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USNRC

April 4, 2008 (4:36pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

DOCKETED USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	Docket Nos.
	)	50-247 and
	)	50-286
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	ASLBP No. 07-
	)	858-03
	)	LR-BD01
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	PETITION FOR
	)	REVIEW

April 4, 2008

PETITION FOR REVIEW OF ATOMIC SAFETY AND LICENSE  
BOARD (ASLB) ORDERS OF MARCH 25, 2008 AND MARCH 31, 2008  
CANCELLING ORAL ARGUMENTS ON WESTCAN'S CONTENTIONS

Pursuant to 10 CFR 2.341, Petitioners WestCAN, Sierra Club, RCCA,  
PHASE and Assemblyman Richard Brodsky ("WestCAN") Petition the  
Nuclear Regulatory Commission for review of the Atomic Safety and  
Licensing Board ("ASLB") orders, dated March 25, 2008 and March 31,  
2008, canceling the scheduled April 1, 2008 oral argument on admissibility  
of 50 Contentions submitted by WestCAN in the License Renewal  
Application Proceedings.

Template Aug-021

Aug-02

WestCAN represents over a million Stakeholders, and has submitted numerous unique Contentions or contention with different arguments and/or support for its' contentions. WestCAN is the only Intervenor who was not given an opportunity for oral argument to address the admissibility of their contentions.

On February 29, 2008 ASLB initially scheduled oral arguments for the ASLB to direct questions to the attorneys representing WestCAN, the NRC Staff, and Entergy in order to determine if these contentions are admissible for April 1, 2007 (Exhibit 4 ).

On March 25, 2008 the ASLB cancelled the oral arguments (Exhibit 7). On March 31, 2008, the ASLB reaffirmed its cancellation of oral arguments (Exhibit 9) in responses to Petitioners' letter requesting clarification. (Exhibit 8).

Consequently, WestCAN petitions the Commission to review the ASLB orders canceling the Petitioners' oral arguments for the following reasons:

- a. The ASLB orders are conduct in the proceeding that involve a prejudicial procedural error, without precedent. The ASLB orders deny a right to the Petitioners granted to all other Intervenors in the same proceedings.
- b. The ASLB orders are a material issue in conflict with the same circumstances granted to other Petitioners in the same License Renewal proceedings, and in other proceedings. WestCAN should be afforded the same right to support all their Contentions in oral arguments as all the other Petitioners.
- c. The following Contentions asserted by Petitioners are unique to the WestCAN Petition.

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

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.

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.

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.

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.

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.

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

- d. The other Contentions the Petitioners submitted, though unique in presentation, were similar to those raised by other Petitioners, however WestCAN does not waive the right to support these Contentions in oral argument.

- e. The scheduled April 1, 2008 oral argument for WestCAN was never placed on the ASLB schedule, in contradiction to the ALSB Order on March 7, 2008. (Exhibit #6 ).
  
- f. WestCAN had responded in a timely manner to all ASLB letters and orders regarding oral arguments.. Exhibit #1 - #9 are the complete correspondence between the ASLB and Petitioners with regard to the scheduling of WestCAN's oral arguments. It was never stated by the ASLB that due to the unavailability of the WestCAN on March 13, that Petitioners would be denied oral arguments. It is unreasonable for the ASLB to cancel WestCAN's oral arguments on admissibility due to scheduling conflicts. It is customary in the scheduling of legal proceedings to schedule hearings and oral arguments on the reasonable availability of all parties and their legal counsel. WestCAN was available for hearings on March 14 in White Plains, New York, or in Washington, D.C. as scheduled by the ASLB on April 1, 2008. Petitioners were fully prepared to travel to Washington, D.C. for the April 1, 2008 hearings.

g. On February 29<sup>th</sup> ASLB first scheduled oral argument for the Petitioners they wrote “Accordingly, each litigant will be given an opportunity to answer questions relating to the contentions that they have presented.”, and “...the purpose of this proceeding is to allow the Board to clarify its understanding of the Petitioners’ contentions and the NRC Staff’s and the Applicant’s responses thereto.

The ASLB also stated that “If, however, no representative of WestCAN is available on that day, the Board will conduct oral argument on the admissibility of WestCAN’s contentions at the ASLBP Hearing Room in Rockville, Maryland, during the week of March 24, 2008, or as soon thereafter as is practicable.” (Exhibit 4)

On April 7, 2008 the ASLB ordered that “attorneys who have filed Notices of Appearance shall then be prepared to answer questions posed by the Board regarding the contentions that they have submitted” and, “This proceeding is intended only as an opportunity for the Board to question, and the attorneys to explain, that which has previously been submitted.” (Exhibit 7).

Yet in the ASLB Orders dated March 25, 2008 and on April 3, 2008 the ASLB wrote, “we currently have no questions to ask WestCAN... regarding the admissibility of WestCAN’s Contentions”. (Exhibit 9). The ASLB has not explained when, from whom and what information they obtained and used that rendered its earlier decision to accept oral testimony “would not be materially assisted by oral argument.”

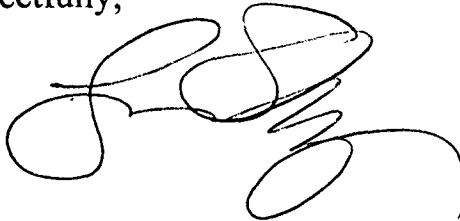
- h. The orders of canceling the Oral Arguments of WestCAN undermines the very reasoning for holding public hearings - to ensure the concerns of interested parties and individuals are heard and considered. The even handedness of the ASLB is in the public in interest.

Therefore, WestCAN respectfully requests that Commission grant a Petition for Review of ASLB’s orders of cancellation; the ASLB orders of Cancellation be overturned; and, that the ASLB immediately schedule an oral hearing on admissibility of WestCAN’s Contentions to be held in Westchester County on WestCAN's contentions, with all appropriate public



and official notice, including sufficient microphones and audio equipment to accommodate public participation.

Respectfully,

/SS/ 

Susan Shapiro

Representing Westchester Citizen's  
Awareness Network, Rockland County  
Conservation Association, PHASE, Sierra  
Club – Atlantic Chapter and Assemblyman  
Richard Brodsky

Spring Valley, NY  
Submitted April 4, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

PETITION FOR REVIEW

BEFORE THE NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	Docket Nos. 50-247/286-LR
	)	ASLBP No. 07-853-03-LR-BD01
(Indian Point Nuclear Generating)	)	
Units 2 and 3)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petitioners' WestCAN et. al Petition for Review dated April 4, 2008, has been served upon the following by electronically as shown to the address below, this 4th day of April, 2008. Hard copies have been sent to the Office of the Secretary as required by the February 1, 2008 ASLB Order.

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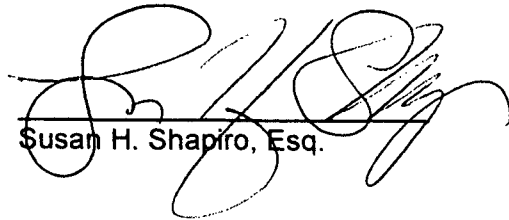
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Susan H. Shapiro, Esq.

\* Original and two copies

## **EXHIBIT TABLE OF CONTENTS**

### **PETITION FOR REVIEW OF ATOMIC SAFETY AND LICENSE BOARD (ASLB) ORDERS OF MARCH 25, 2008 AND MARCH 31, 2008 CANCELLING ORAL ARGUMENTS ON WESTCAN'S CONTENTIONS**

Exhibit #1	January 24, 2008 ASLB ORDER Preliminary Notification Regarding the Scheduling of Oral Argument
Exhibit #2	January 30, 2008 WestCAN Notification of Anticipated Conflicts during the week of March 10, 2008
Exhibit #3	February 26, 2008 WestCAN Letter Response to Entergy's letter dated Feb 19 <sup>th</sup> – Reiterated schedule conflicts
Exhibit #4	February 29 <sup>th</sup> ASLB Order Scheduling Oral Argument on Admissibility of Contentions for March 13 <sup>th</sup> date
Exhibit #5	March 6, 2008 WestCAN Request for Oral Arguments to be March 14
Exhibit # 6	March 7 ASLB Scheduling WestCAN Oral Argument for April 1, 2008
Exhibit #7	March 25, 2008 ASLB Canceling Oral Argument on WestCAN's Contentions
Exhibit # 8	March 31, 2008 WestCAN request for Clarification of cancellation of Oral Argument
Exhibit #9	April 3, 2008 Order Relating to Wagner Letter Dated March 31, 2008

# **EXHIBIT #1**

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

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating  
Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

January 24, 2008

ORDER

(Preliminary Notification Regarding The Scheduling Of Oral Argument)

It is the intent of the Board to hear oral argument on the admissibility of contentions, and any other matters then outstanding, during the week of March 10, 2008, at the Richard J. Daronco Courthouse, 111 Dr. Martin Luther King Blvd., White Plains, New York.

It will be necessary for representatives of the NRC Staff and the Applicant, Entergy Nuclear Operations, Inc., to be available during all business hours (9:00 am until 6:00 pm) throughout that week. Other participants in this litigation need only be present when contentions, or other matters which they presented, are being discussed.

Accordingly, in order to assist the Board in establishing a schedule for oral argument that will pose the least inconvenience to all involved, we direct all participants in this litigation, on or before Thursday, January 31, 2008, to notify the Board of any conflicts anticipated during the oral argument week. This notification shall include a listing of the business hours during the week of March 10<sup>th</sup> that would present a scheduling problem and a brief description of the nature of the time conflict.



To the degree practicable, the Board will attempt to formulate its schedule for oral argument to accommodate any significant conflicts. However, given the number of participants in this litigation and the number of issues too be addressed, the Board may not be able to acquiesce to all scheduling requests.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>1</sup>

/RA/

Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
January 24, 2008

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<sup>1</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for the State of Connecticut; (5) Counsel for Riverkeeper, Inc.; (6) Counsel for WestCan, RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) John LeKay, the Representative for FUSE; (10) Counsel for Westchester County; and (11) Counsel for the Town of Cortlandt.

## **EXHIBIT #2**

DOCKETED USNRC  
January 30, 2008  
Office of the Secretary  
Rulemaking and  
Adjudications Staff

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	)	
	)	50-286
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	ASLBP No. 07-
	)	858-03
	)	LR-BD01
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	January 24, 2008

**Notification of Conflicts Anticipated during the Week of March 10,  
2008**

The Counsel for Westchester's Citizen's Awareness Network (WestCAN),  
Rockland County Conservation Association (RRCA), PHASE (Promoting

Health and Sustainable Energy, LLC) and the Sierra Club- Atlantic Chapter;  
and Richard Brodsky have the following conflicts:

Susan Shapiro has a pre-planned vacation from March 8 to March 24,  
2008 due to her children's school spring break schedule.

Assemblyman Richard Brodsky is required to attend Session of the  
New York State Assembly during the week of March 10, 2008.

Therefore we request scheduling oral argument on the admissibility of the  
contentions, and other matters then outstanding to March 27 and March 28,  
2008.

Counsel for WestCAN, RCCA, PHASE  
Sierra Club and Richard Brodsky

*/SS/*

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Richard Brodsky and Susan Shapiro

Spring Valley, NY  
SUBMITTED JANUARY 30, 2008

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Copies of this Request were sent this date by Internet e-mail to: (1) ASLB Staff ; (2) Counsel for the NRC Staff; (3) Counsel for Entergy; (4) Counsel for the State of New York; (5) Counsel for the State of Connecticut; (6) Counsel for Riverkeeper, Inc.; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) John LeKay, the Representative for FUSE; (10) Counsel for Westchester County; and (11) Counsel for the Town of Cortlandt.

# **EXHIBIT #3**



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

CLERK OF THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY, NEW YORK

CLERK OF THE SENATE  
STATE OF NEW YORK  
ALBANY, NEW YORK

1

February 26, 2008

Lawrence G. McDade, Chair  
Atomic Safety and Licensing Board  
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Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20851-2738

Dr. Kaye Lathrop  
Administrative Judge  
Atomic Safety and Licensing Board  
190 Cedar Lane E  
Ridgway, CO 81472

Richard E. Wardell  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop - 1-3123  
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Re: License Renewal Application submitted by Entergy Indian Point Unit 2, LLC, Entergy  
Indian Point Unit - LLC, and Entergy Nuclear Operations, Inc. for Indian Point Nuclear  
Generating Station Unit 2 and 3

Docket Nos. 50-247-LR/50-286-LR; ASLB No. 07-858-03-LR-BD01

Dear Administrative Judges:

Petitioners Westchester Citizen's Awareness Network (WestCAN), Rockland County  
Conservation Assoc., Inc. (RCCA), Public Health and Sustainable Energy (PHASE), Sierra  
Club - Atlantic Chapter (Sierra Club), and New York State Assemblyman Richard L. Brodsky  
hereinafter "Petitioners") submit this letter in response to Entergy's letter dated February 19,  
2008 concerning the hearing to take place the week of March 10, 2008 in the above referenced  
proceeding. Petitioners reiterate that Susan Sharpino, Esq. or Richard Brodsky, Esq. are not  
available the week of March 10, 2008 as stated by letter dated January 30, 2008.

U.S. NUCLEAR REGULATORY COMMISSION, 1000 L STREET, N.E., WASHINGTON, D.C. 20545-0001  
U.S. NUCLEAR REGULATORY COMMISSION, 1000 L STREET, N.E., WASHINGTON, D.C. 20545-0001

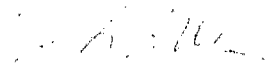
Petitioners do not oppose Entergy's suggestion to group contentions that are the same to assist the Board. However, Petitioners strongly oppose Entergy's suggestion that oral argument is not warranted for certain contentions. Petitioners will be prepared to answer the Board's questions concerning any of Petitioners' contentions.

Furthermore, Petitioners vigorously oppose Entergy's request that a single representative to present an argument on common proposed contentions. Pursuant to 10 C.F.R. § 2.316 "the Commission or the presiding officer may order any parties in a proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party." Consolidation would prejudice the rights of all the Petitioners because the petitioners have proposed independent and detailed contentions that are based on different theories and supported by different experts. Petitioners' have a right to fully participate in the oral argument. Moreover the petitioners represent different groups which have different interests. Petitioners should not be required to speak to issues raised by other petitioners. Nor should one representative speak on another's specific contention and which may bind other petitioners. Subsequently, Petitioners should not be denied the right to present their specific contention. Petitioners respectfully ask the Board to deny Entergy's suggestion for the designation of a single representative to present consolidated arguments on behalf of several differing petitioners.

Petitioners further respectfully request that the Board to order the service list names to be served in future filings since several parties' petitions to intervene have been denied and new names have appeared on the service list without notice. Pursuant to 10 C.F.R. § 2.304(c) Petitioners further request that the Board specify that only one copy must be mailed to each address on the service list even though multiple recipients are listed at the same address.

Finally, Petitioners object to Entergy's informal suggestions to the Board.

Respectfully submitted,



Sarah L. Wagner

cc: service list



## **EXHIBIT #4**

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

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating  
Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

February 29, 2008

**ORDER**

(Scheduling Oral Argument on the Admissibility of Contentions)

The Board has set the following schedule for the Oral Argument to be held at the Richard J. Daronco Courthouse, 111 Dr. Martin Luther King Blvd., White Plains, New York. Representatives for Entergy and the NRC Staff shall be present for the entire week (or the duration of the oral argument should it be completed before the end of the week). All other litigants shall be in the courtroom and ready to proceed as scheduled below.

Consistent with the regular schedule at the Daronco Courthouse, the Board intends to conclude the proceeding by 5:00 pm each day. Once their presentations are completed, litigants may remain in the courtroom, or leave, as they deem appropriate. Likewise, a litigant may, but need not, be present when another litigant is scheduled for oral argument. If the

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All litigants are reminded that they must arrive at the Daronco Courthouse sufficiently in advance of the scheduled start of the proceeding so that they may clear security, find the courtroom, and be fully prepared to proceed before the time set.

Board has not finished asking questions of a litigant on the day scheduled, the Board will continue the argument the following morning. All litigants shall arrange their schedules accordingly.

The following schedule will be adhered to to the extent possible. If the Board concludes its questioning of the litigants scheduled for a specific day before 5:00 pm, we will recess until the next morning. Litigants need not be present before the day on which they are scheduled :

**Monday, March 10, 2008, at 10:00 AM EDT<sup>2</sup>** – (in order of appearance) Westchester County, The State of New York.

**Tuesday, March 11, 2008, at 9:00 AM EDT** – (in order of appearance) The Town of Cortlandt, The State of Connecticut, Riverkeeper, Inc.

**Wednesday, March 12, 2008, at 9:00 AM EDT** – (in order of appearance) Riverkeeper, Inc., Hudson River Sloop Clearwater, Inc. (Clearwater), Connecticut Residents Opposed to Relicensing of Indian Point (CRORIP).

**Thursday, March 13, 2008, at 9:00 AM EDT** – Westchester Citizen's Awareness Network, Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club - Atlantic Chapter, and Assemblyman Richard Brodsky (collectively, WestCAN).<sup>3</sup>

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<sup>2</sup> The litigants are reminded that daylight savings time begins on March 9, 2008.

<sup>3</sup> In a Licensing Board Order dated February 1, 2008, we stated that the Board would base its decision regarding the admissibility of WestCAN's contentions only on their Petition to Intervene and those supporting documents that we had listed in Appendix A to our Order unless WestCAN could demonstrate to the satisfaction of the Board that the other documents referred to by WestCAN in its Petition had been properly submitted and served (Appendix B). WestCAN attempted to meet this requirement in a pleading dated Feb. 11, 2008 (sent to the Board by USPS first class mail with a postmark of Feb. 12, 2008, and initially received by the Board on February 21, 2008 – the Board has no record of receiving an electronic copy of this submission even though the Certificate of Service states that service on the Board was perfected on February 11, 2008, via electronic mail.) WestCAN was unsuccessful. The Board will not consider those documents listed in Appendix B to the Board's Order of February 1, 2008, in support of the admissibility of WestCAN's contentions.

The Board recognizes that in its response to our Scheduling Order, WestCAN asserted that two of its representatives, Susan Shapiro and Assemblyman Richard Brodsky, are not available to participate in this proceeding during the week of March 10, 2008.<sup>4</sup> However, since that filing, WestCAN has submitted an additional Notice of Appearance for Sarah L. Wagner.<sup>5</sup> We also note that it does not appear that the New York Assembly is scheduled to meet on March 13, 2008. Accordingly, should Ms. Wagner and/or Richard Brodsky be available on this date, the Board proposes to conduct oral argument on the admissibility of WestCAN's contentions in White Plains, NY on Thursday, March 13, 2008. If, however, no representative of WestCAN is available on that day, the Board will conduct oral argument on the admissibility of WestCAN's contentions at the ASLBP Hearing Room in Rockville, Maryland, during the week of March 24, 2008, or as soon thereafter as is practicable.

No later than noon on March 6, 2008, WestCAN shall notify the Board whether it will proceed with the oral argument in White Plains, NY on March 13, 2008. If WestCAN is unable to proceed on March 13, it shall notify the Board of any conflicts that would prevent its representatives from appearing in Rockville, MD between March 24, and April 4, 2008. If they are notified by WestCAN that it can not proceed on March 13<sup>th</sup>, the NRC Staff and Entergy shall promptly notify the Board of any conflicts that they anticipate between March 24, and April 4, 2008.

The Board does not expect, nor will it entertain, presentations by the litigants on all the contentions presented. Rather, the Petitioners may, but need not, make opening statements

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<sup>4</sup> Notification of Conflicts Anticipated During the Week of March 10, 2007 (Jan. 30, 2008).

<sup>5</sup> Notice of Appearance for Sarah L. Wagner, Esq. (Feb. 4, 2008).

which shall not exceed 10 minutes, in which they may speak generally regarding their Petitions to Intervene. The Petitioners shall then be prepared to answer questions posed by the Board regarding the contentions that they have submitted. The NRC Staff and Entergy may, but need not, make opening statements in response to each Petitioner's opening. These statements by the NRC Staff and Entergy shall not exceed 5 minutes each. Questions will then be addressed to the Petitioner, the NRC Staff, and Entergy as the Board deems appropriate.

We will follow this procedure because the purpose of this proceeding is to allow the Board to clarify its understanding of the Petitioners' contentions and the NRC Staff's and the Applicant's responses thereto. It is not the purpose of this proceeding to entertain general presentations regarding contentions which have already been adequately explained in the pleadings. Likewise, this proceeding is intended only as an opportunity for the Board to question, and the litigants to explain, what has previously been submitted. This will not be an evidentiary hearing and, without a specific exemption from the Board, the litigants will not be given an opportunity to supplement the already voluminous record at this point in the proceeding.

The Board has concluded that the standing of all Petitioners has been adequately discussed in the pleadings. Accordingly, we will have no questions regarding standing and the Board will not entertain any argument on the issue of standing.

With regard to the admissibility of contentions, the Board will not consolidate contentions prior to their being admitted. Accordingly, each litigant will be given an opportunity to answer questions relating to the contentions that they have presented. Moreover, the Board will only address questions regarding specific contentions to the proponent thereof and to the current parties, the NRC Staff and Entergy. Where the positions of the litigants on a particular

contention are clear to all of the members of the Board based on the pleadings, we will ask no questions and entertain no presentation regarding that contention.

Westchester County, which proposes to adopt the contentions submitted by the State of New York, is the first scheduled litigant. Westchester, the NRC Staff, and Entergy should be prepared to discuss the applicability of the ASLBP decision in Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 206-08 (2006) and the Commission decision in Consolidated Edison Co. of New York (Indian Point, Units 1 and 2), CLI-01-19, 59 NRC 109, 131-33 (2001) to Westchester's Petition. In addition, these litigants should be prepared to discuss the role that Westchester would have in this proceeding if it is admitted as a party by adopting New York's contentions, as opposed to the role that it would have in this proceeding if it were to participate as an interested governmental body pursuant to 10 C.F.R. § 2.315(c).

The Board notes that CRORIP has submitted a Section 2.335(b) Motion which is pending. CRORIP, the NRC Staff, and Entergy should be prepared to present oral argument on this Motion on Wednesday, March 12, 2008.

The Board also notes that there are a number of Motions to Strike that have been filed and are pending. These Motions focus on the appropriate content of a Reply under our Rules of Practice, 10 C.F.R. § 2.309(h)(2). The Board does not perceive the need for oral argument

on these motions. Furthermore we will not rule on them at this time. Rather we will address these Motions in our ruling on contention admissibility.<sup>6</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

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Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
February 29, 2008

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<sup>6</sup> However, we note at this time that the requirement established by 10 C.F.R § 2.323(b) that a "sincere effort" be made to "resolve the issue(s) raised in [a] motion" prior to filing contemplates something more than mere notification that a motion will be filed made moments before a deadline.

<sup>7</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for the NRC Staff; (2) Counsel for Entergy; (3) Counsel for the State of New York; (4) Counsel for the State of Connecticut; (5) Counsel for Riverkeeper, Inc.; (6) Counsel for WestCAN, RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) Counsel for Westchester County; and (10) Counsel for the Town of Cortlandt.

# **EXHIBIT #5**





THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

RICHARD L. BRODSKY

Westchester County

CHAIRMAN

Committee on  
Corporations, Authorities and Commissioners

March 6, 2008

Lawrence G. McDade, Chair  
Atomic Safety and Licensing Board  
Mail Stop -- T-3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

Dr. Kaye Lathrop  
Administrative Judge  
Atomic Safety and Licensing Board  
190 Cedar Lane E.  
Ridgway, CO 81432

Richard E. Wardell  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop -- T-3 F23  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

Re: License Renewal Application submitted by Entergy Indian Point Unit 2, LLC, Entergy Indian Point Unit 3, LLC, and Entergy Nuclear Operations, Inc. for Indian Point Nuclear Generating Station, Unit 2 and 3

**Docket Nos. 50-247-LR/50-286-LR; ASLB No. 07-858-03-LR-BD01**

Dear Administrative Judges:

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") submit this letter in response to the Atomic Safety and Licensing Board Order of February 29, 2008.

Petitioners request that they be scheduled for oral arguments on Friday, March 14, 2008 in White Plains, New York in order to permit Susan Shapiro, Esq. to return from a previously scheduled trip associated with a serious family emergency. Assemblyman Richard Brodsky and his counsel, Sarah Wagner, Esq., are tentatively scheduled to participate in legislative budget conference committees that were scheduled months ago. The final decision on the budget conference committee's will be made no later than Wednesday March 12, 2008. All counsel for

ALBANY OFFICE: Room 422, Legislative Office Building, Albany, New York 12248 (518) 435-4753  
DISTRICT OFFICE: 5 West Main Street, Ste. 205, Elmford, New York 10523 (914) 345-6232  
EMAIL: brodsky@assembly.state.ny.us

Petitioners are available on Friday, March 14, 2008 to conduct oral argument at the Richard J. D'Amico Courthouse, 111 Dr. Martin Luther King Blvd., White Plains, N.Y. Petitioners advise that most of the responses proffered will be made by Petitioners' expert witness, Ulrich White, whose CV will be provided at oral argument.

Respectfully submitted,

/s/

Sarah L. Wagner

cc: service list

# **EXHIBIT #6**

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

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating  
Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

March 7, 2008

**ORDER**  
(Scheduling WestCAN Oral Argument)

In an Order dated February 29, 2008, the Board scheduled oral argument to be held at the Richard J. Daronco Courthouse, 111 Dr. Martin Luther King Blvd., White Plains, New York during the week of March 10, 2008.<sup>1</sup>

In that Order the Board also recognized that WestCAN had previously asserted its two representatives, Susan Shapiro and Assemblyman Richard Brodsky, would not be available during the week of March 10, 2008, due to preexisting commitments.<sup>2</sup> However, the Board then noted that, after WestCAN advised the Board of the conflicts, it submitted an additional Notice of Appearance for Susan Wagner, Esq.<sup>3</sup>

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<sup>1</sup> Licensing Board Order (Scheduling Oral Argument on the Admissibility of Contentions) (Feb. 29, 2008).

<sup>2</sup> Notification of Conflicts Anticipated During the Week of March 10, 2008 (Jan. 24, 2008).

<sup>3</sup> Notice of Appearance for Sarah L. Wagner, Esq. (Feb. 4, 2008).

Accordingly, since it appeared that it might be possible for an attorney representing WestCAN to be present, the Board proposed to conduct oral argument on the admissibility of WestCAN's contentions in White Plains, NY on Thursday, March 13, 2008. However, in that Scheduling Order the Board also offered WestCAN an alternative to the March 13<sup>th</sup> date. Specifically, the Board proposed holding oral argument on the admissibility of WestCAN's contentions at the ASLBP Hearing Room in Rockville, Maryland, during the week of March 24, 2008, or as soon thereafter as is practicable.<sup>4</sup>

We then directed WestCAN to notify the Board no later than noon on March 6, 2008, whether it wished to proceed with the oral argument in White Plains, NY on March 13, 2008, and, if not, to notify the Board of any conflicts that would prevent its representatives from appearing in Rockville, MD between March 24 and April 4, 2008.

By letter dated March 6, 2008, WestCAN notified the Board that it did not wish to proceed on March 13, 2008. WestCAN did not, however, notify the Board of any conflicts that would prevent its representatives from appearing in Rockville, MD between March 24, and April 4, 2008.

Accordingly, unless the NRC Staff and Entergy promptly (no later than 5:00 pm, March 10, 2008) notify the Board of specific conflicts, the Board will hold oral argument on the admissibility of WestCAN's contentions on April 1, 2008, at the ASLBP Hearing Room in Rockville, Maryland, beginning at 10:00 am.

As previously stated in our Order of February 29, 2008, the Board does not expect, nor will it entertain, presentations on all the contentions presented. Rather, WestCAN may, but need not, make an opening statement which shall not exceed 10 minutes, in which it may speak generally regarding its Petition to Intervene. Its attorneys who have filed Notices of

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<sup>4</sup> Licensing Board Order (Scheduling Oral Argument on the Admissibility of Contentions) (Feb. 29, 2008) at 3.

Appearance shall then be prepared to answer questions posed by the Board regarding the contentions that they have submitted. The NRC Staff and Entergy may, but need not, make opening statements in response which shall not exceed 5 minutes each. Questions will then be addressed to the attorneys representing WestCAN, the NRC Staff, and Entergy, as the Board deems appropriate.

We will follow this procedure because it is the purpose of this proceeding to allow the Board to clarify its understanding of WestCAN's contentions and the NRC Staff's and the Applicant's responses thereto. It is not the purpose of this proceeding to entertain general presentations regarding contentions which have already been adequately explained in the pleadings. Likewise, this proceeding is intended only as an opportunity for the Board to question, and the attorneys to explain, that which has previously been submitted. This will not be an evidentiary hearing and, without a specific exemption from the Board, the litigants will not be given an opportunity to supplement the already voluminous record at this point in the proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>

/RA/

Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
March 7, 2008

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<sup>6</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for WestCAN, RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (2) Counsel for the NRC Staff; (3) Counsel for Entergy; (4) Counsel for the State of New York; (5) Counsel for the State of Connecticut; (6) Counsel for Riverkeeper, Inc.; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) Counsel for Westchester County; and (10) Counsel for the Town of Cortlandt.

# **EXHIBIT #7**

UNITES 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

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating  
Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

March 25, 2008

ORDER

(Canceling Oral Argument on WestCAN's Contentions)

In an Order dated March 7, 2008, the Board scheduled oral argument on the admissibility of the contentions submitted by Westchester Citizen's Awareness Network, Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club - Atlantic Chapter, and Assemblyman Richard Brodsky (collectively "WestCAN"). Pursuant to that Order, oral argument was to be heard on April 1, 2008, at the ASLBP Hearing Room in Rockville, Maryland, beginning at 10:00 am. We are now canceling that proceeding.

As stated in that Order, and in our earlier Scheduling Order dated February 29, 2008, it was not our intent at the oral argument to entertain presentations on the contentions presented. Rather, it was the Board's intent to direct questions to the attorneys representing WestCAN, the NRC Staff, and Entergy, as we deemed appropriate, in order to clarify our understanding of WestCAN's contentions, and the NRC Staff's and the Applicant's responses thereto. Expressly, it was not our intent to entertain general presentations regarding contentions which had already been adequately explained in the pleadings and which we believed were understood by the



Board. The proceeding was intended only as an opportunity for the Board to question, and the attorneys to explain, that which has previously been submitted.<sup>1</sup>

Based on the pleadings submitted, and the insights into the relevant issues in this proceeding gained by the Board during the oral arguments that were presented in White Plains, New York, on March 10-12, 2008, the Board has concluded that its understanding of the issues presented by WestCAN's contentions is adequate to enable us to properly rule on their admissibility and would not be materially assisted by oral argument. Accordingly, the additional oral argument scheduled for April 1, 2008, has been canceled.

If, during the process of drafting its decision on the admissibility of WestCAN's contentions, the Board determines that clarification of any issue is necessary, we will schedule additional oral argument at that time.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>

/RA/

Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
March 25, 2008

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<sup>1</sup> The Board expressly stated in our Orders of February 29<sup>th</sup> and March 7<sup>th</sup> that we were scheduling a proceeding at which litigants would answer questions from the Board based on the pleadings and exhibits that had previously been submitted and that the litigants would not be given an opportunity to supplement the already voluminous record in conjunction with the oral argument.

<sup>2</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for WestCAN, RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (2) Counsel for the NRC Staff; (3) Counsel for Entergy; (4) Counsel for the State of New York; (5) Counsel for the State of Connecticut; (6) Counsel for Riverkeeper, Inc.; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) Counsel for Westchester County; and (10) Counsel for the Town of Cortlandt.

# **EXHIBIT #8**



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THE ASSEMBLY  
 STATE OF NEW YORK  
 ALBANY

FILED 1985  
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March 31, 1984

Lawrence G. McDowell, Chair  
 Atomic Safety and Licensing Board  
 Mail Stop 153-323  
 Two White Flint North  
 11342 Rockville Pike  
 Rockville, MD 20851-2733

Dr. Ray E. Lathrop  
 Administrative Judge  
 Atomic Safety and Licensing Board  
 1-9 Cedar Lane E.  
 Ridgway, CO 80412

Richard E. Wardell  
 Administrative Judge  
 Atomic Safety and Licensing Board  
 U.S. Nuclear Regulatory Commission  
 Mail Stop 153-323  
 Two White Flint North  
 11342 Rockville Pike  
 Rockville, MD 20851-2733

Re: License Renewal Application submitted by Energy East on Point Unit 1, LLC, Energy  
 Indian Point Unit 3, LLC, and Energy North Operations, Inc. for Indian Point Nuclear  
 Generating Station, Units 1 and 2.

Docket Nos. 50-247 LR-50-286-LR, ASLB No. 07-855-03-LR-B101

Dear Administrative Judges:

We were in touch to your attention the decision of the Atomic Safety and Licensing

Board Panel 153-323 on the application for the renewal of the license of the

Indian Point Nuclear Generating Station, Units 1 and 2, for the period of the

of a license renewal application submitted by Energy East on Point Unit 1, LLC, Energy  
 Indian Point Unit 3, LLC, and Energy North Operations, Inc. for Indian Point Nuclear  
 Generating Station, Units 1 and 2.

the way regarding the holding public hearings - to ensure the concerns of interested parties and stakeholders are heard and considered

Professors WestCAN, Sierra Club, SCCA, PHASE and Assemblyman Richard Brodsky ("WestCAN") have submitted numerous written submissions or correspondence with different arguments and/or support for its contention. WestCAN is the only intervenor who was not given an opportunity for oral argument to address the admissibility of their submissions.

On April 7, 2008 ASLB finally scheduled oral argument for the ASLB to direct questions to the attorneys representing WestCAN, the NRC, Sierra and Entergy in order to determine if these submissions are admissible. Yet on March 25, 2008 the ASLB no longer had any questions for WestCAN. Consequently, we seek clarification of the following concerning the Order:

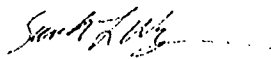
- Please explain when, from whom, and what information the ASLB received and used that rendered its earlier decision to accept oral testimony "would not be materially affected by oral argument."
- Why was the April 1, 2008 hearing for WestCAN never placed on the ASLB calendar?
- Did the ASLB decision rest in part or full on issues related to scheduling conflicts that prevented WestCAN from participating in the admissibility hearings on March 19-21, 2008?

The decision and reasons for the above comments of the Atomic Safety and Health Board Board and the Nuclear Regulatory Commission is an open and public

process for considering Estuary's license renewal application for Indian Point.

Therefore, we request that the ASLB immediately schedule a hearing to be held in Westchester County on WestCAN's comments, with all appropriate public and official notice, including notice sent via telephone and audio equipment to accommodate public participation.

Respectfully submitted,



Sarah A. Wagner

## **EXHIBIT #9**

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

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating  
Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

April 3, 2008

**ORDER**

(Order Relating to Wagner Letter Dated March 31, 2008)

On March 31, 2008, the Board received via electronic mail a copy of a letter sent by Sarah Wagner. Although the letter does not expressly state on whose behalf it was being sent, since Ms. Wagner has entered an appearance in this proceeding on behalf of Westchester Citizen's Awareness Network, Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club - Atlantic Chapter, and Assemblyman Richard Brodsky (collectively, "WestCAN"), the Board presumes that the letter was sent on behalf of WestCAN. The letter requests clarification of the Board's March 25, 2008, Order and asks that the Board reconsider its decision canceling oral argument on the admissibility of WestCAN's contentions.<sup>1</sup>

First, the correct vehicle for requesting clarification of an Order and/or the reconsideration of an Order is by filing a Motion, not by sending a letter to the Judges who issued the Order. Having noted this error, we shall treat Ms. Wagner's letter as a Motion by WestCAN for Clarification and Reconsideration of the Board's March 25 Order.

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<sup>1</sup> Licensing Board Order (Canceling Oral Argument on WestCAN's Contentions) (Mar. 25, 2008) [hereinafter March 25 Order].

Second, the Board has repeatedly advised the participants in this proceeding that "[a] motion must be rejected if it does not include a certification by the attorney . . . of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion . . . ." 10 C.F.R. § 2.323(b). Having been advised of this requirement several times, WestCAN did not comply with Section 2.323(b). Accordingly, we are not at liberty to act favorably on WestCAN's Motion.

Third, even if WestCAN had met the procedural requirements of Section 2.323(b), its Motion lacks merit. The Board's March 25 Order was clear, and WestCAN has presented no persuasive argument why we should reschedule oral argument. As stated in that Order, and in our earlier Scheduling Orders dated February 29, 2008,<sup>2</sup> and March 7, 2008,<sup>3</sup> oral argument was intended as an opportunity for the Board to direct questions to the attorneys representing Petitioners, the NRC Staff, and Entergy, as we deemed appropriate, in order to clarify our understanding of contentions that had been submitted, and the NRC Staff's and the Applicant's responses thereto.<sup>4</sup> Since we currently have no questions to ask WestCAN, the NRC Staff, or Entergy, regarding the admissibility of WestCAN's Contentions, scheduling an oral argument at this time would serve only to delay this proceeding.

In sum, the Board has concluded that our understanding of the issues would not be materially assisted by oral argument and that our understanding of the issues presented by

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<sup>2</sup> See Licensing Board Order (Scheduling Oral Argument on the Admissibility of Contentions) (Feb. 29, 2008) [hereinafter February 29 Order].

<sup>3</sup> See Licensing Board Order (Scheduling WestCAN Oral Argument ) (Mar. 7, 2008) [hereinafter March 7 Order].

<sup>4</sup> The Board expressly stated in the Orders of February 29, March 7, and March 25 that we were scheduling oral arguments at which litigants would answer questions from the Board based on the pleadings and exhibits that had previously been submitted and that the litigants would not be given an opportunity to supplement the already voluminous record in conjunction with the oral argument. See February 29 Order at 3-5; March 7 Order at 2-3; March 25 Order at 1-2.



WestCAN's contentions is adequate to enable us to properly rule on their admissibility.

Accordingly, we see no reason to revisit our earlier decision, or to schedule additional oral argument at this time.

Therefore, for the reasons stated above, WestCAN's Motion for Clarification and Reconsideration of the Board's Order of March 25, 2008, is DENIED.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

/RA/

Lawrence G. McDade, Chairman  
ADMINISTRATIVE JUDGE

Rockville, MD  
April 3, 2008

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<sup>5</sup> Copies of this Order were sent this date by Internet e-mail to: (1) Counsel for WestCAN; RCCA, PHASE, the Sierra Club - Atlantic Chapter; and Richard Brodsky; (2) Counsel for the NRC Staff; (3) Counsel for Entergy; (4) Counsel for the State of New York; (5) Counsel for the State of Connecticut; (6) Counsel for Riverkeeper, Inc.; (7) Nancy Burton, the Representative of CRORIP; (8) Manna Jo Green, the Representative for Clearwater; (9) Counsel for Westchester County; and (10) Counsel for the Town of Cortlandt.