergy license to operate should be renewed. If Entergy's license is renewed and Entergy fails to make safety related repairs or pay decommissioning expenditures or pay retroactive Price Anderson Act premiums, Entergy cannot give reasonable assurances of health and safety of the public.

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Any license transfer during a LRA proceeding brings into scope Entergy's financial qualification review to continue operating the license during the license renewal period. The proposed corporate restructure will affect the financial responsibility and liabilities of Indian Point 1,2, and 3. The proposed restructuring draws question as to whether Entergy can provide reasonable assurances of health and safety of the public. Serious doubts exist as to whether the NRC can hold a parent company responsible for the liabilities incurred by a subsidiary. Therefore,

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the owner and its financial status are relevant to the license renewal process to protect the public's health and safety.

The timing of this transfer application creates the opportunity for the NRC staff to do less than an adequate review, as was found by the General Accounting Office in previous reviews performed. (Exhibit C GAO Report to Congress 02-48 dated December 3, 2001). The General Accounting Office has found that the NRC has done an inadequate analysis regarding the fiscal responsibility during license transfers in the past, affecting commitments or lack thereof, including but not limited to such items as the decommissioning funds, specifically relevant to Unit 2 and Unit 3 license renewal. The General Accounting Office found that "NRC did not obtain the same degree of financial assurance in the case of one merger that created a new generating company that is now responsible for owning, operating, and decommissioning the largest fleet of nuclear plants in the United States. The new owner did not provide, and NRC did not request, guaranteed additional sources of revenue above the market sale of its electricity, as other new owners had. Moreover, the NRC did not document its review of the financial information—including revenue projections, which were inaccurate—that the new owner submitted to justify its qualifications to safely own and operate 16 plants." (GAO Report to Congress 02-48 dated December 3, 2001),

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Based on the foregoing and the GAO report, the NRC license renewal procedure is defective because it permits a licensee to transfer its operating license during the pending license renewal process.

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Thus, Contention 3 is material, particular, raises an issue of law, and therefore is admissible.

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CONTENTION 4: The exemption granted by the NRC on October 4, 2007 reducing Fire Protection standards are Indian Point 3 are a violation of §51.101(b), and does not adequately protect public health and safety,

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Entergy and the NRC Staff contend that the fire standard exemption granted to licensee is outside renewal scope. (Entergy brief pp. 51-54); (NRC Staff brief at pp 38-39). As noted in the NRC Staff brief, the exemption has become part of the CLB. Furthermore, Entergy has failed to submit expert rebuttal of our expert witness declaration, and therefore their answers are without merit.

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Petitioners contend that the NRC exemption granted by the NRC reducing the fire protection standards for Indian Point Unit 3 violates 10 C.F.R. 51.101(b) and does not protect the public health and safety. Under 10 C.F.R. 54.4 “[a]ll systems, structures, and components relied on in safety analyses or plant

evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 C.F.R. 50.48), environmental qualification (10 C.F.R. 50.49), pressurized thermal shock (10 C.F.R. 50.61),

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anticipated transients without scram (10 C.F.R. 50.62), and station blackout (10 C.F.R. 50.63).” This clearly includes exemptions to federal law that are specifically mentioned under code for license renewal,

Subsequent to Entergy’s LRA being accepted by the Staff, the application proposed an exemption that substantially modified the in- progress exemption regarding fire protection of power cables and control cables in the electrical cable tunnels. These new requests were done without proper notice in the Federal Register, and constituted a change in Attachment D to Appendix E of Entergy’s LRA,

The exemption modified the Core Damage Frequency calculations as demonstrated in Petitioners contention 5. The exemption permits Entergy to operate although the Units have a 24-minute rated fire barrier for ETN-4, and 30-minute rated fire barrier for PAB-2, in lieu of a 1-hour rated barrier. The result of these new changes that were expeditiously approved under an apparently rushed Safety Evaluation are based upon unsubstantiated analysis, and fly in the face of 2005 EPact, as well as existing rule increasing risk to the health and safety to the public without the most modest analysis as required under 10 C.F.R.50.12.

As demonstrated in contention 5, the issue is particular, and relevant to renewal given the Entergy relies on manual actions suppress a fire in a zone that is

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difficult and dangerous to enter during a fire, and is a prerequisite zone to remain operational for associated systems safe shutdown analysis (ASSD),

In a series of letters dated July 24, 2006, and supplemental letters dated April 30, May 23, and August 16, 2007, responding to the NRC staff's request for additional information, Entergy submitted a request for revision of existing exemptions for the Upper and Lower Electrical Tunnels (Fire Area ETN-4, Fire Zones 7A and 60A, (respectively), and the Upper Penetration Area (Fire Area ETN-4, Fire Zone 73A), to the extent that 24-minute rated fire barriers are used to protect redundant safe-shutdown trains located in the above fire areas in lieu of the previously approved 1-hour rated fire barriers per the January 7, 1987 Safety evaluation For the 41" Elevation CCW Pump Area (Fire Area PAB-2, Fire Zone 1) ENO is requesting a revision of the existing exemptions to the extent that a 30-minute rated fire barrier is provided to protect redundant safe shutdown trains located in the same fire area,

Pursuant to 10 C.F.R. 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 C.F.R. Part 50 when (1) the exemptions are authorized by law, *will not present an undue risk to public health or safety, and are consistent with the common defense and security*; and (2) when special circumstances are present. (emphasis added). One of these special circumstances, described in 10 C.F.R.

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50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule.

In this case the NRC has failed to enforce its own regulations. The underlying purpose of Subsection III.G.2 of 10 C.F.R. 50, Appendix R, is to ensure that one of the redundant trains necessary to achieve and maintain hot shutdown conditions remains free of fire damage in the event of a fire. The provisions of III.G.2.c through the use of a 1-hour fire barrier with fire detectors and an automatic fire suppression system is one acceptable way to comply with this fire protection requirement. The NRC must consider whether the process to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications provide reasonable assurance that the applicant will comply with the regulations and that the health and safety of the public will not be endangered. Sections 50.40, 50.92 (1988).

Contentions identifying and referring to particular documents or studies are sufficiently specific for the purpose of admission. *Sierra Club v. U.S. Nuclear Regulatory Com'n*, 862 F.2d 222 (9th Cir. 1988)(Sierra Club submitted with its contention a copy of the BNL report and made clear title in the title and text of its contention that it wished to litigate issues contained in that report was held sufficient although the contention itself did not contain any specific accident scenario, the BNL report, which was attached to the Sierra's Club contention, more

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than adequately identified such scenarios). The relevant inquiry is whether the contention adequately notifies the other parties of the issues to be litigated; whether it improperly invokes the hearing process by raising non-justiciable issues, such as the propriety of statutory requirements or agency regulation; and whether it raises issues that are appropriate for litigation in the particular proceeding. *Sierra Club, supra*.

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Therefore, the exemption granted by the NRC, which will be carried over into the proposed license period fails to protect the health and safety of the public and does not provide an adequate aging management plan for this in scope system. Therefore Contention 4 additionally raises significant issues of fact and law regarding safety concerns and aging management that should must be admitted and heard.

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CONTENTION 5: The Fire Protection Program described in the Current License Basis Documents including the unlawfully approved exemptions to Appendix R, the Safety Evaluation and the amended license for Indian Point 3 fail to adequately protect the health and safety of the public, and fail to meet the requirements of 10 CFR 50 and Appendix R.

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Petitioners assert that the fire protection exemption granted to Entergy fails to adequately protect the health and safety of the public and fails to meet to the requirements of 10 C.F.R. 50 and Appendix R.

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The NRC Staff oppose this contention because it is outside the scope of the license renewal proceedings. (NRC brief at p.40). Entergy asserts that this contention does not raise a factual or legal matter and is not within the scope of the license renewal process. However, As noted in the NRC Staff brief, the exemption has become part of the CLB. Moreover, neither Entergy nor the NRC Staff have submitted expert rebuttal of Petitioners expert witness declarations and therefore their arguments are baseless. Petitioners maintain that this contention meets the six part test for admissibility. The fire standard exemption granted to Entergy does protect the health and safety of the public.

Petitioners' Contention 5 raises a factual and legal issue. NRC's standards for licenses state that the use of the facility and the facility itself must not endanger the health and safety of the public. 10 C.F.R. 50.40(a). Issuance of a license must not "be inimical to the common defense and security or to the health and safety of the public." Section 50.40(c). The fire standard exemption granted is inimical to the common defense and security or to the health and safety of the public.

Petitioners question whether the Indian Point Units can safely operate.

The Fire Protection exemption is without question within scope as required under § 2.309(f)(iii). The contention raises a particular and material issue the application containing contradictory, incomplete, and evolving core damage frequency analysis regarding the probability of a fire (even disregarding the nature

of the incendiary cause and (excluding a saboteur for example) the contention meets the threshold of admissibility. See § 2.309(f)(iv), in to the license basis that was available, and the pertinent sections of Appendix E to the LRA¹⁰ provides within Attachment D, analysis methodology and results suggesting that the specific area in question i.e. the electric cable tunnels described in specificity below, contain a CDF (core damage frequency) sufficiently low¹¹ so as to not be listed as major core damage frequency initiators.

However, the list that provides the Probabilistic Safety Analysis model Core Damage Frequency (these are results by each of the Entergy's opinion as to what are the major initiators) is absent of these tunnels but includes less likely initiators. The list which includes loss of non-essential service water, transients, station blackout, and others all have probabilities that are *greater than* the Entergy own calculation for CDF in the tunnels. This discrepancy *notably* precedes the Entergy then revising the physical characteristics of the tunnel components itself with a reduction from one hour to 24 minutes of burn time prior to cable failure and loss of emergency core cooling systems power and control running in close proximity in those fire areas.

¹⁰ This examination does not include substantial changes to the LICENSING RENEWAL APPLICATION submitted on about December 18, that may alter this contention—however, WestCANs petition was submitted prior to December 18, and no notification was made in the Federal Register regarding a substantial revision to the Application's LRA. See motion for stay of renewal proceedings until publication of the December 18th amendment, and a public comment period.

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10 This examination does not include substantial changes to the LICENSING RENEWAL APPLICATION submitted on about December 18, that may alter this contention—however, WestCANs petition was submitted prior to December 18, and no notification was made in the Federal Register regarding a substantial revision to the Application's LRA. See motion for stay of renewal proceedings until publication of the December 18th amendment, and a public comment period. ¶ provides within Attachment D, analysis methodology and results suggesting that the specific area in question i.e. the electric cable tunnels described in specificity below, contain a CDF (core damage frequency) sufficiently low

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The contention disputes genuine material facts as clarified above. The compilation of law violated as provided on pages 40 through 44 of the petition stand. Entergy's erroneously stated that Petitioner failed to establish a regulatory linkage between 10 C.F.R.50.48 and 10 C.F.R.73. One has only to look at the words plainly in 10 C.F.R.50.12: "alternatives for the exemption...must be grounded in meaningful and not superficial examination...including measures impacting the "common defense and security..." This was not done for the existing, analysis, and failure to provide adequate analysis, invalidates statements in the LRA regarding of fire protection. It is the cornerstone of the core damage frequency analysis provided in Entergy's above cited reports.

Broken current programs that are within scope and that are to credited during the new license period, including this Fire Protection exemptions, raise significant issue of fact and law. Thus Contention 5 must be admitted and heard by the ASLB.

CONTENTION 6: Fire Protection Design Basis Threat. The Applicant's License Renewal Application fails to meet the requirements of 10 CFR54.4 "Scope," and fails to implement the requirements of the Energy Policy Act of 2005,

Entergy and the NRC Staff submit that contention 6 is not admissible because it is not within scope. (NRC Staff brief at pp. 40-42); (Entergy brief at pp. 55-56). Petitioners maintains that contention 6 meets the six part test for

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admissibility. Current law supersedes scope limitations by the Commission regarding exclusion of design basis threat as part of license renewal. Design Basis Threat (hereinafter “DBT”), while excluded by the Commission as part of License Renewal process, current precedence in the Ninth Circuit provides that fire intentionally set must be considered a required element of relicensing.

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Entergy’s LRA fails to address this issue. The Commission regulation codified on March 12, 2007¹² is applicable. Moreover, Entergy has not submitted expert rebuttal of our expert witness declarations and therefore their answer is without basis

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Therefore, Contention 6 raises material issues of fact and law regarding aging management of Indian Point 2 and 3, is within scope, and should be admitted,

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CONTENTION #7: Fire initiated by a light airplane strike risks penetrating vulnerable structures,

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The NRC Staff contend that this contention fails to satisfy 10 C.F.R. 2.309(f)(1)(v)-(vi). (NRC Staff brief at p. 43). Petitioners need only state the reasons for its concern. *Seabrook, supra, citing Allens Creek, supra.* Petitioners refer to various studies and reports in their exhibits, and this have provided sufficient facts in support of contention 7.

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The response provided by Entergy misses the issue entirely. Core Damage Frequency analysis provided in attachment D, to Appendix E of the LRA excludes fire incendiary sources beyond a limited scope. Under Contention 5, a CDF of $7.14E-07$ per reactor year. If one assumes fire ignition and fuel is available via aircraft crashes, the entire set of models for PRA regarding fire needs revision. The plant specific IPEE excluded any “transportation accident” on the basis that would not lead to a core melt frequency of greater than $1.0E-06$ per reactor year. This value is *more* frequent than about half of those listed in table 3.1-2 in Attachment D to Appendix E. None of the models¹³ examined included accidental aircraft crashes as an ignition entry point into the model. Examination of industry surveys of aircraft crashes in the region surrounding the plant provide extensive evidence that fires from aircraft accident are far from remote (Exhibit D).

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Second, the recent rulemaking petition drafted by the NRC, §52.500 “Aircraft Impact Assessment”, raises questions regarding the mandate of the agency to minimize risk to the public assets including threats of aircraft triggered fires. Petitioners question why the NRC would codify the most modest protection for 8 plants that may never be constructed, and yet set aside protection of the

¹² 72 Fed. Reg. 12705.

¹³ FIVE analysis, DBT methodology.

public health and safety for the existing 104 plants, and in particular Indian Point Plant being considered for an additional 20 year extension¹⁴.

Finally, the following precedence provides that CDF for fire related events has a much broader uncertainty then claimed via credit under such methods as

“Monte Carlo” or others. All one has to do is look at the actual record of fires at this plant, and the frequency input can be shown as invalid. A brief summary is provided in Attachment 1. Domestic fire frequency is about 1 per 100 reactors per year. Indian Point Unit 3 only recently had a fire in a transformer. A good test to the uncertainty is to correlate the actual fire frequency, multiplied to core damage threat, to those predicted. They do not correlate.

Petitioners are not challenging the rule—Petitioners are challenging the enforcement of 10C.F.R.54 to cover not to exclude, just wind, tornado, and seismic on faulted premise. Excluding these phenomena based upon incomplete PRA is questionable analysis, and appears yield a clear error in table in Appendix E,

Finally, Petitioners question how Entergy can conclude that its fire protection program as required by 10 C.F.R.54.4 is sufficient, when the existing CLB does not include compliance to the DESIGN BASIS THREAT rule—and compliance to the rule is in a state of flux. Further, Entergy has not submitted

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¹⁴ Petition filed December 17th for example.

expert rebuttal of our expert witness declarations and therefore their answer is without basis

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Thus, Contention #7 is material, particular, and within scope and thus admissible.

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CONTENTION 8: The NRC improperly granted Entergy’s modified exemption request reducing fire protection standards from 1 hour to 24 minutes while deferring necessary design modifications,

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In contention 8, Petitioners contend that the NRC improperly granted

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Entergy’s modified exemption allowing a reduction of the fire standards, while deferring necessary design modifications. The rationale is identical as in Contention 6. NRC’s standards for licenses state that the use of the facility and the facility itself must not endanger the health and safety of the public. 10 C.F.R.

50.40(a). Issuance of a license must not “be inimical to the common defense and security or to the health and safety of the public.” Section 50.40(c). The fire standard exemption granted is inimical to the common defense and security or to the health and safety of the public. Petitioners question whether the Indian Point Units can safely operate. Here, careful examination indicates that the Entergy is failing to meet its current licensing basis pro tem—and must rely on hourly fire watches.

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Numerous other discrepancies add to the uncertainty. For example, the 480 volt EDG output is unique requires different cable sizing, different heat dissipation, and additional analysis to show circuit integrity through the event. Under 10 C.F.R.10.12(c) an alternative analysis of simply replacing the hemyc wrap was not presented. There is no test data or analysis examined or the configuration qualified. Petitioners question why the cost benefit analysis performed could not support upgrading the firewrap to a 1 hour rating.

“Indian point Unit 3 Case study” provides an abundant history of distinct fire related events at Indian Point 3. Included are 20% of the fire dampers were found to fail due to improper installation, cable tunnel separation criteria failed to meet separation requirements, , design regarding lighting for fire related remote shutdown. There are 11 more all significant,

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Further, Entergy has not submitted expert rebuttal of our expert witness declarations and therefore their answer is without basis, Thus this contention is material, particular, and within scope to be admitted and heard,

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CONTENTION 9: In violation of promises made to Congress the NRC did not correct deficiencies in fire protection, and instead have reduced fire protection by relying on manual actions to save essential equipment,

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Entergy and the NRC Staff argue that contention 9 is not within scope of a renewal proceeding. Petitioners maintain that the exemption granted by NRC

granting the use of HemyC thereby reducing the fire protection standard to 24 minutes at Indian Point 3 from the standard of one hour, is carried into the new license period. (NRC Staff brief at p. 45); (Entergy brief at pp. 57-58). In fact the exemption, though omitted from the LRA, will be continued during the proposed new license period and therefore is within scope, as it directly impacts the aging management of the plant. By granting this exemption the NRC did not correct deficiencies in fire protection and instead reduced fire standards by relying on manual action to save essential equipment. (Pet. pp. 95-98) (Entergy brief pp. 57-58), which will impact material and particular issues directly related to the aging management of the plant.

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Petitioners reassert that this contention raises specific and defined actions regarding retrofitting the plant to bring it into compliance, in order for the NRC to allow this exemption to be carried into the proposed license period. Entergy failed to include such retrofits, and failed to amend it's LRA to include this exemption- as required under 10 CFR Part 54.

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Entergy has not submitted expert rebuttal of our expert witness declarations and therefore Entergy's answer is without basis. Based on the foregoing, Contention 9 is material, particular, and within scope. Therefore, contention 9 should be admitted and be heard.

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CONTENTION No. 10: (Unit 2) Cable separation for Unit 2 is non-compliant, fails to meet separation criteria and fails to meet Appendix R criteria. This has been a known issue since 1976; and again in 1984, yet remains non-compliant today,

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Petitioners contend that the cable separation for Unit 2 is non-compliant, fails to meet the criteria for separation and for Appendix R. (Pet. at pp. 98-99). Entergy and the NRC Staff assert that Contention 10 is not admissible. (Entergy brief at pp. 58-61); (NRC Staff brief at pp. 46-47).

Petitioners assert that the electrical separation of Unit 2 at Indian Point was constructed under unapproved criteria. (Pet. at pp. 98-99). As a result, a single electric tunnel houses both safety related trains within approximately 12 inches of each other, which violates general design criteria and does not comply with Appendix R criteria. (Id.) Entergy's LRA fails to present adequate and lawful design measures to provide a reasonable assurance to protect the health and safety of the public; therefore, the aging program in Entergy's LRA is meaningless. (Id.)

As discussed earlier, the merits of the contention are not part of admissibility. See e.g., *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), *supra*. Petitioners need only state the reasons for its concern. *Seabrook, supra, citing Allens Creek, supra*. Consequently, Petitioners have met the criteria under 10 C.F.R. 2. 309(f).

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Entergy further states that Indian Point Units 2 and 3 construction permits were issued on October 14, 1966, and August 13, 1969, respectively and thus, the

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General design criteria does not apply to those plants. (Entergy's brief at p. 59). This is a substantial error. The NRR Office Instruction No. LIC 100, Licensing Basis for Operating Reactors has no legal basis. There are numerous places in the license basis where the Entergy does either directly or by inference state that it intends to comply with the GDC in question.

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The Indian Point 2 (P2) Control Room Ventilation System (CRVS) meets the applicable General Design Criteria (GDC). Indian Point 2 was initially licensed based on the proposed GDCs issued for comment by the Atomic Energy Commission on July 11, 1967. Since that time, the NRC issued a Confirmatory Order on February 11, 1980, which included a requirement to conduct a study regarding compliance with the regulations of 10 CFR 50. The study performed in response to this Order included a review of the GDCs contained in Appendix A of 10 CFR 50. The results of this study were reported in Reference 1 and NRC acceptance of this response was provided in Reference 2. The applicability of the GDCs to P2 is also described in the Updated Final Safety Analysis Report (Reference 3). (See Exhibit G. p. 10).

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Under the admissibility criteria of Section 2.309(f)(1), this contention is admissible. Petitioners have provided a specific statement of the legal or factual issue sought to be raised --- that the cable separation for unit 2 is non-compliant. Petitioners have provided a brief explanation of the basis for the contention -- the

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cable separation violates GDC. Petitioners have raised an issue within the scope of the proceeding because it involves the GDC's and aging management.

Petitioners have demonstrated that the issue is material and stated that it was not referenced in the LRA; thus, Petitioners could not cite to specific portions of the application. Petitioners have provide sufficient information to show that a genuine disputes exists with regard to a material issue of law or fact. (Pet. at p. 98),

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Moreover, Entergy and the NRC Staff have not submitted expert rebuttal of Petitioners expert witness declarations, and therefore, the answers are without basis As a result, Contention 10 should be admitted and heard,

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CONTENTION No. 11A (Unit 2 and Unit 3): The Fire protection program as described on page B-47 of the Appendix B of the Applicant's LRA does not include fire wrap or cable insulation as part of its aging management program.

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Contention 11A asserts that the fire protection program described on page B-47 of Appendix B of the LRA does not include fire wrap or cable insulation in its aging management program. (Pet. at. pp. 99- 101). Without maintaining minimum criteria for age management of fire wraps, beyond visual inspections, the actual scope of fire barrier/insulation supplied in the application is insufficient. The NRC Staff concedes that the portion of this contention relating to the fire protection aging management program is admissible. (NRC Staff brief at p. 47).

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The specific elements noted in tables provided by the Entergy are vague, incomplete, and without substance. There exists ambiguity between insulation with the word “none” inserted for aging management. In other one word entries on the table 3.5.2-4, there is simply a reference to fire protection, but no aging management program described.

Therefore, the fire protection aging management program submitted by Entergy is insufficient and thus Petitioners contention 11A must be admitted,

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CONTENTION 11B: Environmental Impact of an increase in risk of fire damage due to degraded cable insulation is not considered thus the Applicants’ LRA is incomplete and inaccurate, and the Safety Evaluation supporting the SAMA analysis is incorrect.

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Petitioners argue that Entergy failed to assess the increased risk of fire damage due to degraded cable insulation and thus, Entergy’s LRA and the safety evaluation supporting the SAMA are incomplete and inaccurate. SAMA issues are material issues of fact that should be considered during this license renewal proceeding. Furthermore, neither Entergy nor the NRC Staff have submitted expert rebuttal of Petitioners expert witness declarations, as such, their answers should not be considered. Since contention 11A is material, particular, and within scope, the contention should be admitted and subject to a hearing,

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CONTENTION 12: Entergy either does not have, or has unlawfully failed to provide the Current License Basis' (CLB) for Indian Point 2 and 3, accordingly the NRC must deny license renewal,

Entergy argues that contention 12 is not within scope of the renewal process.

THE NRC Staff argue that Petitioners failed to identify an error or omission in the application. (NRC Staff brief at pp. 49-50). Petitioners maintain that the current license basis is within scope, and must be available for a petitioner during the period allowed by rule 2.336 for intervention. Petitioners have a legal right to the pertinent parts of the licensing basis. 10 C.F.R.2.309 Moreover, under 10 C.F.R. §§ 54.19 and 54.21(c), Entergy failed to provide a comprehensive list of plant-specific exemptions, as noted by the NRC Staff. (NRC Staff brief at p. 50).

Therefore, Entergy's LRA currently is not in compliance with NRC regulations.

Under section 2.309(f)(1)(iv) of the Code of Federal Regulations, the contention is material to the findings the NRC must make to support the action that is involved in the proceeding. An issue is only "material" if "the resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172. This means that there must be some link between the claimed error or omission regarding the proposed licensing action and the NRC's role in protecting public health and safety or the environment. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89 (2004), *aff'd* CLI-04-36, 60 NRC 631 (2004),

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Finally, the CLB is not a “term of art” as described by the Entergy. The CLB is precisely defined in §54.3. Even if Petitioners acknowledge the amorphous nature of the CLB and the dynamic state—Entergy is required under the rules to have the pertinent elements and they don’t. This is another example that is relevant is the stunning oversight by Entergy -- their repeated statements in their reply [to contentions 10, 11B and others] that Entergy(s) for the plants are not bound to the GDC’s. By them even making that statement, Entergy is attempting to change the CLB.

Entergy argues that the ASLB should “not be expected to sift unaided through large swaths” of exhibits. Petitioners argue that Petitioners should not be expected to sift unaided through 40 years of exemptions, deviations, exceptions to piece together the current CLB. Applicant’s have an obligation to provide both Petitioners/Stakeholders and the ASLB a CLB that is not a vague idea, but a concrete written document. A complete and non-vague CLB is the very basis by which Petitioners and the ASLB can evaluate whether the aging management of components, systems, and structures are adequately addressed in the LRA. Entergy did not provide a complete and accurate CLB to adequately assess the aging management program.

Entergy does not challenge the in-scope status of this contention. Thus, 10 pursuant to C.F.R. 2.309(f)(1)(vi), contention 12 must be admitted,

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CONTENTION 13: The LRA is incomplete and should be dismissed, because it fails to present a Time Limiting Aging Analysis and an Adequate Aging Management Plan, and instead makes vague commitments to manage the aging of the plant at uncertain dates in the future, thereby making the LRA a meaningless and voidable “agreement to agree.”

The contention is admissible under the six part test. The Applicants are required to provide a complete application as required under the standards promulgated within §54.29, Entergy has failed to do so because the commitments are made in the LRA that contain language that are void under contract law. The very essence and scope of aging management programs is based on the commitments made in the LRA, the voidable nature of such commitments is clearly within scope of the relicensing proceedings. Petitioners are particular, or specific as to where the application is incomplete.

Petitioners need not argue the merits, just show the absence of information is relevant to a few of our contentions. A properly pled contention must contain "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1). Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. See 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in

affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." Id. at 33,171.

On page 71 of the Applicant's response there are a number of statements regarding commitments that are completely incorrect. Licensee commitments can number in the thousands. Only a fraction have legal enforceability. The remainder are not tracked as commitments, and generally not maintained. The precise set of ongoing or onetime commitments that are docketed and in affect must be maintained by the applicant and is required by §54.3(a).

Petitioners assert that anything that is currently capable of being described in sufficient detail should be. Programs for aging management, *by contract law* can be precisely articulated—the Applicant proffers no rationale for delaying disclosure. Examples of the Applicant's failure of full disclosure include Flow Accelerated Corrosion¹⁵, Equipment qualification¹⁶, buried piping¹⁷, and in

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15 For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 202L Rev 2 is not specific. There are examples of plants were they credit EPRs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piant piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events where not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years. ¶
16 See contention 27. ¶
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¹⁵ For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 202L Rev 2 is not specific. There are examples of plants were they credit EPRs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piant piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events where not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years.

¹⁶ See contention 27.

¹⁷ See contention 35

particular, the undisclosed refurbishment plan for the reactor heads¹⁸. (See Exhibit E, OIG Report, and Exhibit F, Declaration of Ulrich Witte).

By avoiding the issues, the Applicant avoids the Environmental Reporting. And thereby avoid, intervention, and foreclose the opportunity for the public to be heard and made aware of the risks,

In response the NRC Staff state that Petitioners contention is “vague, lacks expert support, fails to specify portion of the application with which it disagrees, and fails to state an admissible issue.” (NRC Staff brief at pp. 51-52). Entergy claims that this contention is not supported by facts or expert opinion, fails to raise a genuine dispute on a material issue of law or fact, and impermissibly challenges 10 C.F.R. Parts 50 and 54. (Entergy brief at pp. 70-71),

Petitioners contention is that Entergy’s LRA is incomplete; therefore, it cannot point to specific portion of the LRA with which it disagrees because the entire LRA is incomplete. The applicant is required to include all information in its LRA and thus the burden of proof is on the applicant to show that the LRA is complete. Since the application is required to address all EE&D’s being carried over into the new licensing period, the LRA is complete if it does not include a plan for aging management of the plants degradation and fails to provide AMP’s.

Therefore contention 13 must be admitted and heard,

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18 See contention xx reactor head replacement. ¶

(See Exhibit E, OIG Report, and Exhibit F, Declaration of Ulrich Witte).

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¹⁸ See contention xx reactor head replacement.

CONTENTION 14: The LRA submitted fails to include Final License Renewal Interim Staff Guidance. For example, LR-ISG 2006-03, “ Staff guidance for preparing Severe Accident Mitigation Alternatives.”

Petitioners point to numerous material inadequacies found in the Entergy submittal. (Pet. at pp. 112-113). Entergy insists that LR-ISG-2006-03 is included in their LRA at 2.1-21, (Entergy’s brief at 72-73), whereas the NRC Staff argue that contention 14 lacks specificity and basis. (NRC Staff brief at p. 53).

Essentially, the inherent weaknesses found throughout the submittal would have been at least partly avoided had they followed this guidance. Second, the guidance whether draft of final is immaterial – a point apparently considered important in the response by the Entergy. Plants were built to *draft* GDCs in 1967. That is better than no GDCs at all, which is what Entergy now is actually claiming in responses to our contention 10, 11B, and 22-25.

The date LR-ISG-2006-03 was finalized is immaterial. The NRC notes that it intends to roll this guide into NUREG 1555. This action gives it more strength – and more compelling that it be used. But there are others that are in existence and yet only one guideline was cited—and only in general terms. The licensee appears to have cherry picked the guidance at best. Where it pointed to NEI such as NEI-05-01, the Entergy used the resource to limit the extent it believed would be necessary for applying regulations to SAMA submittal. This is flawed. SAMA vulnerability (for example due to a large pipe break coolant accident) is

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incomplete—given that consideration is not made for steam generators that are less than 100% functional. By following the guidance—for example, LR-ISG-2006-02, “Staff guidance for environmental reports for license renewal applications” (published as a draft document in February, 2007) the following flaws would have also been avoided,

A list of the inadequacies, as compared to several EIS scoping documents submitted on October 12, 2007 is provided in Exhibit H. “Incomplete Scoping under IGS-2006-02 Guidance.”

Contention 14 meets the admissibility criteria. Entergy does not challenge the in-scope nature of this Contentions. Contention 14 raises a genuine dispute with the Applicant on materials issues of law or fact as per 10 C.F.R. 2.309(f)(1) and must be admitted,

CONTENTION 15: Regulations provides that in the event the NRC approves the LRA, then old license is retired, and a new superseding license will be issued, as a matter of law § 54.31. Therefore all citing criteria for a new license must be fully considered including population density, emergency plans and seismology, etc,

Petitioners maintain that this Contention meets the 6 part test for admissibility. Petitioners maintain that under NRC regulations, when the LRA is approved, the old operating license terminates and a new superseding license is issued pursuant to 10 C.F.R. 54.31. (Pet. at p. 155). Consequently, before a new operating license

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can be issued, the NRC must assess the nuclear power plant and its location under the same criteria as an application for a new operating license. (Pet. at p. 116).

License Renewal (as codified in 10C.F.R.54 and 10C.F.R.51) can be simplified to address four things—and four things only: (a) Aging of the plant structures, systems, and components will be sufficiently managed – where one cannot argue they are already addressed within the current license basis; (b) review of time limited aging evaluations; (c) environmental impact analysis that is clearly plant specific and not generic, (for example, severe accident risk is out of scope but alternatives to severe accidents are in scope; (d) anything else that one can prove is only possible during the renewal period but not during the current license period. (10 C.F.R. 54.21(b)),

“A contention about a matter not covered by a specific rule need only allege that the matter poses a significant safety problem. That would be enough to raise an issue under the general requirement for operating licenses (10 C.F.R. § 50.57(a)(3)) for finding of reasonable assurance of operation without endangering the health and safety of the public.” *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, LBP-82-116, 16 NRC 1937, 1946 (1982),

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19 NYS petition, letter signed by six state attorneys general, ¶

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As numerous agencies¹⁹ and states²⁰ have asserted, as well as the Office Of The Inspector General²¹, the current application bypasses a plethora of issues that start from current unresolved problems and are expected (by engineering rigor and not mere speculation) to either not be resolved at the end of the current license period, or more importantly, reflect a failed implementation of design criteria, operational criteria; or design basis accident mitigation that actually worsen by extending the operating license.

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20 Letter dated October 24, 2007 for the EPA requesting criteria consistent with a new operating license be applied. ¶

21 September report ¶

Examples that meet these criteria include;

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1. Probable water contamination, with the announced intention to use the Hudson River as a source of drinking water...water,
2. Changes to the environment that are forthcoming. Weather systems, river water level and flow rates, and temperatures,
3. Probabilistic assessments of sabotage, action: cite report that shows likelihood of attack etc—and that it is likely to increase further,
4. Whether operating Indian Point for 50% longer creates new and different failure modes—as yet unpredicted but real. For example, the casual affect

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¹⁹ NYS petition, letter signed by six state attorneys general,

²⁰ Letter dated October 24, 2007 for the EPA requesting criteria consistent with a new operating license be applied.

of the pipe break at Surry, and the consequences were entirely unpredicted,

4. and outside the design basis accident that the plant was designed, engineered, and operated to withstand.

5. Design Basis Threat

6. The added cost of decommissioning the site with 20 *more* years of additional soil contamination, water contamination, and airborne contamination—

where the Entergy has shown itself to be the nation's worst operator²².

Finally, the material condition of the plant is critical, which depends heavily on how the plant was designed, operated, modified, and maintained compliant. For instance, the efficacy of the physical plant through the past 45 years since construction needs to be provable by the docketed record including compliance to the historical and current license bases by the Entergy. Compliance to the rules and case law by themselves must establish the sufficiency of the license bases record so as to adequately implement the congressional enacted statutes governing the protection of the health and safety of the public, as well as minimizing risk to the public assets. In contention after contention Petitioners show (along with the NEW YORK STATE Attorney Generals Office Petition) wholesale violation of the rules. One does not need to look any further than Entergy's response: "Indian

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22 Reference coming... Indian Point is the dirtiest plant in the domestic fleet. ¶

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²¹ September report

²² Reference coming... Indian Point is the dirtiest plant in the domestic fleet.

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Point is not required to comply with the GDC's stated regarding our petition and stated to other petitioners. A clear example of what lies ahead of the risks of the public assets, and the protection of the health and safety of the public.

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The Entergy relies heavily on the GALL report to support their suggestion that the LRA provided is complete and compliant to law. The GALL report is guidance- not law. The question of law raised in this contention is precisely how does the Entergy interpret and apply the rules as codified in 10 C.F.R.54 and 10 C.F.R.51 so as to actually meet congressional statutory authority as prescribed the Atomic Energy Act, together with the following statutory authority²³. This contention turns on resolution of the ambiguities.

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Petitioner contend that without a superseding license by these particular facts and law, the matter not covered by a specific rule but by the particular and specific conditions found, does allege that the renewal of Indian Point poses a significant safety problem. Because there is no definition listed in for "license renewal" or "relicensing" in the NRC regulations, Petitioners reason that the criteria for obtaining a initial operating license are just as applicable for relicensing. Alternatively, the aging management analysis covers the same review that is necessary for obtaining a renewed license.

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Thus, contention 15 should be admitted.

CONTENTION 16: An Updated Seismic Analysis for Indian Point must be Conducted and Applicant must Demonstrate that Indian Point can avoid or mitigate a large earthquake. Indian Point Sits Nearly on Top of the Intersection of Two Major Earthquake belts,

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Contention 16 urges the NRC to consider the site specific conditions at Indian Point and perform an updated seismic analysis. Indian Point is right on top of two major earthquake belts that intersect and each is approximately twenty feet wide. Since Entergy’s LRA failed to include a seismic analysis, the NRC should order Entergy to do so. In reply, Entergy argues that this issue is beyond the scope of this proceeding, immaterial to license renewal, the contention lacks factual or expert support, and fails to show a genuine dispute exists. (Entergy brief at pp. 77-79). The NRC Staff also state that this issue is beyond the scope of license renewal. (NRC Staff brief at pp. 58-60).

Contention 16 raises the issue of whether a seismic analysis, a site-specific environmental issue relating to Indian Point, should be required before a new operating license is approved. Petitioners Argue that an analysis should be conducted because there are site specific considerations removing seismic analysis from a category one environmental issue to a category two issue. Petitioners need only state the reasons for its concerns. *Seabrook, supra, citing Allens Creek, supra.*

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Due to the site specific conditions of Indian point a seismic analysis should be conducted because it is a category 2 environmental issue.

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24 Pet. at p. 10, contention 6 ¶

Petitioners explain several severe consequences if an earthquake were to occur, particularly in light of the aging equipment. Under 10 C.F.R.54.21, the licensee must evaluate the aging of the plant structures, systems, and components will be sufficiently managed, where not addressed in the current license basis, and perform an environmental impact analysis that is clearly plant specific and not generic. Entergy's LRA does not.

The issues raised in contention 16 are particular and specific. (Pet. at p. 134).

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For example, ISFI issues were admitted in recent precedence²⁴.

Once Petitioner is admitted as a party, Petition will seek a waiver to compel reanalysis of Class 1 piping, and Class 2 piping.

This could be accomplished while saving the Entergy substantial costs in the generally overly conservative seismic analysis performed in the late 1970's and early 1980's. It is likely, that snubbers can be removed, and substantial costs of maintaining or replacing those snubbers be avoided. Given that the plant is required to maintain a complete design record, including the "asbuilt" configuration of each facility, specifically including piping schematics and isometrics. It is also possible to show that the existing analysis is conservative

²⁴ Pet. at p. 10, contention 6

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against the revised seismic OBE and SSE criteria. If on the other hand, the analysis is non-conservative, and the Entergy is aware, and chooses not to disclose

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configurations that are currently do not meet design basis accident

requirements. Then other enforcement rules come into play, and Entergy has a compliance issue much bigger than Seismic analysis of safety related systems components and structures,

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The engineering requirements including thermohydraulic fatigue analysis is specifically required under §54. There is significant ASME code case relief available since 1978, for example Code Case N-597, and others. However, given Entergy's position that it is not bound by any GDCs associated with pipe stress etc, this contention provides another example of the incomplete LRA. How can one prove adequate engineering management of aging and degradation of class 1 piping, when, the Entergy states that it is not bound to the GDCs?

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The aging management of the systems, components and structures are within scope and therefore an updated seismology report should be required. This contention raises material issue of fact and law which are in dispute and therefore should be admitted and heard,

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CONTENTION 17: The population density within the 50 mile Ingestion Pathway EPZ of Indian Point is over 21 million, the population within in the 10 mile plume exposure pathway EPZ exceeds 500,000.

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Entergy and the NRC Staff argue that the population density issue is outside the scope of renewal proceedings. (Entergy brief at p. 79-81); (NRC Staff brief at p. 61). Entergy failed to address increased population density surrounding Indian Point²⁵ in their inadequate environmental report.

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For the reasons stated in contention 16, the population density surrounding Indian Point is site specific and should be heard. NEPA empowers the NRC to require an environmental study of the environmental impact of a proposed action if the action would significantly affect the quality of the human environment. 42 U.S.C. 4332(2)(C). A license renewal application is a significant and major event under the NEPA. The applicant’s environmental report must include “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.” 10 C.F.R. 51.53(c)(3)(iv). Changes in factual and legal circumstances may impose upon an agency obligation to reconsider a settled policy or explain its failure to do so. *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C.Cir. 1992); *AHPA v. Lyng*, 812 F.2d 1 (D.C. Cir. 1987). As stated in Petitioners

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²⁵ There is a 1982 study that shows Indian point property values within the 50 mile zone as being by far the highest of any of the 104 operating plants in the country. In 1982 dollars it was of the order of 400 billion.

contention 17, Indian Point is surrounded by one of the most densely populated areas in the U.S. and 21 million people live within 50 miles of Indian Point. (Pet.

at. p. 140-142). _Entergy responds that changes in population density do not require reassessment _because this issue is not in the scope of 10 C.F.R. Part 54.

Petitioners need only state the reasons for its concerns. *Seabrook, supra*, citing *Allens Creek, supra*. _The increasing population density surrounding Indian Point, as explained in contention 17, is new and significant information that should have been addressed in Entergy's environmental report. _The dense population is an issue that is site specific and should be evaluated in accordance with 10 C.F.R. Part 100. _Because this issue is site specific and known to Entergy, it should be included in its environmental report as a category two issue. _Contention 17 should be admitted and heard because it raises genuine material issues of fact and law that are dispute.

CONTENTION 18: Emergency Plans and evacuation plans for the four counties, surrounding are inadequate to protect public health and safety, due to limited road infrastructure, increased traffic and poor communications.

_____Entergy and the NRC Staff state that this issue is outside of the scope of the aging management considerations relative to license renewals. _(Entergy brief at p. 81).; (NRC Staff brief at p. 62). _Again, for the reasons stated in contention 16, contention 18 raises a site specific issue and thus should be admitted. _Entergy's

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25 There is a 1982 study that shows Indian point property values within the 50 mile zone as being by far the highest of any of the 104 operating plants in the country. In 1982 dollars it was of the order of 400 billion. ¶

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failure to adopt an adequate emergency and evacuation plan does not protect the health and safety of the public. Entergy's emergency and evacuation plans have held inadequate by the James Lee Witt and Associated Report commissioned by Governor Pataki of New York, and endorsed by Congressional leadership including Hillary Clinton, Edward Markey and Bernie Sanders.

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Furthermore, Entergy's non-working sirens is an aging management issue,

The failure of Entergy to install a functional siren system mandated by Congress is clear evidence, that Entergy inadequate management of emergency and evacuation systems and emergency plans hindered by limited roads and increased traffic. (Pet. at p. 142). The LRA does not address how Entergy will adequately manage the aging evacuation and emergency systems during the proposed new license period. The site specific issues, at Indian Point with regard to Emergency Planning must be fully evaluated as Category 2 issues, including the inability for Indian Point install sirens with backup power, as required by Congressional law. Entergy attempts to claim that this contention is outside the scope of the aging-management matter considered in license renewal proceedings. (Entergy brief at 81). Entergy cites to *Millstone*, CLI-05-24, 62 NRC at 560-561 in which the Board stated that "emergency planning is, by its very nature, neither germane to age related degradation nor unique to the period covered by [a] license renewal application." (Entergy brief at p. 81-82).

_____ However, the very mandate of the NRC is to adequately protect the public. Without a functional evacuation plan Indian Point cannot continue to operate for an additional 20 years. Thus contention 18 should be admitted,

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CONTENTION: 19 Security Plans Petitioners contend that the way the force-on-force (FOF) tests are conducted do not prove that the Indian Point security force is capable to defend the facility against a credible terrorist attack or sabotage. The LRA does not address how Security, as required under section 10 C.F.R. 100.12(f) and 10 C.F.R. Part 73, will be managed during the proposed additional 20 years of operation against sabotage/terrorist forces with increasing access to sophisticated and advance weapons.

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_____ Along the same lines as Contention 16-18, contention 19 raises questions about the adequacy of Entergy's security plans at Indian Point. (Pet. at. 149-157). Entergy and the NRC Staff respond that security plans are outside the scope of license renewal proceedings citing to *Vermont Yankee*, LBP-06-20, 64 NRC at 172-173. (Entergy brief at 82-83); (NRC brief at p. 63-64).

In accordance with 10 C.F.R. 2.309(f)(3) and *Consolidated Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001), where both Petitioners independently established standing, the Presiding Office has the discretion to permit Petitioners to adopt the others' contention early in the proceeding. Petitioners join and adopt contention of parties raising this same issue.

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CONTENTION 20: The LRA does not satisfy the NRC's underlying mandate of Reasonable Assurance of Adequate Protection of Public Health and Safety.

_____ Entergy claims that the issues raised in contention 20 are outside the scope of license renewals. (Entergy brief at pp. 83-84). Petitioners reassert that the very mandate of the NRC is not adequately protect the public. However, Applicant's LRA is void of aging management plans to address systematic failures as evidence by many issues, including, but not limited to, the radioactive leaks, deficiencies in emergency planning, boric acid corrosion of the vessel heads for both Unit 2 and 3, steam generator issues, impending failure of the steel containment plate,

The very mandate of the NRC is to adequately protect the public. The LRA does not address how Entergy will prevent adequately protect the public functional evacuation plan Indian Point cannot continue to operate for an additional 20 years. Thus, Contention 20 raises materials issues of fact and law that are in dispute as per 10 CFR 2.309(f)(1) (vi) must be heard and omitted, Precedents on point supporting the admissibility of this Contention include the following;

- o *Louisiana Energy Services, L.P.*, CLI-05-20 (2005)- Petitioner was seeking review of Atomic Safety and licensing board decision on

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- o environmental uranium disposal- held board should admit it for a hearing
- o *Exelon Generation Co., LLC*, CLI-05-17 (2005) – mandatory hearings under 10 C.F.R. 103, 1046 of AEA (42 U.S.C. 2239(a))

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The very mandate of the NRC is to adequately protect the public. The LRA does not address how Entergy will prevent adequately protect the public functional evacuation plan Indian Point cannot continue to operate for an additional 20 years.

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The NRC Staff contend that “[m]ost of the issues that the Petitioners bring up have nothing to do with the GEIS or the Supplemental to the GEIS.” (emphasis added) (NRC brief at p. 66). The NRC Staff also state that Petitioners have failed to seek a waiver of the regulations. Under the NRC regulations, only a party can seek a waiver of a regulation. Until at least one contention is admitted, a Petitioner is not a party. Thus, once Petitioners are parties, we will seek waiver of the issues that should be considered as category 2 environmental issues.

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Thus contention 20 should be admitted,

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Contention 21 was omitted from the Petition.

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Contention 22

Entergy contents that Petitioners have not satisfied the admissibility criteria under 10 C.F.R. 2.309(f)(1). (Entergy brief at p. 84-85). The NRC Staff oppose admission of this contention because it is alleged to be outside the scope of license renewal. (NRC Staff brief at pp. 68-69).

The regulatory rules for obtaining a new superseding license, as delineated in the code of federal regulations, specifically rules under 10 C.F.R. Part 54, License Renewal, and 10 C.F.R. Part 51, Aging Management, were set aside by the Applicant in lieu of suggested criteria promulgated by the trade industry. The Applicant misrepresented the specific General Design Criteria which formed the basis of the Safety Evaluation Report granting the Unit 2 operating license and subsequently remained in violation of the terms of its operating license and with the federal rules for four decades. Hence, the Applicant placed economics before the health and safety of the public.

The Applicant, as well the federal agency, willfully and knowingly violated the Administrative Procedures Act, and as a result, now has prostituted the license renewal application for Indian Point Unit 2. The aging Management Programs proposed by the Applicant are based upon misrepresentations of the actual general design criteria to which Indian Point Unit 2 was license. The as-built construction

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of the facility does not comply with the safety evaluation report, the operating license or to the code of federal regulations.

The NRC is currently assessing the need to review the 41 older nuclear power plant units referred to as the Systematic Evaluation Program Phase III (SEP-III) plants. Generic Safety Issue (GSI) 156-6.1 (R. Emrit, et al., 1993) deals with whether the effects of pipe break inside containment have been adequately addressed in these plants' designs. The NRC originally evaluated a majority of the SEP-III plants before they issued Regulatory Guide (RG) 1.46 in May 1973 (AEC, 1973b). Although the NRC reviewed these plants, there is a potential lack of uniformity in those reviews due to the absence of documented acceptance criteria. The NRC is now attempting to assess the impact of not having such criteria in place.

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The extent of the violations are breathtaking, and involve a substantial prima facie breach of Administrative Procedures Act (APA) by the Federal Agencies over almost four decades for Indian Point 2. Beginning in 1968, the Nuclear Regulatory Commission acted in direct defiance of the Administrative Procedures Act by approving Amendment Nine of the Operating License, (contained in exhibit I) in which the Licensee acknowledged commitments to *trade comments* to draft General Design Criteria for its new plant. In addition, the Licensee committed to trade comments to the proposed General Design Criteria, and erroneously claimed

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that the trade organization comments were published in the Federal Register for public comment in July, 1967, when in fact they were never properly published. (See Exhibit J).

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The Licensee claimed adherence to a General Design Criteria required for the licensing of Indian Point 2 facility, and committed to such General Design Criteria in the 1970 SER. In actuality, the plant design, programs and procedures

were licensed to trade industry-endorsed commentary as opposed to the

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General Design Criteria for the LRA and subsequently approved by the Atomic Energy Commission under the 1970 Safety Evaluation Report. (See Exhibit K).

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bypassed the federal rules as found under the rule making process. The draft GDC's were published and approved for use more than 13 months prior. This fundamental failure of oversight by the regulator was subsequently set aside and festered, while the commission quietly authorized by retroactive fiat that the licensing process proscribed under federal rules for Indian Point 2 could remain in violation of law. This series of events is evidenced by close examination of documents cited or submitted in the applicant's LRA. The commission dealt with the design basis and license failures with a stroke of a pen in 1992. (See Exhibit L).

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The table below best provides the chronology as well as the facts, and the implications to the renewal license application fidelity. In simplest terms the Licensee and NRC with the acceptance of the GDC defined in Amendment 9 to the

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Date	Docketed Activity	Reference	Implications to fidelity of the License Amendment
		of Reactor Licensing Atomic Energy Commission,	unapproved "general design criteria tabulated explicitly in this report comprised of the proposed AIF versions of the criteria issued for comment in July 1967."
<u>February 1970</u>		<u>See January 28, 1971 NRC discussion of AIF GDC comments.</u>	<u>The staff met with an ad hoc AIF group, which included representatives of reactor manufacturers, utilities and architect engineers to discuss the revised General Design Criteria. The comments of this group were reflected in a June 4, 1970 draft of the revised General Design Criteria that was forwarded to the AIF for comment. The AIF forwarded comments and stated it believed the criteria should be published as an effective rule after reflecting its comments. These comments have been reflected in the GDC in Appendix "A".</u>
<u>November 16, 1970</u>	<u>Safety Evaluation Report</u> <u>Commission grants operating license based upon amendments 9-25 of application for license by Con Edison.</u>	<u>Incorporated License amendments 9-25 to the application and the FFDSAR -includes ALSB, ACRS review et al.</u>	<u>"Our technical safety review of the design of this plant has been based on Amendment No. 9 to the application, the Final Facility Description and Safety Analysis Report (FFDSAR), and Amendments Nos. 10-25, inclusive. All of these documents are available for review at the Atomic Energy Commission's Public Document Room at 1717 H Street, Washington, D.C. The technical evaluation of the design of this plant was accomplished by the Division of Reactor Licensing with assistance" from the Division of Reactor Standards and various consultants to the AEC.</u> <u>This document gave them authority to operate the facility under the draft GDCs but without the AIF comments specifically for the Reactor Protection and Control System.</u>

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			As noted, "Specifically, for the reactor protection system instrumentation for -Indian Point Unit 2 is the same as that installed- at the Ginna plant. The adequacy of the protection system instrumentation was evaluated by comparison with the Commission's proposed general design criteria published on: July 11, 1967, and the proposed IEEE criteria for nuclear power plant protection system (IEEE-279 Code), dated August 28, 1968. The basic design has been reviewed extensively in the past and we conclude that the design for Indian Point 2 is acceptable".
February 20 1971 through July 11 1971.	Formerly Draft GDCs are approved Final GDCs and become part of Appendix A to 10 CFR 50. They are amended the same year.	Published in FR. on February 20 1971, and amended on July 11, 1971	These are the first legal standards for which the plant is required to comply or under federal rules, or be granted an exemption.
November 4, 1971	A third modified construction permit was issued for Units #1 and #2. The proposed relocation of the intake structures by Con Edison was a significant improvement and entered into this decision.		The USAEC is urged to require Consolidated Edison to establish a firm schedule for implementing this proposed modification because of changes in the design of the adjustable discharge ports and slide gates.
September 28, 1973	Unit 2 Operating License Received		SER states that the plant is licensed to 1967 draft general design criteria without endorsement of AIF comments.
Commission issues a confirmatory order on February 11, 1980	Unit 2 FSAR dated June 2001 states that the detailed results of the order indicate that the plant is in compliance with the then current General Design Criteria established in 10CFR50 Appendix A.		The commission concurred on January 1982.

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September 18, 1992	<u>SECY 92-223, "resolutions of deviations identified during the systematic evaluation program"</u>	<u>Letter to James Taylor, Executive Director for Operations</u>	<p>The Commission approved the staff proposal in which the plant was not required to comply with federally approved General Design Criteria, if construction permits were issued prior to May 2, 1971.</p> <p><u>This is a clear and flagrant violation of the Administrative Procedures Act.</u></p>
June 2001	<u>Unit 2 FSAR states incorrectly that the General Design Criteria tabulated explicitly in the pertinent systems comprised the proposed trade organization general design criteria.</u>	<u>Section 1.3 General Design Criteria, Unit 2 UFSAR, and indicates under a footnote that the safety analysis report added trade organization comments in the change to the FSAR. (see footnote within Section 1.3.)</u>	<p>The license with collateral endorsement of the federal regulatory agency bypassed the administrative rules act, and thus reduced its commitments made to obtain its operating license to less than the minimum legal requirements of 10 CFR 50 Appendix A which were made law more than two years prior to the NRC granting the applicant an operating license for Unit 2.</p> <p><u>The reductions of safety margin and reasonable assurance of protection of the health and safety of the public have been compromised for over three decades, without the public understanding of the loss of margin in safety. Subsequently, Entergy allowed the error to remain and is actually currently committing Unit 2 to trade organization design criteria.</u></p>

Consequences of these actions: The Licensee's failure to adhere to a legally

enforceable General Design Criteria substantially reduces safety margins for safe plant operation, by severely reducing detection of and the consequential mitigation of accident conditions resulting in substantial reduction in protecting the health and safety of the public.

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The Nuclear Regulatory Commission continued this pattern of bypassing the Administrative Procedures Act in 1992, in which the regulator relieved the Applicant of *all compliance* enforcement to any General Design Criteria, without any attempt to abide by the Administrative Procedures Act. The Commission belief that it could use guidance documents from trade organizations in lieu of rules as was adjudicated in *Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1) ("TMI")* ALAB-698, 16 NRC 1290, 1298-99 (October 22, 1982), affirming *LBP-81-59, 14 NRC 1211, 1460 (1981)*, where it was established that the criteria described in NUREG-0654 were intended to serve solely as regulatory guidance, not regulatory requirements). Indeed, the Commission's mere reference to NUREG-0654 in a footnote to 10 C.F.R. § 50.47 was found to be insufficient to incorporate that guidance document by reference as a part of a federal regulation, even if the Commission had intended to do so.

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The Nuclear Regulatory Commission continues this approach today without any hint of complying with the rules of the Administrative Procedures Act (APA). In summary, the Applicant is obligated to meet the requirements of the General Design Criteria as published on July 11, 1967. In fact, the Applicant falsely states that it is in compliance on page 3 of the LRA. Indian Point 2 LLC plant was designed, constructed and is being operated on the basis of the proposed General Design Criteria, published July 11, 1967. Construction of the plant was already

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underway when the Final Facility Description and Safety Analysis Report was filed on December 4, 1970, and when the Commission published its revised General Design Criteria in February 1971, and final version of the General Design Criteria in July 1971, which included the false statement. As a result, we did not require the applicant to reanalyze the plant on the basis of the revised criteria. However, our technical review assessed the plant against the General Design Criteria now in effect and we have concluded that the plant design conforms to the intent of these newer criteria.

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The Applicant was not in compliance with 10 C.F.R. 50 Appendix A then, and is not in compliance with 10 C.F.R. 50 Appendix A now, as provided in current 2006 Unit 2 UFSAR submitted as a part of its relicensing application. Subsequent to the issuance of the Operating License, the Nuclear Regulatory Commission issued many Bulletins, Orders, Generic Letters, and Regulatory Guides. Most of the Regulatory Guides address the Nuclear Regulatory Commission's interpretation of the meaning of the requirements of the 1971 General Design Criteria. Inference could be made that regardless of the legal basis of these orders, if one accepts them as legal, one must also accept the legal requirement of compliance to the specific relevant 1971 General Design Criteria. However, the process clearly violated the Administrative Procedures Act regarding the incorporation by reference on regulations such as violation of 10 C.F.R. 50.212.

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regarding equipment aging 10 C.F.R. 50.21²⁶ program scope by using a methodology that is entirely addressed under NUREGS prepared and promulgated outside rulemaking procedures and industry trade guidelines such as NEI 95-10 Rev. 6, each of which has no legal force. Neither public involvement nor the most fundamental steps required under the Administrative Procedures Act were adhered to by either the Applicant or the Federal Agency.

Pursuant to section 3(a)(1) of the Administrative Procedure Act, 5 U.S.C. § 552(a)(1), as implemented by the regulations of the Office of the Federal Register, 10 C.F.R. Part 51, no material may be incorporated into a rule by reference unless the agency expressly intends such a result, 10 CFR. § 51.9, requests and receives the approval of the Director of the Office of Federal Register, 10 C.F.R. §§ 51.1, 51.3, and the Federal Register notice indicates such specific approval, 10 C.F.R. § 51.9.

A brief review of statutory/regulatory construction confirms the method for incorporating Regulatory Guides. Here 10 C.F.R. Part 50, Appendix E, n.1; NRC

²⁶ (1) Safety-related systems, structures, and components which are those relied upon to remain functional during and following design-basis events (as defined in 10 CFR 50.49 (b)(1)) to ensure the following functions-- (i) The integrity of the reactor coolant pressure boundary; (ii) The capability to shut down the reactor and maintain it in a safe shutdown condition; or (iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable. (2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1)(i), (ii), or (iii) of this section. (3) All systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63). (b) The intended functions that these systems, structures, and components must be shown to fulfill in § 54.21 are those functions that are the bases for including them within the scope of license renewal as specified in paragraphs (a)(1) - (3) of this section. [60 FR 22491, May 8, 1995, as amended at 61 FR 65175, Dec. 11, 1996; 64 FR 72002, Dec. 23, 1999]

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following functions-- (i) The integrity of the reactor coolant pressure boundary; (ii) The capability to shut down the reactor and maintain it in a safe shutdown condition; or (iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable. (2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1)(i), (ii), or (iii) of this section. (3) All systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63). (b) The intended functions that these systems, structures, and components must be shown to fulfill in § 54.21 are those functions that are the bases for including them within the scope of license renewal as specified in paragraphs (a)(1) - (3) of this section. [60 FR 22491, May 8, 1995, as amended at 61 FR 65175, Dec. 11, 1996; 64 FR 72002, Dec. 23, 1999] ¶

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Staff Regulatory Guide 1.101, Rev. 2 (October, 1981) specifically endorses the incorporation by reference to the criteria and recommendations in NUREG-0654 as "generally acceptable methods for complying" with the standards in 10 C.F.R. § 50.47. The NRC's emergency planning rules, however, include neither such a designation nor any express intention that NUREG-0654 be incorporated by reference.

In the absence of other evidence, adherence to NUREG-0654 may be sufficient to demonstrate compliance with the regulatory requirements of 10 CFR §

50.47(b). However, such adherence to NUREG-0654 is not required,

because regulatory guides are not intended to serve as substitutes for regulations.

TMI, ALAB-698, supra, 16 NRC at 1298-99. Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a permit or license by the Commission."

Id. at 1299, quoting *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 937 (1981)*. Petitioners believe the atomic licensing board erred in this decision. This error was confirmed in the recent ruling regarding storage of spent fuel requiring a NEPA proceeding compliance prior to the NRC approval. See *San Luis Obispo Mothers v. NRC 03-*

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Examples include certain Regulatory Guides that provide requirements for post-accident monitoring of the TMI incident. These Regulatory Guides describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations and delineate an acceptable means of meeting the General Design Criteria as contained in 10 C.F.R. 50 Appendix A. More than 100 Regulatory Guides have been issued, amplifying the requirements of the General Design Criteria. The NRC developed Regulatory Guide 1.97 to describe a method that the NRC staff considers acceptable for use in complying with the agency's regulations with respect to satisfying criteria for accident monitoring

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instrumentation in nuclear power plants. Specifically, the method described in this Regulatory Guide relates to General Design Criteria 13, 19, and 64, as set forth in Appendix A to Title 10, Part 50, of the Code of Federal Regulations (10 C.F.R. Part 50), —Domestic Licensing of Production and Utilization Facilities:

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Criterion 13, —Instrumentation and Control, requires operating reactor licensees to provide instrumentation to monitor variables and systems over their anticipated ranges for accident conditions as appropriate to ensure adequate safety.

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Criterion 19, —Control Room, requires operating reactor licensees to provide a control room from which actions can be taken to maintain the nuclear power unit in a safe condition under accident conditions, including loss-of-coolant accidents (LOCA's). In addition, operating reactor licensees must provide equipment (including the necessary instrumentation), at appropriate locations outside the control room, with a design capability for prompt hot shutdown of the reactor. Criterion 64, —Monitoring Radioactivity Releases, requires

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operating reactor licensees to provide the means for monitoring the reactor containment atmosphere, spaces containing components to recirculate LOCA fluids, effluent discharge paths, and the plant environs for radioactivity that may be released as a result of postulated accidents. The licensee has responded to these communications and states compliance with these communications and makes a commitment in the UFSAR.

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In these examples, the Applicant included the NUREG language in the FSAR, and by inference one could argue compliance in this case with General Design Criteria 1971. The Applicant could not, however, use the Aging Management Program to argue compliance with other cases, and certainly cannot

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use the program exclusively. The Applicant is potentially holding open options that should be eliminated under the Aging Management Rule. (See Contention 4).

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A dispositive example is "General Design Criteria Criterion" 35-Emergency core cooling:

A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented and (2) clad metal-water reaction is limited to negligible amounts. Suitable redundancy in components and features, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is available) the system safety function can be accomplished, assuming a single failure. See General Design Criteria

35, Final design criteria (10 C.F.R. 50 appendix A approved 1971, (36 FR 3256, Feb 20, 1971)).

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The IP2 Final Safety Analysis Report (FSAR) does not address Criterion 35

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at all. In neglecting to do so, the IP2 FSAR leaves the General Design Criteria meaningless in its intent to protect the health and safety of the public, and places the plant in clear violation of 10C.F.R. 50 Appendix A. A detailed list of specific violations contained within 10 C.F.R. Part 54 will be provided in supplemental submittal to this contention,

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Contention 23,

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to Petitioner by the Licensee, and the regulator.

Criterion 10, Reactor design, in which the reactor core and associated coolant, control, and protection systems must be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. FSAR Section 5.1.1.1.5, Reactor Containment substantiates the Criterion with the following additions:

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The containment structure shall be designed (a) to sustain, *without undue risk to the health and safety of the public*, the initial effects of gross equipment failures, such as a *large reactor coolant pipe break*, without loss of required integrity, and (b) together with other engineered safety features as may be necessary, to retain for as long as the situation requires, the functional capability of the containment to *the extent necessary to avoid undue risk to the health and safety of the public*. [italics and bold added] These additions provide latitude

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and judgment to the Applicant as to what the Architects and Engineers need to do in order to minimally satisfy the criteria ***but do not support the right for public review of the pertinent documents in a public forum.***

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A brief review of Tech Spec requirements contained in Exhibit Q confirms that the misrepresented statement in the FSAR regarding General Design Criteria for Unit 2 is followed through with improper implementation. See e.g., Reactor Coolant Leakage. In LCO 3.4.13, reactor containment pressure leakage from primary to secondary systems ***is allowed in quantities up to 150 gallons per day.*** Such quantities are much larger than reasonable limits implicit under General Design Criterion 35. This non-conservative quantity may have contributed to the root cause of the 2000 tube rupture accident and is intolerable as an acceptable quantity for age management of the RCS leakage.

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Contention 24

A second example may be found in examination of General Design Criterion 45, through General Design Criterion 6.2.1.2. Inspection of Emergency Core Cooling System Criterion is the following: Design provisions shall, where practical, be made to facilitate inspection of physical parts of the emergency core cooling system, including reactor vessel internals and water injection nozzles.

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(General Design Criteria 45). Here the trade organization inserted the words “where practical.” (See Exhibit L, page 14).

The Applicant bypasses the rules, by failing to properly examine or replace reactor core internal components with known susceptibility to failure on multiple occasions. For example, the components such as baffle bolts that hold down springs, lower core barrel, and lower core plate are routinely UT or VT'd during outages and often replaced. (See Exhibit P). The process involves a machine that typically removes and replaces bolts in an automated procedure which adds two weeks to an outage. Despite the higher reliability of such a process, Indian Point 2 has chosen instead to rely on water chemistry tests which are meaningless for assessing bolt integrity. The reasoning behind the reliance on an inferior method of testing is financial: Water chemistry tests enable Indian Point 2 to substantially reduce lost revenue by shortening the outage time (some estimates are in the order of millions of dollars per outage day), despite the fact that the health and safety of

the public is sacrificed. See exhibit P and the declaration of Ulrich Witte, Exhibit Q. This is a prima facie violation of 10 C.F.R. 50 Appendix A.

The Applicant attempts to placate the issue with the following words contained in the LRA —to manage loss of fracture toughness, cracking, change in dimensions (void swelling), and loss of preload in vessel internal components, the site will (1) participate in the industry programs for investigating and managing

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aging effects on reactor internals; (2) evaluate and implement the results of the industry programs as applicable to the reactor internals; and (3) upon completion of these programs, but not less than 24 months before entering the period of extended operation, submit an inspection plan for reactor internals to the NRC for review and approval. (See section A.2.1.141 of the LRA report).

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This language essentially removes this entire matter from the public's right of input and participation. It is another example of —Agree to agree and bypasses the procedures required by law through the Administrative Procedures Act.

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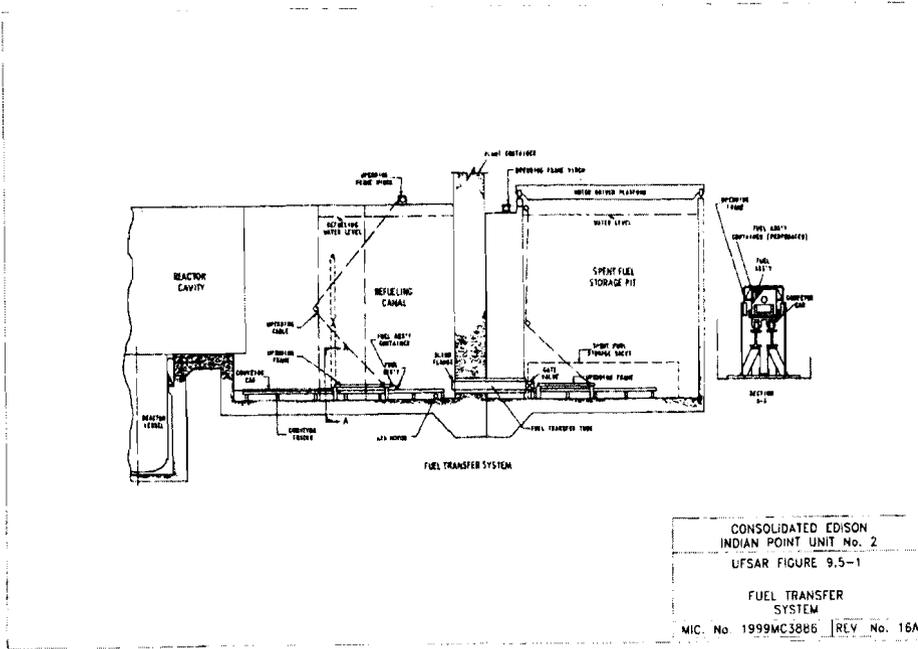
Alternative methods that act as proposals to comply with the federal rules for license renewal represent guidance only, unless explicitly cited, and developed within the confines of the Administrative Procedures Act. The above examples meet the standards for specific contentions as cited above.

This serious and deliberate practice of rewriting federal code without public input is in clear violation of the Administrative Procedures Act and invalidates the plans proposed for the technical, safety, and environmental aspects of entire LRA, even setting aside the issues of a lack of completeness and vagueness of the description. The misrepresentation has become routine, and the violations so acceptable, that the NRC only days ago published a notice regarding a leaking and aging 20-inch pipe, described by the media as a —conduit with a pinhole leak,

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Misrepresentation does violence to the entire intent of the agency, and the Applicant's failure to comply with specific rules of 10 C.F.R. 54, and further violates the Administrative Procedures Act. For example, the 20-inch —conduit is not considered part of the Aging Management Program or part of the environmental program, and the lack of inspection and maintenance of it is not considered unlawful. (See Exhibit R).

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Contention 25

The breadth and depth of these contentions are extreme. Even if each issue is classified in the narrow confines of the scope of the Rule (however not 42

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the GALL Report (but see NUREG 1801 Rev. 1) the egregious conduct by the applicant and the regulatory failure raises questions about any statement made in the LRA, or the Current Licensing Basis for Unit 2. The Current Design Basis for Indian Point 2 is unknown, unmonitored, and the materiel condition also unknown. These conditions associated with the CLB were the exact bases for permanent closure of Millstone Unit 1.

These findings for Indian Point 2 are clearly analogouş and a new superseding license has insufficient ground for approval. For those issues raised here, no distinct and independent forum is available to adjudicate the magnitude of the misrepresentation and unlawful acts. Clearwater questions how a Board selected by the Commission can be allowed to judge the acts by the very Commission that selected it (such as the 1992 letter contained in Exhibit M). The Administrative Procedures Act under chapter 5 provides for adjudication in the federal court for exactly this kind of broad unlawful act,

CONTENTION 27: The LRA for Indian Point 2 & Indian Point 3 is insufficient in managing the environmental Equipment Qualification required by federal rules mandated that are required to mitigate numerous design basis accidents to avoid a reactor core melt,

_____ This is a dispute over material facts- not applicable law. Petitioners challenge Entergy's LRA for Indian Point Units 2 and 3 because it fails to comply with (a) 10 C.F.R. § 50.49(e)(5) & Part 54, and (b) the federal rules mandated

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Finally we question statements that directly conflict with the LRA regarding legal conditions to which the Licensee/Applicant claims it complies with the GDCs. These statements are made in the LRA and its appendices repeatedly. Yet, Entergy's response to the coalition petition argues exactly the opposite, and further more in contention after contention. See Exhibit DD. ¶
We proffer definitive prima facie documentation that shows otherwise. We provide that in Exhibit EE. That (1) LIC 100 is of no legal significance what so ever, and is nothing more that exactly its title. See Exhibit FF. An office instruction for Nuclear Reactor Regulation. Where as responses to generic letters are legally binding, and are enforceable. ¶
The core of the both aging management and TLAA rest upon what exactly the design basis is, and that license basis as defined in §54.3 is available, and the record has integrity. We find it does not. The mandate of the Commission cannot be met without the CLB known, the GDCs conformed to the rule, and in implemented with sound engineering rigor, and then and only then, can renewal analysis have any validity. ¶
Contention 26: Omitted from Petition. ¶
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after the Three Mile Island tragedy to protect the health and safety of the public. (Pet. at p. 187). Entergy opposes contention 27 on the basis that they claim the contention is outside the scope. (Entergy brief at p. 96). The NRC Staff state that this contention is not admissible because it “fails to identify any error or omission in the application. It is vague and unfocused, and thus fails to meet the requirements of §2.309(f)(1)(i) and (vi)...PHASE does not explain how 10 C.F.R. §50.49(e)(5) is violated, or why these assertion establish a dispute with the LRA.” (NRC Staff brief at p. 71).

Although Entergy attacks credibility of Petitioner’s expert witness, Mr. Witte, Entergy does not submit expert rebuttal, and therefore their allegations must not be considered. Mr. Witte’s expertise is well documented in his CV.

Petitioners have met the 6 part test. Entergy responses argument regarding processes is engineering nonsense. The current EQ systems that are out of compliance, cannot be credited towards the proposed new license term. The Applicant credits a rudimentary economic analysis which concluded that a 50% change of multiple equipment failure as acceptable. It is obviously not. The Advisory Committee on Reactor Safeguards (ACRS) found that this economic analysis evidenced a disregard of federal rules regarding Entergy’s CLB, 10 C.F.R. 50.49 and 10 C.F.R. 50.4. The issue is thus within scope. Although we are not

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conceding that the contention as written does not meet the six part test, Exhibit I provides additional items of particularity.

Petitioners assert that the scientific methodology that was stretched to reach 40 years and cannot be stretched to 60 years. The Applicant's LRA has failed to address the aging effects are cumulative and issues of limited functionality and integrity of in-scope components such as Instrumentation and Control cables. Contention 27 is within scope and must be admitted.

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Contention 28-32 The License's ineffective Quality Assurance Program violates fundamental independence requirements of Appendix B, and its ineffectiveness furthermore triggered significant cross cutting events during the past eight months that also indicate a broken Corrective Action Program, and failure of the Design Control Program, and as a result invalidate statements crediting these programs that are relied upon in the LRA.

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Petitioners assert that Entergy's Quality Assurance Program violates the requirements in 10 C.F.R. 50, Appendix B. (Pet. at p. 204). Specifically, Petitioners maintain that Entergy's Quality Assurance Program for Aging Management is ineffective. (Pet. at p. 204).

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Entergy opposes admission of this contention because it falls outside the scope of this proceeding. (Entergy brief at p. 99). Additionally, the NRC Staff contend that Petitioners failed to demonstrate that the issues raised are material to

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the findings the NRC must make and that Petitioners fail to provide sufficient information that a genuine dispute exists. (NRC Staff brief at pp. 73-74).

Petitioners need only show that the Appendix B program translates to inadequate oversight and the consequences are fundamental to the operational safety of Indian Point 2 and Indian Point 3. Entergy does not assert that their Quality Assurance Program is in compliance, rather they attempt to claim that the condition or failure of the QA program should not be considered in the NRC's safety review.

Petitioners argue that a managed program for aging of equipment cannot be credit to a program that there is some nexus between the alleged omission and the protection of the health and safety of the public. *Millstone, supra.* The failed Appendix B program translates to inadequate oversight and the consequences are yet again fundamental. You can't get to a managed program for aging of equipment, when the plant has, a "broken" track record of maintenance, operational issues, corrosion, design basis accidents, have in their roots the Appendix B program that is not independent in violation of 10 C.F.R. 50 Appendix

B.

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Where the Entergy intends to fully credit an existing program as adequate, and it is fundamentally failing to comply with Appendix B, Petitioner and the ASLB have the right and the obligation to bring it into renewal consideration. To

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ignore this, creates conditions which place the public assets and their health and safety at risk. Entergy does not dispute that the Quality Control at Indian Point has been seriously reduced and that they have credited this reduced program to be carried into the proposed 20 year additional license term. Therefore the Quality Control program is within scope. Because contention 28 raises material and particular issues of fact and law in dispute, it is therefore admissible,

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Contention 29: Failed Quality Assurance Program

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Petitioner's Response to Contention 28 is reference and incorporated fully, as if set forth herein.

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Contention 29 raises the specific failures during the second quarter of 2007, regarding an attempt to clear interference of sumps while implementing modifications to the vapor containment and recirculation pumps is an example of a cross-cutting issue, were the root cause was improperly attributed and the quality assurance failure was not addressed. This failure and the methodology used that is being credit to be carried over into the proposed 20 year license period is not addressed in the LRA. The root cause of the failure of the current Quality Control

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program has been brought into scope. Contention raises material and particular issues of fact and law in dispute and therefore is admissible,

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Contention 30

Petitioner's Response to Contention 28 is reference and incorporated fully, as if set forth herein.

Contention 30 is a second example that supports contention 28, but is its own contention. It raises a separate and distinct issue that procedure regarding temporary modifications are inadequate. This contention is unchallenged by the Applicant. It meets the six part test with specificity and particularity. Temporary modifications will be a substantial element of modifications required if the LRA is granted. A deficient temporary modification program is fatal a safe transition to license renewal,

Applicant's Appendix B program translates to inadequate oversight and the consequences are fundamental to the operational safety of Indian Point 2 and Indian Point 3. Entergy does not assert that their Quality Assurance Program is in compliance, rather they attempt to claim that the condition or failure of the QA program should not be considered in the NRC's safety review. Petitioner's argue that a managed program for aging of equipment cannot be credit to a program that has, a "broken" track record of maintenance, operational issues, corrosion, design basis accidents, that is in violation of 10 C.F.R. 50 Appendix B,

Where the Entergy intends to fully credit an existing program as adequate, and it is fundamentally failing to comply with Appendix B, Petitioner and the

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ASLB have the right and the obligation to bring it into renewal consideration. To ignore this, creates conditions which place the public assets and their health and safety at risk. Entergy does not dispute that the Quality Control at Indian Point has been seriously reduced and that they have credited this reduced program to be carried into the proposed 20 year additional license term. Therefore the Quality Control program is within scope.

Contention 30 raises material and particular issues of fact and law in dispute and therefore is admissible to be heard,

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Contention 31

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Contention 31 is a separate and distinct contention that raises procedures regarding the failure to establish corrective actions associated with monitoring the service intake bay level. Failure of Entergy to take corrective action, without the issue being re-identified by the NRC indicates that the current configuration management and control of the facility is insufficient, yet Entergy is crediting their corrective action program for the proposed additional 20 year term. This

contention is unchallenged by Entergy. It meets the six part test with specificity and particularity. Configuration management and corrective action programs are substantial systems required if the LRA is granted. A configuration management and corrective action program is fatal to an safe transition to renewal. Therefore

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Contention 31 raises material and particular issues of fact that are in dispute, which are admissible and should be heard,

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Contention 31 raises the issue that there appears to be no configuration management control program at either facility., even though Unit 3 had a commitment to have a bona fide program in place their keys back in 1996 after being shut down for over a year, and after being on the NRC's watch list Unit 3.

Based on the examples provided in Contentions 28,29, 30, and 31 Petitioners argue that the required program has become completely obliterated and broken, therefore Entergy cannot take credit for it in it's LRA. Omission of an adequate aging management configuration management control program raises material and particular issues of fact that are in dispute, which are admissible and should be heard,

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The examples provided in contentions 28, 29, 30, and 31 all support the notion that if the program is there, it is broken. Therefore, contentions 28, 29, 30, and 31 should be admissible.

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Contention 32: Indicators of a failed Safety Culture Work Environment

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Contention 32 is a separate and distinct contention that raises serious issues with regard to the failure of safety culture assessment and confidence by workers in raising safety concerns. This contention is unchallenged by Entergy. It meets

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the six part test with specificity and particularity. Substantial safety work culture being credited in the LRA is a substantial element in license renewal proceedings. A deficient safety work culture is fatal to an safe transition to renewal. Therefore Contention 32 should be heard,

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CONTENTION 33: The EIS Supplemental Site Specific Report of the LRA is misleading and incomplete because it fails to include refurbishment plans meeting the mandates of NEPA, 10 C.F.R. 51.53 post-construction environmental reports and of 10 C.F.R. 51.21.

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The contention meets the six part test for admissibility in spite of Entergy's attempt to discredit the evidence. The NRC Staff "do not oppose the admission of PHASE Contention 33 for the limited purpose of verifying whether the Applicant has omitted plans to replace the reactor vessel head as a refurbishment item associated with license renewal." (NRC Staff brief p. 75).

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The contention meets the six part test for admissibility in spite of Entergy's attempt to discredit the evidence. Although Entergy does not deny that a RPV

head was purchased, Entergy does not deny they it may replace the heads during the 20 year license period and that will constitute major refurbishment Inspection indicated streaks of brown stains, and there are issues with upper head injection nozzles that are unique to Indian Point Westinghouse Reactors. This is a

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major design evolution. Extensive engineering work is required to establish integrity between an embrittled vessel barrel, and a new head.

Even if Entergy did not deliberately omit the information regarding the RPV and refurbishment contemplated during the proposed additional 20 year term, the Doosan “slide show” evidences such information should have been included in the LRA, and have not been left to be brought to the attention of the ASLB by Petitioner’s discovery.

Petitioners have raised a concise statement of fact, have raised material issue of law and fact that are in dispute, and are within scope, therefore Contention 33 is admissible.

CONTENTION 34: Petitioners contend that accidents involving the breakdown of certain in scope parts, components and systems are not adequately addressed Entergy's LRA for Indian Point 2 and Indian Point 3,

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Petitioners contend that accidents involving the breakdown of certain equipment, parts, components, and systems are not adequately addressed in Entergy’s LRA for Indian Point Units 2 and 3. (Pet. at p. 226). Specifically,

Entergy’s LRA fails to include aging management of the following, including but not limited to, boric acid corrosion, internal bolting, fuel rod control system, duty valve failure, briny reactor water coolant environment, cable degradation, cumulative effect of constant exposure of the reactor vessel to neutron

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irradiation and reduction in the fracture toughness and ductility of the PWR internal, refurbishment issues, primary water stress corrosion cracking, fatigue of metal components, heat and shell exchange replacement, accident analysis, digital upgrade of the rod control logic and power cabinets, risks of low temperature flow accelerated corrosion, industry wide problem of securing hand contingency spare parts, shortage of engineers with knowledge of pools, premature failure of containment coatings, increasing obsolescence issues of original equipment, reactor vessel issues, and cables. (Pet. at pp. 226-233). Entergy's LRA does not address certain accidents associated with breakdown of components. Based upon *Mass v. United States*, precedence and the rules that the burden indicated as the petitioner's actually is out of context.

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The scope meets the threshold of admissibility any of the following:

- (a) Aging of the plant structures, systems, and components will be not sufficiently managed – where one cannot argue they are already sufficiently addressed within the current license basis.
- (b) review of time limited aging evaluations
- (c) environmental impact analysis that is clearly plant specific and not generic, (for example, severe accident risk is out of scope but alternatives to severe accidents are in scope)

(d) anything else that one can prove is only possible during the renewal period but not during the current license period.

Significantly, expert opinion on this particular topic given Mr. Witte's known expertise in configuration management which was not challenge by expert witness rebuttal.

The contention is admissible under the six part test. NRC regulations require that an applicant provide a complete application under the Section 54.29. Entergy's LRA does not address certain accidents associated with breakdown of components.

Petitioners have sufficiently pled sufficient information to show a genuine dispute. 10 C.F.R. § 2.309(f)(1). Specifically, a contention "must include references to specific portions of the application... that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. See 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not

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be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." *See* 54 Fed. Reg. at 33,170-71.

Energy counters that the contention is beyond the scope of renewal proceedings and that it is not particular, or specific regarding where the application is incomplete. (Energy brief at p. 106). The NRC Staff add that the contention is not supported. (NRC brief at p. 77).

The contention is admissible under the six part test. NRC regulations require that an applicant provide a complete application under the Section 54.29. Petitioners have sufficiently pled sufficient information to show a genuine dispute. 10 C.F.R. § 2.309(f)(1). Specifically, a contention "must include references to specific portions of the application... that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief." Although a petitioner must demonstrate that a "genuine dispute exists" at the contention admissibility stage, it need not demonstrate that it will prevail on the merits. *See* 54 Fed. Reg. at 33,170-71. Similarly, "at the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal

evidentiary form and need not be of the quality necessary to withstand a summary disposition motion." *See* 54 Fed. Reg. at 33, 170-71. The recent report

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26 For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 2021 Rev 2 is not specific. There are examples of plants where they credit EPRs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events where not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years. ¶
27 See contention 27. ¶
28 See contention 35 ¶
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, Equipment qualification

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provided by the Office of the Inspector General regarding deficiencies in licensing renewal proceedings support with question the substance of this contention.

(Exhibit N). _____ Petitioners assert that anything that is currently capable of being described in sufficient detail should be. Programs for aging management, *by contract law* can be and should be precisely articulated— Entergy proffers no rationale for delaying disclosure. Examples of such programs include Flow Accelerated Corrosion²⁷, Equipment qualification²⁸, buried piping²⁹, and in particular, the undisclosed refurbishment plan for the reactor heads³⁰.

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Contention 35,

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Withdrawn,

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29 See contention regarding reactor head replacement. ¶

²⁷ For Flow Accelerated Corrosion, simply referring to an approved program such as NSAC 202L Rev 2 is not specific. There are examples of plants where they credit EPRs industry accepted program, but fail to adequately implement it. Inspection frequency is not specified, but a critical parameter. Actual program scope, inspection frequency, grid selection, and corrective action to identified pipe thinning is not described. This leaves is public in the dark. Aging of piping will lead to numerous unforeseen accident scenarios if not carefully managed. No one predicted that a pipe rupture of an 18 inch line in 1986 first led to four immediate fatalities, then, loss of fire protection controls, and spurious activation of numerous electrically controlled devices included dumping of entire CO2 fire protection systems, inoperability of security doors, locking workers into rooms without immediate means to escape, and finally, threatened the safety of reactor operators when CO2 drifted or leaked into the unit 2 control room. The causal events were not predicted nor predicable. The risk and PRA associated with this event is being debated after 21 years.

²⁸ See contention 27.

²⁹ See contention 35

Contention 36: FAC,

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In this contention, Petitioners claim that Entergy's program does not include

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an adequate plan to monitor and manage aging of plant piping due to flow-accelerated corrosion of during the extended period of operation.

Management of FAC fails to comply with 10 C.F.R. § 54.21(a)(3).205

Section 54.21(a)(3) which requires that, for each structure and component identified in Section 54.21(a)(1), the Applicant "demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation." The contention and its related basis is related upon three things. These are the program as described in the LRA, which the applicant credits as being affective and in place today, (2) the record of the so called effective program to date, and (3) expert opinion provided by Declaration on Ulrich Witte.

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The issue of the efficacy of the checwork program is challenged. Efficacy can only be confirmed by actual current performance as examined its use at Indian Point. The program is designed as essentially a trending tool, and based upon trending of wear, then provides selection points for inspection of wall thinning

events. Entergy has since about 2005 implemented a generic procedure (See

Exhibit Q) and has not had success in this program being effective. Examples of

³⁰ See contention regarding reactor head replacement.

failures of the implementation are provided in Exhibit R. We maintain that the applicant 's program is deficient because it, and there is insufficient benchmarking of the program to correlate a mechanistic examination with an empirical analysis.

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In this same vein, Petitioners further claim that Entergy has failed to demonstrate "a good track record with use of CHECWORKS." We note with interest that this same program implemented another Entergy plant currently in renewal proceedings, and was not just admitted, but also denied motion for summary disposition only months ago. See Exhibit S.

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We fundamentally take issue as to the contention meeting the six part test, and the facts we bring clearly show a genuine dispute with the applicant.

Finally, we note that yet again vague indescrpt summary of the program provided in the LRA, and that the LRA "fails to specify the method and frequency of component inspections or criteria for component repair or replacement." We assert that the program provided in the LRA leaves the petitioner forced to conclude that there Entergy has no meaningful program to address FAC aging phenomena." This content is admissible because it establishes a genuine dispute with the applicant on a material issue of law or fact, and without question raises Issues within the Scope of this Proceeding.

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Finally the expert, Mr. Witte, is also the expert on the faulted identical program (See Exhibit T) scheduled for trial at Vermont Yankee this summer.

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Therefore, while Petitioners note the NRC Staff criticism of Mr. Witte, it should not be considered. (NRC Staff brief at pp. 85-86).

Despite Entergy's and the NRC Staff's assertion of admissibility, (Entergy brief at pp 113- 118) based on the foregoing, contention 36 is admissible.

CONTENTION 37,
Withdrawn.

CONTENTION 38: Microbial action potentially threatens all the stainless-steel components, pipes, filters and valves at Indian Point (issue 99 of EIS),

Entergy does not deny the microbial corrosion issues raised by Contention 38. The seriousness of the eyewitness account should not be ignored by the ASLB, especially in light of the recent corrosion issues with the new, yet to be installed siren system, in which the manufacture has claims that the corrosive nature of the Hudson River has caused the unexpected corrosion. Microbial corrosion was omitted from the LRA and therefore Entergy does not have an aging management program to address this during the 20 year license period.

In Contention 38 Petitioners have raised issues of fact that are in dispute and should be admitted and heard.

CONTENTION 39,

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Withdrawn.

CONTENTION 40

Withdrawn because it is a duplicate of Contention 14.

CONTENTION 41: Entergy's high level, long-term or permanent, nuclear waste dump on the bank of the Hudson River.

Contention 41 meets the six part test for admissibility. The passive components, structure and systems of the Interim Storage Fuel Installation (ISF) for spent fuel storage is site specific and within scope.

At Diablo Canyon, the ASLB panel acknowledged that the petitioners had submitted substantial evidence that the proposed ISFSI presents a significant safety issue, The proposed expansion of the spent fuel storage facility is inherently risky. Especially if sited in a seismically active area. Like Indian Point both the power generation and spent fuel storage facilities at Diablo Canyon present targets for cataclysmic acts of terrorism and sabotage. As such, the safety and environmental risks inherent in the proposed expansion of DCCP's spent fuel storage facility must — to the extent consistent with plant security — be evaluated carefully and publicly.

Additionally Entergy has not demonstrated that it is financially able to cover the costs of constructing, operating and decommissioning the proposed ISFSI which is necessary in during the 20 year new license period, due to the additional high level

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radioactive waste that will be produced during that time. Therefore the environmental impacts of the ISFI are within scope, yet Entergy does not identify an aging management program to handle such impacts.

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The 2,000,000 pounds of high level radioactive waste is currently maintained on site. During the proposed 20 year additional license approximately 1,000,000 pounds will be added to that, yet there a solution to disposal of this waste does not exist. This is an issue of fact that must be raised and fully adjudicated during the relicensing proceedings, as it directly impacts the aging management of the plant and the environmental impact of the site. In fact the proposed license period increases the long term waste storage by 50%. Petitioners have submitted the expert testimony of Gordon Thompson with regard to Robust Spent Fuel Storage.

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The Waste Confidence Rule was written in 1995 many years prior to the contemplation of dry cask storage as the only option for increasing spent fuel.

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Therefore the dry cask storage is an in scope component necessary to the new license term, and therefore site specific issues caused by the new use of Indian Point cite for long term high level radioactive was storage, will be carried into the proposed new license period.

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Staff claims that spent fuel storage is as a Generic issue, but Petitioners claim it is not a generic issue, but site specific and there is new evidence of large quantities of unidentified and unremiedated leaks that must be addressed in the relicensing proceedings.. The current non-compliance and failure to stop leaks will be carried over into the new superseding license period and therefore within scope.

Contentions 41 raises particular issues of law and fact that are within scope and are in dispute, and which Entergy failed to address in the LRA; thus Contention 41 is admissible and should be heard.

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CONTENTION 42: Dry Cask Storage (Issue 83)
The Independent Spent Fuel Storage Installation (SFSI) being constructed at Indian Point for the purpose of holding the overflow of nuclear waste on site for decades, and probably more than a century, must be fully delineated and addressed in the aging management plan and, moreover constitutes an independent licensing issue,

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Contention 42 meets the six part test for admissibility. The passive components, structure and systems of the dry cast storage are site specific and within scope.

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The Waste Confidence Rule was written in 1995 many years prior contemplation of dry cask storage as the only option for increasing spent fuel. Therefore the dry cask storage is an in scope component necessary to the new license term, and therefore site specific issues caused by the new use of Indian

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Point cite for long term high level radioactive was storage, will be carried into the proposed new license period. The specificity of the need for additional dry cask storage as set forth in this Contention is based on conference with staff and is not speculation as Entergy proposed.

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Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue.

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At Diablo Canyon the ASLB panel acknowledged that the petitioners had submitted substantial evidence that the proposed ISFSI presents a significant safety issue, The proposed expansion of the spent fuel storage facility is inherently risky. Especially if sited in a seismically active area. Like Indian Point both the power generation and spent fuel storage facilities at Diablo Canyon present targets for cataclysmic acts of terrorism and sabotage. As such, the safety and environmental risks inherent in the proposed expansion of DCP's spent fuel storage facility must — to the extent consistent with plant security — be evaluated carefully and publicly.

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Additionally Entergy has not demonstrated that it is financially able to cover the costs of constructing, operating and decommissioning the proposed dry cask storage required to continue operation of the plant for an additional 20 year new license period. Therefore the environmental impacts of the dry cask storage are within scope, yet Entergy does not identify an aging management program to handle such impacts.

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The 2,000,000 pounds of high level radioactive waste is currently maintained on site. During the proposed 20 year additional license approximately 1,000,000 pounds will be added, yet there no longer term solution to disposal of

this waste. This is an issue of fact and law that must be raised and fully adjudicated during the relicensing proceedings, as it directly impacts the aging management of the plant and the environmental impact of the site. In fact the proposed license period increases the long term waste storage by 50%. The current dry cask pad is inadequate to hold the additional waste and yet the Applicant's LRA fails to consider this and address the aging management program for this additional waste.

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Since long term and potential permanent dry cask storage was not a contemplated use of the site when it was initially sited, before this use can be credited and carried into the proposed additional 20 year license term a full review and evaluation of the site, including public comment is required. This is new information and the reality of dry cask storage on site for an unknown term brings it within scope as it is a major component that must be included and must be reviewed as site specific material issue of fact.

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Contentions 42 raises particular, concise material issues of law and fact of components, and systems that are passive and necessary for the continued operation of Indian Point, which Entergy failed to address in it's LRA. Such material issues of law and fact are in dispute, thus Contention 42 is admissible and should be heard.

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Contention 43: The closure of Barnwell will turn Indian Point into a low level radioactive waste storage facility, a reality the GEIS utterly fails to address, and a fact which warrants independent application with public comment and regulatory review.

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This Contention satisfies the six part test. Entergy does not contest that in scope nature of this issue. The new information that Barnwell will no longer be accepting low- level radioactive waste from Indian Point is not addressed in the LRA, nor is an aging management program identified to handle low level waste. The Applicant's failure to include this material issue of fact in the LRA does not excuse it from being a material issue that is in dispute.

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The Applicant has the obligation to submit an LRA that addresses aging management issues, to fail to address the handling of low level waste disposal for the 20 year license period at Indian Point, is evidence of the incompleteness of the LRA. The LRA is mute on this. Because the Applicant omitted low level waste management form the LRA does not prevent it from being a material issue of dispute.

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The Applicant's attempt to characterize Petitioner's contention as speculative, and place in question the industry known reality that Barnwell is closing its doors to Indian Point in 2008, is evidence of the Applicant failure to provide necessary information. Low level waste management is an essential in

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scope systems for which a functional aging management plan is required and planned for during the superseding license period,

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Since low level waste storage was not a contemplated use of the site when it was initially sited, before this use can be credited and carried into the proposed additional 20 year license term a full review and evaluation of the site, including public comment is required,

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Staff's quote regarding Oconnee only deals with "high level waste." Low level waste management is an essential in scope systems required to be function and planned for during the superceding license period,

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The LRA is mute on this. Because it is omitted from the LRA, as if it doesn't exist, or as if there was a plan to dispose of the waste does not prevent it from been a material issue of dispute. Staff does not refute the fact that Barnwell is closing and that there is no plan to dispose of the low level waste,

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Therefore Contention 43 raises an issue of fact that is within, and thus, is admissible,

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CONTENTION 44: The Decommissioning Trust Fund is inadequate and Entergy's plan to mix funding across Unit 2, 1 and 3 violates commitments not acknowledged in the application and 10 CFR rule 54.3,

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In light of the massive underground leaks of strontium, tritium and cesium c Indian Point is one of the dirtiest sites in the country. Additionally, Indian Point is

location in the middle of some of the most expensive real estate in the nation. As such, the adequacy of the decommissioning funds is a material issue and is relevant to the ASLB's approval of a 20 year license extension.

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Petitioners contend that the decommissioning funds have not been adjusted to take into account the evidence of these leaks as report in the January 7, 2007 GZA report. Additionally the funds have not been recalibrated on decommissioning costs derived from 60 years of non-linear growth in contamination. The applicant does not present concrete evidence that it has adequate funds to clean up the site.

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Applicant also claims that the decommissioning is not related to the extended operation of the plant. Petitioners assert Applicant's statement is short sighted and self serving, when it is an issue of fact the recalibrated decommissioning costs must be adjusted from 60 years of non-linear growth in

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contamination. Entergy's claim that 50.75 offers adequate monitoring and oversight of the adequacy of the decommissioning funds is refute when the calculations of the biennial reports evidence that the decommissioning funds have only been adjusted by 1% a year, rather adjusted as required to the cost of living increases at the rate of 3% a year. This short fall, extended over the 20 year proposed additional license period will cause disparity in 2035 dollars by approximately 40%, which would substantially reduce Entergy's ability to properly

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and fully decommission the plant. A mismanaged fund is the same as no management at all.

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Entergy's position contradicts Commission's determination in prior action that WestCAN can raise adequacy of Decommissioning Fund in Relicensing proceedings. (Pet. at pp. 293) (NRC Staff brief at p. 101). This argument by Entergy is one of convenience and attempts to thwart Petitioner's ability to address a substantive issue of aging management a system necessary for the safe decommissioning of the plant. Entergy's claim that the only time to raise this is after the LRA is approved greatly reduces and limits Petitioner's right to the point of making Petitioner's concerns ineffectual. The record in CL1-00-22 is clear, that the Commission refused to hear issues of the adequacy of the decommissioning fund in the license transfer application and said that it should be raised under relicensing.

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Entergy alleges that the Commission was disingenuous in making such a statement and really never meant that decommissioning could be raised under relicensing Under Entergy's assertion the Commission was only using it as a ruse to prevent Petitioners from raising the adequacy of decommissioning fund in either meaningful proceeding Petitioner's do not accept that the Commission would act in such an unjust manner, and therefore Entergy's assertion much be rejected.

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The decommissioning fund is not only a current license issues, but pertains to and is carried into the superseding license period. The NRC regulations require that an adequate decommissioning fund be available prior to the issuance of a license.

Staff's position contradicts Commission's determination in prior action regarding license transfer of Indian Point 3 where it stated that WestCAN can raise adequacy of decommissioning fund during Relicensing proceedings. (P 293 of our Petition or p 101 of Staff response). This argument by Staff is one of convenience and attempts to thwart Stakeholders rights to address a substantive issue. Staff claims that the only time to raise this is after the LRA is approve is self serving and would cause Petitioner's rights to be greatly limited and made ineffectual.

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Decommissioning in not only a current license issue, but pertains to and is carried in to the superseding license period.

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Contention 44 is pled with specificity and raises material issues disputing fact and law regarding the adequacy of the decommissioning required under 10 C.F.R. 54.3 and 10 C.F.R. 50.75 in order for approval of the proposed 20 year license.

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Contention 45: Non-Compliance with NYS DEC Law – Closed Cycle Cooling “Best Technology Available” Surface Water Quality, Hydrology and Use (for all plants).

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This contention is within scope, and Entergy does not assert otherwise. Entergy’s assertion that until the matter pending in New York with respect to Entergy’s discharge permit is resolve with finality, the NRC is constrained to assess the pending LRA on the basis of the currently- permitted system, is inaccurate. NRC staff has acknowledged that without a discharge permit the NRC cannot grant a operating license to Entergy, and New York State DEC has already determined that a retrofit with close cycle cooling is required to meet EPA standards. Thus, Petitioner’s assert that until the matter is resolved there is a matter of law in dispute that is specific and particular, and clearly meets the threshold of admissibility and should be heard.

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Finally until the matter pending in New York with respect to Entergy’s discharge permit is resolved with finality, the NRC is constrained to assess the LRA on the basis of the currently permitted system” seems dead wrong for a basis for not admitting the contention. The opposite should be argued. Until the matter is resolved we have a matter of law in dispute that is specific and particular, and clearly meets the threshold of admissible.

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Contention 47: Cancer rates surrounding the plant: The Environmental Report Fails to Consider the Higher than Average Cancer Rates and Other Health Impacts in Four Counties Surrounding Indian Point,

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Entergy claims “other than unsupported speculation regarding releases in the future”, however Petitioners assert that the new information regarding the projected future radiological leaks provided in the leak study by GZA for Entergy of January 7, 2008, must be incorporated into the EIS with regard to projected future leaks and the Cumulative site specific health issues,

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Petitioners have cited New York State Cancer zip code studies as evidence that thyroid cancer rates in the two miles surrounding Indian Point is 70% higher than areas further away. This is clear evidence that the health impacts of Indian

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Point currently and credited into the proposed new licensing period is not small, but significant and therefore cannot be considered a Category 1 issue.

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Entergy fails to challenge Petitioner expert witness, Joseph Mangano with expert rebuttal, and only cites unrelated and distinct studies. Therefore Entergy's challenge to Mr. Mangano's declaration is without basis and must be dismissed,

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Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue,

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Thus, Contention 47 raises material issues of law and fact that are dispute and therefore is admissible,

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CONTENTION 48: Environmental Justice - Corporate Welfare

Petitioner's reassert that the issue of fair trade is a material issue of fact and law that is relevant to the proposed 20 year license. Entergy and the nuclear industry are spending billions of dollars, including millions of taxpayer dollars, to promote false propaganda about how inexpensive, renewable and clean. The Commission may use it's discretion to consider the true carbon foot print of nuclear power from mining to decommissioning, which is comparable to coal fire plants and to require a comparative study of the true costs, specifically the tax dollars used to support nuclear vs. any other energy technology in order to even the playing field.

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Large communities of sustenance fisherman are ingesting and feeding life threatening tritium and strontium laced fish and shellfish to their families caused by the ongoing leaks at Indian Point. These leaks will continue during the proposed 20 year license period, rather than decommissioning and cleaning up the site to prevent such contamination.

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In accordance with 10 C.F.R. 2.309(f)(3) and *Consolidated Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001), where both Petitioners independently established standing, the Presiding Office has the discretion to permit Petitioners to adopt the others' contention early in the

proceeding. Petitioners join and adopt Clearwater's contention number on this issue.

Once Petitioner is accepted as a party we will apply for a waiver to consider this issue as a Category 2, site specific issue.

In accordance with 10 C.F.R. 2.309(f)(3) and *Consol. Edison Co. (Indian Point, Units 2 & 3)*, CLI-01-19, 54 NRC 109, 132 (2001) where both Petitioners

have independently established standing, the Presiding Officer may permit

Petitioners to adopt the others' contention early in the proceeding. Petitioners join and adopt Clearwater's, and any other parties, contention(s) on this issue.

Contention 49: Global warming- Withdrawn

CONTENTION 50: Replacement Options: Stakeholders contend that the energy produced by Indian Point can be replaced without disruptions as the plants reach the expiration dates of their original licenses.

Applicant have failed to consider reasonable alternatives for 2158 MW of electricity, as required by 10 CFR 51. They on consider solar and wind as options to carry base load, and totally ignore the stability of geothermal and wave generated power. Additionally they incorrectly repeat in their answer that answer solar and wind are not always available and is speculative. Energy's refusal to acknowledge the ability of alternative energy to replace Indian Point is both short

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sighted and self-serving. They ignore current state of art technologies, including nanosolar and small wind generation which produces energy on cloudy and rainy days, and on days with little or no wind.

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The failure of the Applicant and Staff to consider reasonable replacement energy is evidenced a narrow and closed minded approach that denies the current feasibility sustainable energy.

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The Levitan Associates report and the Academy of Science report sponsored by Congresswoman Nita Lowey serve as expert reports that support Petitioners reasonable approach to replacement energy as a reasonable alternative to Indian Point continued operation during the proposed 20 year license period.

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Simply if the incentives and tax subsidies granted to the nuclear industry and Entergy specifically was used to build sustainable energy systems the energy produced by Indian Point could be completely replaced. This is not speculative but factual.

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Entergy's failure to provide a comprehensive study of replacement energy is inadequate and self serving. Entergy's conclusionary statement that "alternative simply cannot with current technology, provide the necessary amount of baseload power" is misleading and unsupported by expert witness rebuttal. Communities in the United State such as Sacramento have closed nuclear plants and have produced more than sufficient replacement energy, as well as created new jobs and

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economies. Energy's failure to present reasonable alternative fails to fulfill the requirements of 10 CFR 51 and is complete inadequate.

Thus, contention 50 meets the criteria for admissibility and must be admitted.

CONTENTION 50-1: Failure to Address Environmental Impacts of Intentional Attacks & Airborne Threats

Energy's failure to address the environmental impacts and costs of intentional attacks and airborne threats of terrorism is unjustified especially at Indian Point the uniquely most attractive and vulnerable terrorist targets in the nation. The fact that the 9/11 terrorist flew directly over Indian Point and considered it as a target prior to settling on the World Trade Center causes this issue to be germane to the relicensing proceedings.

For the Commission not to require the Applicant to comply with the Ninth's Circuit's remand in the Diablo Canyon proceeding, is unreasonable in relicensing proceedings for Indian Point. The Commission refusal not to require the consideration of the impacts of a terrorist attack is a failure of the Commission to up hold their organizing mandate to adequately protect the public health and safety in violation of the Administration Procedure Act. Therefore, this Contention raises material issues of fact and law that are admissible and should be heard.

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Contention 51: Inability to Access Proprietary Documents Impedes Adequate Review of Entergy Application for License Renewal of IP2 LLC and IP3 LLC,

Entergy claims that Petitioners assertion that proprietary information was withheld is incorrect. Petitioner's reiterate with specificity that the documents Entergy failed to provide are: the CLB including all modifications, exemptions, exceptions and deviations, and additions to such commitments over the life of the license, and appendices thereto; orders, license conditions, exemptions, exceptions and deviations; and technical specification and extensive redactions in the FSAR, UFSAR, including leak reports and leak maps that were shown at public meetings, but specifically denied to Susan Shapiro and other Petitioners, upon multiple requests to Entergy and the NRC dated 6/29/07, 7/6/07 and 9/4/07 (attached hereto). Entergy claims that Petitioners never contacted Entergy, when in fact Susan Shapiro had attempted through numerous communications attached hereto to obtain such information. NRC representative Richard Barkley of the NRC has told FUSE that the maps are proprietary property of Entergy. They will not become available until after the NRC receives Entergy's leak report later this fall, which makes the October 1, 2007 deadline to file Intervener Petitions highly prejudicial in favor of the licensee at the expense of the Stakeholders and other citizens whose best interests are supposed to be served by this Federal regulatory body.

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Clearly, these leak maps and the upcoming leak report contain vital information directly related to potential environmental impacts and infrastructure aging issues, and consequently Entergy's LRA. The maps are necessary for Stakeholders to file properly and fully documented Intervener contentions.

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In fact, the NRC used these maps to discuss the leaks in public meetings with representatives of Riverkeeper, Clearwater and IPSEC. In addition these maps, minus the Cesium map, were displayed in the lobby of a public meeting, however copies were unavailable.

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Documents that have been made unavailable under the claim of proprietary information denying Petitioners their constitutional rights to redress, as required in the guidelines of the NRC Code of Regulations meant to protect human health and safety.

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Therefore, this contention must be admitted,

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February 1970	See January 28, 1971 NRC discussion of AIF GDC comments.	The staff met with an ad hoc AIF group, which included representatives of reactor manufacturers, utilities and architect engineers to discuss the revised General Design Criteria. The comments of this group were reflected in a June 4, 1970 draft of the revised General Design
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Criteria that was forwarded to the AIF for comment. The AIF forwarded comments and stated it believed the criteria should be published as an effective rule after reflecting its comments. These comments have been reflected in the GDC in Appendix "A".

<p>November 16, 1970 February 1970</p>		<p>See January 28, 1971 NRC discussion of AIF GDC comments.</p>	<p>The staff met with an ad hoc AIF group, which included representatives of reactor manufacturers, utilities and architect engineers to discuss the revised General Design Criteria. The comments of this group were reflected in a June 4, 1970 draft of the revised General Design Criteria that was forwarded to the AIF for comment. The AIF forwarded comments and stated it believed the criteria should be published as an effective rule after reflecting its comments. These comments have been reflected in the GDC in Appendix "A".</p>
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“Our technical safety review of the design of this plant has been based on Amendment No. 9 to the application, the Final Facility Description and Safety Analysis Report (FFDSAR), and Amendments Nos. 10-25, inclusive. All of these documents are available for review at the Atomic Energy Commission's Public Document Room at 1717 H Street, Washington, D.C. The technical evaluation of the design of this plant was accomplished by the Division of Reactor Licensing with assistance” from the Division of Reactor Standards and various consultants to the AEC.

This document gave them authority to operate the facility under the draft GDCs but **without the AIF comments specifically for the** Reactor Protection and Control System.

As noted, “Specifically, for the reactor protection system instrumentation for -Indian Point Unit 2 is the same as that installed-at the Ginna plant. The adequacy of the protection system instrumentation was evaluated by comparison with the Commission's proposed general design criteria published on: July 11, 1967, and the proposed IEEE criteria for nuclear power plant protection system (IEEE-279 Code), dated August 28, 1968. The basic design has been

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reviewed extensively in the past and we conclude that the design for Indian Point 2 is acceptable”.

February 20 1971 through July 11 1971 November 4, 1971	A third modified construction permit was issued for Units #1 and #2. The proposed relocation of the intake structures by Con Edison was a significant improvement and entered into this decision.		The USAEC is urged to require Consolidated Edison to establish a firm schedule for implementing this proposed modification because of changes in the design of the adjustable discharge ports and slide gates.
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 Formerly Draft GDCs are approved Final GDCs and become part of Appendix A to 10 CFR 50. They are amended the same year.

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 These are the first legal standards for which the plant is required to comply or under federal rules, or be granted an exemption.

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November 4, 1971	A third modified construction permit was issued for Units #1 and #2. The proposed relocation of the intake structures by Con Edison was a significant improvement and entered into this decision.	The USAEC is urged to require Consolidated Edison to establish a firm schedule for implementing this proposed modification because of changes in the design of the adjustable discharge ports and slide gates.
September 28, 1973	Unit 2 Operating License Received	SER states that the plant is licensed to 1967 draft general design criteria without endorsement of AIF comments.
Commission issues a confirmatory order on February 11, 1980	Unit 2 FSAR dated June 2001 states that the detailed results of the order indicate that the plant is in compliance with the then current General Design Criteria established in 10CFR50 Appendix A.	The commission concurred on January 1982.

September 18, 1992	SECY 92-223, "resolutions of deviations identified during the systematic evaluation program"	Letter to James Taylor, Executive Director for Operations	The Commission approved the staff proposal in which the plant was not required to comply with federally approved General Design Criteria, if construction permits were issued prior to May 2, 1971. This is a clear and flagrant violation of the Administrative Procedures Act.
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<p>June 2001</p>	<p>Unit 2 FSAR states incorrectly that the General Design Criteria tabulated explicitly in the pertinent systems comprised the proposed trade organization general design criteria.</p>	<p>Section 1.3 General Design Criteria, Unit 2 UFSAR, and indicates under a footnote that the safety analysis report added trade organization comments in the change to the FSAR. (see footnote within Section 1.3.)</p>	<p>The license with collateral endorsement of the federal regulatory agency bypassed the administrative rules act, and thus reduced its commitments made to obtain its operating license to less than the minimum legal requirements of 10 CFR 50 Appendix A which were made law more than two years prior to the NRC granting the applicant an operating license for Unit 2. The reductions of safety margin and reasonable assurance of protection of the health and safety of the public have been compromised for over three decades, without the public understanding of the loss of margin in safety. Subsequently, Entergy allowed the error to remain and is actually currently committing Unit 2 to trade organization design criteria.</p>
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