

April 7, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO THE  
LICENSING BOARD'S ORDER OF APRIL 1, 2008

The NRC Staff ("Staff") hereby provides the following information in accordance with the Licensing Board's "Order (Third Order Relating to the Service and Content of WestCAN's Reply Dated Feb. 15, 2008)" ("Order"), issued on April 1, 2008, at 10.

1. In response to the Licensing Board's inquiry, the Staff states that it did not receive either WestCAN Exhibit H or WestCAN Exhibit I in the electronic transmissions sent by WestCAN, *et al.*, on Friday, March 21, 2008. Further, neither Exhibit H nor Exhibit I were listed in the electronic Table of Contents transmitted by WestCAN, *et al.* to the Staff on March 21, 2008.

2. WestCAN made two electronic transmissions to the Staff on March 21, 2008. WestCAN's first transmission was sent at 4:44 PM by WestCAN Counsel Sarah Wagner. This message stated:

Attached please find Petitioners [WestCAN, *et al.*] Reply Brief in response to the Atomic Safety and Licensing Board Order of March 7, 2008. Paper copies are only being sent to the Office of the Secretary, as required by the ASLB Order of February 1, 2008, and a second paper copy is being mailed to the Office of Counsel for the NRC Staff.

I will be sending two emails to include all the exhibits[.] If you cannot open any of the attachments, please contact me.

*Id.*; emphasis added. Attached to this first E-mail transmission were the following documents:

(a) "Petitioners' WestCAN et. al. Reply to the Atomic Safety and Licensing Board Order of March 7, 2008," dated March 21, 2008 ("WestCAN's Reply");

(b) a "Certificate of Service" dated March 21, 2008, stating that copies of WestCAN's Reply were served electronically upon "the email addresses shown below," and that "[a] hard copy will only be served upon the Office of the Secretary and the Counsel for the NRC Staff";

(c) a "Table of Contents," which listed Exhibits A, B, C, D, E, F, and G (no mention was made of Exhibits H or I);

(d) Exhibit A to WestCAN's Reply -- a 122-page document whose file label reads "3 21 08 Exhibit A Word Copy of WestCAN\_Reply\_Brief\_Final\_21 15 08.pdf";<sup>1</sup>

(e) Exhibit B to WestCAN's Reply -- a 2-page document whose file label reads "3 21 08 Exhibit B Email with Adobe copy of Reply\_Brief\_Final\_21 15 08.pdf";<sup>2</sup>

No other exhibits were served upon Staff Counsel by WestCAN on March 21, 2008.<sup>3</sup>

3. At 4:59 PM on March 21, 2008, WestCAN Counsel Sarah Wagner made a second electronic transmission to NRC Staff co-Counsel Sherwin Turk and Christopher Chandler, and certain other recipients including the NRC Hearing Docket. In this E-mail transmission, entitled, "WestCAN reply to ASLB Order 3.7.08," Ms. Wagner stated:

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<sup>1</sup> WestCAN's Exhibit A is an undated, unsigned document, entitled, "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."

<sup>2</sup> WestCAN's Exhibit B is a copy of an E-mail message, without attachments, "Subject: WestCAN reply brief to Entergy's and Staff's Response to Petition to Intervene," transmitted by [Palisadesart@aol.com](mailto:Palisadesart@aol.com) at 1:53 AM on February 16, 2008, to various listed recipients (not including Staff Counsel).

<sup>3</sup> In accordance with the Licensing Board's Order of April 1, 2008, at 10, a copy of the electronic transmission received by the Staff at 4:44 PM on March 21, 2008 (forwarding WestCAN's Reply to the Board's Order of March 7, 2008), is being forwarded this date by E-mail to the NRC Office of the Secretary (at [Hearingdocket@nrc.gov](mailto:Hearingdocket@nrc.gov)).

I attempted to email you two separate emails containing Petitioners' WestCAN et al.'s reply to the Atomic Safety and Licensing Board Order of 3/7/08. I received notification that the email was not deliverable due to the size of the emails or that delivery of the email failed. Please contact me if you would like me to re-send the emails. Please advise what your megabits size limitation is. Thank you.<sup>4</sup>

No exhibits or any other documents were attached to WestCAN's 4:59 PM electronic transmission.

4. On March 24, 2008, at 10:31 AM, the Staff received a further electronic transmission, with attachments, from WestCAN Counsel Sarah Wagner. This communication, entitled, "3.21.08 WestCAN Reply to ASLB Order 3.7.08.zip (4 MB)," appears to have been transmitted by Ms. Wagner in response to an inquiry by Mr. Zachary Kahn, the Licensing Board's Law Clerk, regarding WestCAN's 4:59 PM message on March 21, 2008. In her transmission of March 24, Ms. Wagner stated, in pertinent part:

Due to the size of the documents sent on Friday, March 21, 2008, I am resending the same files that were contained in the two part email in a zip file. These documents although exactly the same as the documents sent Friday, March 21, 2008, supersede any other electronic documents submitted. The attached are [WestCAN et al.'s] Reply Brief in response to the Atomic Safety and Licensing Board Order of March 7, 2008.

As previously stated, paper copies were only sent to the Office of the Secretary, as required by the ASLB Order of February 1, 2008, and an additional paper copy was mailed to the Office of Counsel for the NRC Staff.

*Id.*; emphasis added.

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<sup>4</sup> The Staff had previously informed WestCAN that the Staff's server could only accept E-mail transmissions up to 10 megabytes. As set out in WestCAN Exhibit I, on February 15, 2008, after failing to receive a previous E-mail transmission from WestCAN, Counsel for the Staff sent an E-mail message to all three WestCAN Counsel (Ms. Wagner, Ms. Shapiro and Mr. Brodsky), stating as follows:

This afternoon, we received the paper copy of your February 11 filing. For future reference, I've been informed that the NRC Staff's server can accept incoming messages up to 10 megabytes. Your transmittal of Feb. 11, at 12 megabytes, exceeded that limit, probably because it contained many scanned pages. Please keep this limit in mind when making E-mail transmissions to the NRC in the future.

5. Ms. Wagner's electronic transmission of 10:31 AM on March 24, 2008, provided copies of WestCAN's Reply, a Table of Contents, a Certificate of Service, and Exhibits A, B, C, D, E, F, G and I.<sup>5</sup> Exhibit H was not included in that transmission. Further, despite WestCAN's statement that this transmission was identical to the previous transmission, it was not: The Table of Contents provided with this transmission listed two exhibits that were not identified in the Table of Contents transmitted at 4:44 PM on March 21: "Exhibit H- DHL receipts," and "Exhibit I- February 15, 2008 email from Sherwin Turk, Esq." were listed in the Table of Contents sent by Zip file on March 24, but were not listed in the Table of Contents sent on March 21.<sup>6</sup> Further, while the certain other participants in the proceeding (including Entergy and the State of New York) appear to have received WestCAN Exhibit H by E-mail, the electronic transmissions sent by WestCAN to the Staff did not contain that exhibit.

Respectfully submitted,



Sherwin E. Turk  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 7<sup>th</sup> day of April 2008

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<sup>5</sup> In addition to Exhibits A, B, C, E, G and I, WestCAN's zip file contained two copies of Exhibit D, two versions of Exhibit F Part 1 (one version contained 556 MB of data, while the other contained 476 MB), and one copy of Exhibit F Part 2.

<sup>6</sup> The Staff has ascertained that the paper copy of WestCAN's filing that was served upon Staff Counsel contained Exhibits H and I, and that the Table of Contents included with that copy listed these two exhibits. The Staff has not attempted to identify any other differences between WestCAN's March 21 4:44 PM transmission and its March 24 zip file transmission, nor has the Staff attempted to ascertain any other manner in which these transmissions differ from the paper copy served on Staff Counsel.

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ENTERGY NUCLEAR OPERATIONS, INC. ) Docket Nos. 50-247/286-LR  
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(Indian Point Nuclear Generating )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO THE LICENSING BOARD'S ORDER OF APRIL 1, 2008," dated April 7, 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 7<sup>th</sup> day of April, 2008:

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Mail Stop: O-16G4  
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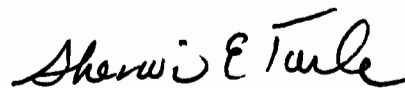
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