

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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

April 15, 2008

**REPLY OF LOCALS 369 AND 590, UTILITY WORKERS UNION OF AMERICA,
AFL-CIO TO ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING
PETITIONS FOR LEAVE TO INTERVENE, REQUEST FOR HEARING, AND
RELATED REQUESTS FOR RELIEF**

Pursuant to 10 C.F.R. § 2.309(h)(2), and the Secretary’s February 28, 2008, Order in the captioned proceedings, Locals 369 and 590, Utility Workers Union of America, AFL-CIO (“UWUA Locals”) reply to the April 8, 2008, “Answer of Entergy Nuclear Operations, Inc.” (“Opposition”). For the reasons stated here, as well as in pleadings filed by UWUA Locals in

these proceedings on February 5 and March 18, 2008, UWUA Locals urge the Commission to reject Entergy's Opposition, and to issue an order finding that UWUA Locals: (1) have standing to intervene in these proceedings; and (2) have raised admissible contentions that will be considered in a hearing before the Commission.

In support of our positions, UWUA Locals state:

I. UWUA LOCALS HAVE STANDING TO APPEAR AS PARTIES TO EACH OF THE CAPTIONED PROCEEDINGS

Entergy questions the standing of UWUA Locals to intervene in all of the captioned proceedings, including Docket No. 50-293-LT, notwithstanding that UWUA Locals represent the Pilgrim Nuclear Power Station workforce. As explained in UWUA Locals' earlier pleadings in this proceeding and amplified *infra*, UWUA Locals and their members have an interest in the outcome of each of the captioned proceedings, and therefore meet the requirements of injury-in-fact, causation, and redressability, both on their own behalf and through their representation of their members.¹ As discussed *infra*, while these standards have been met, the "proximity standing" presumption makes it unnecessary for the Commission to examine these factors separately in each case.²

¹ While UWUA Locals, like all local unions, are already the authorized representatives of their members, Attachment 1 to this pleading contains affidavits from Local members David Leonardi, Murray Williams, and Fred DiCristofaro, as an additional assurance that UWUA Locals are in fact authorized to represent specific individuals with standing to intervene in this proceeding. These affidavits explain approximately how much time the affiants spend at or near the plant, and provide their addresses and their authorization of UWUA Locals to represent their interests in this proceeding.

² We note that UWUA Locals' interests in this proceeding do not fit the category of "labor dispute" described in *Florida Power & Light Co.* UWUA Locals are concerned not about staffing reductions *per se*, but rather about the effect of NewCo's perilous financial situation on the safe operations of each of the plants, whose financial health is directly linked under the proposed restructuring, and thus on the health and safety of the Locals' members. Even if this were a "labor dispute," however, Entergy acknowledges (Opposition at 16 n.64) that "there may be cases where employment-related contentions which are closely tied to specific health-and-safety concerns, or to potential violations of NRC rules can be admitted for a hearing" (*Florida Power & Light Co.*, CLI-06-21, 64 N.R.C. 30, 34 (2006) (citations and quotations omitted)). Moreover, unlike the would-be intervenors in *Florida Power & Light Co.*, UWUA Locals have shown a "causal link" between the proposed transfer and the alleged harm. *See id.* at 35. In *Florida Power & Light*, the would-be intervenors also admitted that the harm they alleged had begun "at least a

A. *UWUA Locals have Standing under the Traditional 3-Prong Test*

Contrary to Entergy's assertions (Opposition at 12), UWUA Locals have provided ample factual support — drawn from Entergy's own NRC application and its testimony before the Vermont Public Service Board — showing that approval of the proposed reorganization will significantly increase the risk of accidents at Pilgrim and at the five other plants implicated by the restructuring, thereby threatening substantial harm to the UWUA Locals and their members. As discussed *infra* at II.D, the causal chain between the proposed reorganization and the threatened harm is short and clear. Commission approval of the proposed reorganization would (1) cause (2) a non-speculative risk of serious harm to the physical safety and health of members of UWUA Locals, and Commission denial of the reorganization would (3) redress this harm (by preventing it).

The fact that the alleged injury has not yet occurred does not preclude a finding that UWUA Locals have standing, just as it did not bar a similar finding in the *Power Authority of the State of New York* case. The situation in the instant case is analogous to that presented in the transfer of the Indian Point and Fitzpatrick plants to Entergy in 2000. In that proceeding, the Commission found that an association of nuclear plant workers had standing, stating:

The Association... argues that its members' health and safety may suffer as a direct result of the license transfer if an insufficient amount of revenue were to preclude the Entergy companies from adequately funding both occupational radiation protection and safe decommissioning activities.... Given that we have found that people... living or active within a few miles of a nuclear plant have shown standing in license transfer cases, it follows that employees who work inside a plant should ordinarily be accorded standing as well, as long as the alleged injury is fairly traceable to the license transfer.

year before" the license transfer applications were filed. *Id.*

Power Auth. of N.Y., CLI-00-22, 52 N.R.C. 266, 294 (2000) (citations omitted). As the Commission has held, “Injury may be actual or threatened.” *Cleveland Elec. Illuminating Co.*, CLI-93-21, 38 N.R.C. 87, 92 (1993) (citations and quotations omitted). Thus, for the same reasons that the Association was found to have standing in the Indian Point transfer, UWUA Locals should be found to have standing to participate in the captioned proceedings.

More specifically, and as explained in UWUA Locals’ earlier pleadings and *infra* at Part II.A, the materials presented by Entergy suggest that approval of the proposed restructuring could lead to significant financial pressures on each of the six nuclear plants at issue, and these pressures could have a negative impact on the members of the UWUA Locals, and deleterious impacts on the operation of the nuclear plants involved in the restructuring. In the case of the proposed financial changes, the causal nexus is, as explained more fully *infra* in Part II.D, that the proposed reorganization will put the six nuclear plants in a far more risky financial situation, significantly increasing the risk that maintenance, staffing and other safety-related functions at all of the plants will receive inadequate funding and attention. Indeed, increased financial instability is a direct, foreseeable and unavoidable effect of the reorganization as proposed, as explained in UWUA Locals’ prior pleadings in this proceeding, *infra* at Part II, and in the attached affidavit of Mr. Whitfield Russell, which is Attachment 2 to this pleading (“Russell Affidavit”). This instability goes directly to the “financial qualifications” issue, which is sufficiently tied to the safe operations of a nuclear plant that the Commission has specific requirements governing the financial qualifications of operators. 10 C.F.R. §§ 50.33(f), 50.80(b)(1)(i).

For the reasons stated here, and those presented in prior pleadings, UWUA Locals have alleged and demonstrated that, if the proposed reorganization is approved, they and their

members will face a significant, non-conjectural risk of future injury. As such, UWUA Locals have satisfied the traditional, three-prong standing test.

B. UWUA Locals have Demonstrated that they Have Standing to Intervene in Each of the Captioned Proceedings

Entergy's protestations aside, the financial well-being of each of the six plants will be linked under the proposed restructuring. Russell Affidavit ¶¶ 11-14. As such, UWUA Locals are concerned both about the license transfer at issue in the Pilgrim proceeding, as well as the transfers to be addressed in the remaining separate dockets opened for each of the other plants. Pilgrim's financial stability will now be directly subject to and affected by events at the other five plants. As such, UWUA Locals have an interest justifying intervention in those proceedings as well as in the Pilgrim proceeding.

Given the significant financial linkages created by Entergy's proposal, the Commission should consider consolidating these proceedings for purposes of hearing and decision. Consolidation will promote administrative efficiency, as it will, *inter alia*, facilitate the Commission's review of the direct financial linkage among the six plants impacted by the proposed license transfers and restructuring.

C. UWUA Locals have Demonstrated that they have "Proximity Standing"

It is not necessary for the Commission to determine that UWUA Locals meet the traditional three-prong standing test, because UWUA Locals qualify for the "proximity presumption" standing criterion recognized by the Commission:

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. 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 fifty miles of the nuclear power reactor.

In re Entergy Nuclear Vt. Yankee, LLC, 50-271-LR, 64 N.R.C. 131, 144 (2006) (citations and quotations omitted), *reversed in irrelevant part*, CLI-07-16, 65 N.R.C. 371 (2007).

While the Commission has stated elsewhere that it sets the “proximity” radius on a case-by-case basis (*see, e.g., Tenn. Valley Auth.*, LBP-02-14, 56 N.R.C. 15, 24 (2002)), no matter what radius the Commission finds appropriate in this case, UWUA Locals’ members are within it, because — at least with respect to Pilgrim — they work at the plant itself. See Attachment 1. In applying the proximity presumption, the Commission has held that “the appropriate focus is upon the nature of the proposed action and the significance of the radioactive source.” *Id.* at 25 (citations and quotations omitted). The significance of the radioactive source — the cores of operating nuclear plants and associated spent fuel pools — is obvious. The “nature of the proposed action,” a reorganization that weakens the owner’s and operators’ financial qualifications at each of the six plants, is also significant.³ *See supra* at Part I.A. UWUA Locals should therefore be granted standing based on the “proximity presumption.”

II. UWUA LOCALS HAVE RAISED ADMISSIBLE CONTENTIONS THAT SHOULD BE SET FOR HEARING IN THIS PROCEEDING

In their March 18 Filing, and in accordance with Commission regulations, UWUA Locals specified certain contentions, explained the basis for these contentions, and asked that the Commission set these contentions for hearing. Entergy has opposed each such contention. We here reply to Entergy’s claims, and reiterate the bases for each proposed contention.

³ Unlike the *Millstone* license transfer case cited by Entergy, Opposition at 13 n.56, the transfer of control proposed in these proceedings would involve a change in financing (a significant change, as discussed *infra*), which is indisputably relevant to the safe operation of the plants. *See Ne. Nuclear Energy Co. (“Millstone”)*, CLI-00-18, 52 N.R.C. 129, 132 (2000).

At the outset, UWUA Locals note that the Commission's regulations, 10 C.F.R. § 2.309(f)(1)(i)-(vi), state that each proposed contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (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; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact. Each of the contentions raised by the UWUA Locals complies with the NRC's regulations, Entergy's objections notwithstanding.

At the outset, we note that while these requirements have been characterized as "strict by design," the Commission has also made clear that they do not obligate an intervenor, at this early stage, to mount its entire case on any specific issue.⁴ As explained by the Commission:

Determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion, however, "does not call upon the intervenor to make its case at [the contention admissibility] stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention." 54 Fed. Reg. at 33,170. A petitioner does not have to provide an exhaustive list of its experts or evidence or prove the merits of its contention at the admissibility stage. As with a

⁴ *Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 and 3)*, CLI-01-24, 54 N.R.C. 349, 358 (2001), *recons. denied*, CLI-02-1, 55 N.R.C. 1 (2002). In making this observation, the Commission expressed concern that it had become involved in litigating "contentions that appeared to be little more than speculation." *Id.* (citations and quotations omitted). Through this and our earlier pleadings, UWUA Locals seek to assure the Commission that the contentions presented here are well-founded and not purely "speculation." However, as noted *infra* and as the Commission has itself recognized, in matters involving projections of financial and technical qualifications, some "speculation" is "unavoidable." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999).

summary disposition motion, the support for a contention may be viewed in a light that is favorable to the petitioner and inferences that can be drawn from evidence may be construed in favor of the petitioner. *See Palo Verde*, CLI 91-12, 34 NRC at 155; 10 C.F.R. § 2.710(c).

In re Entergy Nuclear Vt. Yankee, LLC, 50-271-LR, 64 N.R.C. 131, 150 (2006) (footnote omitted), *reversed in irrelevant part*, CLI-07-16, 65 N.R.C. 371 (2007).⁵ The Commission reached much the same conclusion in its earlier decision in *GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station)*, CLI-00-6, 51 N.R.C. 193 (2000). While stating that it will not accept filings that are “unsupported by alleged fact or expert opinion and documentary support,” the Commission went on to make clear that:

This is not to say that our threshold admissibility requirements should be turned into a “fortress to deny intervention.” *Cf. Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999), quoting *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The Commission regularly continues to admit for litigation and hearing issues that are material and are adequately supported. *See, e.g., Seabrook, supra*.

51 N.R.C. 193, 203 (2000).

Moreover, while there is much in Entergy’s Opposition concerning the need for intervenors to provide “expert” and “affidavit” testimony in support of their contentions, we trust that the Commission will consider Entergy’s objections in accordance with the adage that “what

⁵ The Commission has elsewhere made clear that an intervenor is not required to prove its case 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.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 22 n.1 (1998), citing Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, Final Rule, to be codified at 10 C.F.R. pt. 2, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989). Rather, petitioner must make “a minimal showing that the material facts are in dispute, thereby demonstrating that an ‘inquiry in depth’ is appropriate.” *In re Gulf States Utils. Co.*, CLI-94-10, 40 N.R.C. 43, 51 (1994), citing Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, Final Rule, to be codified at 10 C.F.R. pt. 2, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989). *See also In re AmerGen Energy Co.*, LBP-06-07, 63 N.R.C. 188, 220 (2006) (citing Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 22 n.1 (1998)) (the contention requirement “does not require the submission of an expert opinion”).

is good for goose is good for the gander.” During the relatively brief duration of this proceeding, Entergy has made three filings containing versions of and support for its proposed indirect license transfer and related corporate restructuring. Although this proceeding involves the fate of six nuclear plants and billions of dollars in proposed transactions, none of those filings has been accompanied by any expert affidavit or other testimony.⁶ As Mr. Russell observes:

the lack of supporting data for the financial projections submitted by Entergy to the Commission is perhaps the most striking feature of its submissions in this proceeding. Entergy’s submittals represent an unusually sparse amount of support for such a large transaction. In my experience, such a substantial transaction would ordinarily involve considerable internal Entergy review and interaction with outside advisors (including accounting, legal and investment bankers). While I have every reason to believe that such interactions have occurred, no data concerning them have been provided.

Russell Affidavit ¶ 5.⁷

- A. *UWUA Locals contend that the Application should not be approved because it contains contradictory statements concerning whether implementation of the proposed restructuring will be accompanied by operational changes at Pilgrim.***

Entergy contends that its application “states in no uncertain terms that there will be no physical changes to the Facilities, and no changes to officers, personnel, or day-to-day operations.” Opposition at 21. UWUA Locals do not agree, and have already explained the

⁶ Entergy finds it “telling” that UWUA Locals focus attention on the Curry testimony. Opposition at 43. It is “telling” only in that our focus on Ms. Curry is a result of the lack of information provided by Entergy in its NRC filings. UWUA Locals do, however, reject Entergy’s contention that we have ignored their financial forecasts. As the March 18 Filing shows, that is not the case. However, the ability to analyze these data would be enhanced by the inclusion of backup or other supporting data, as well as testimony concerning the specifics and overall focus of the transaction.

⁷ In any event, to the extent the Commission concludes that the factual contentions raised by UWUA Locals in their earlier filings fail to meet the necessary standards absent support through an expert affidavit, we have included Mr. Russell’s affidavit as an Attachment to this pleading. Mr. Russell reiterates and, in response to Entergy’s claims, amplifies the concerns expressed in our earlier filings and described here. That said, UWUA Locals assert that their prior factual assertions, and the concerns which flow from them, are generally self-evident, even (if not especially) when considered in light of the paucity of information provided by Entergy. See *Subterranean Homesick Blues*, B. Dylan (1965) (“You don’t need a weatherman to know which way the wind blows”).

bases for that disagreement in their February 5 Filing (at 9-10). Given their assertions, Licensees will presumably agree to the conditioning of any approval of the transaction on the assumption of their stated commitment that there will be neither physical nor personnel changes as a result of the proposed restructuring. However, we note that these commitments do not resolve the concerns raised by our remaining Contentions, addressed *infra*. Approval of the proposed transaction will create severe financial pressures on the operating nuclear plants, and calls into question whether the proposed transaction satisfies applicable NRC regulatory requirements. If the transaction is nonetheless approved, UWUA Locals are concerned that there will be deleterious impacts on Unit safety and performance, and continue to urge the Commission to address these concerns at hearing.

B. UWUA Locals contend that the Application should not be approved because Applicants' claims as to benefits are neither supported nor self-evident.

UWUA Locals stated in their February 5 Filing in the *Pilgrim* proceeding (at 10) that “Applicants nowhere explain why this structure is superior to the proposed structure set forth in their July 30 Application, let alone why either arrangement is superior to the *status quo*.” In response, Entergy argues that while the Commission’s regulations require “a statement of the purpose for requesting the NRC’s consent to a [license] transfer,” the applicant’s response can essentially be ignored as outside the scope of any Commission review. Opposition at 23.

UWUA Locals assert that the information presented in support of Contention 2, including matters of market or business “strategy,” is directly relevant to the Commission’s review of the proposed transaction, as these concerns go to the likelihood that post-transaction, the licensees will be able to meet the requisite financial (if not the technical) qualifications. Russell Affidavit ¶ 10. Entergy responds that UWUA Locals have failed to “even suggest” that the failure of the

promised transaction benefits “will adversely impact those qualifications or otherwise undermine safe operation of the Facilities.” Opposition at 23. Given UWUA Locals’ arguments in both their earlier pleadings and the instant filing, Entergy’s claim is simply not credible.

In the same vein, Entergy asserts that while UWUA Locals “express strong reservations” about the proposed guarantees and pledges associated with the transaction, “they do not contend that such transactions would adversely affect nuclear safety at the Facilities.” Opposition at 26.

The statement is incorrect. In their March 18 Filing, UWUA Locals assert (at 9-10):

Once the spin-off is implemented, it appears from the data provided by Entergy that NewCo will be saddled with massive debt obligations for which it will be 100% responsible. NewCo sales and revenues may end up being below forecasted levels if, for example, its market price projections prove to overly optimistic, or if unit operating costs skyrocket and revenues plummet as a result of an extended outage, a catastrophic failure, or any unexpected event. In such instances, NewCo will be forced to deal with whatever problems it may face with much reduced free cash flow (because so much of its cash flow has been committed to paying debt), fewer sources of equity capital (mainly the public and new owners), and as part of a considerably smaller enterprise with a much reduced pool of generating resources, revenue sources and borrowing power. The reduced free cash flow, amounts of equity sources, and borrowing capacity could lead to strains at the nuclear plants, which under the proposed arrangements would serve as guarantors for NewCo’s enormous borrowings. *If unanticipated (or even anticipated) events occur, it would not be hard to see how these financial strains could lead to layoffs, reductions in the provision of needed maintenance and plant security, poor operational performance, failure to fund pensions and reserves, and other such deleterious impacts.* The probability that this detrimental cycle will develop is virtually certain to be increased by implementation of Entergy’s proposal because lenders, recognizing the higher risk of NewCo, can be expected to demand higher interest rates and more restrictive loan covenants from NewCo than they would demand from Entergy.

Footnotes omitted and emphasis added. The express reference to the link between the proposed guarantees and “financial strains,” “layoffs,” “reductions in the provision of needed maintenance

and plant security,” “poor operational performance” and “other such deleterious impacts” should be sufficient to demonstrate that there is a material safety issue posed by the Application.⁸

All of this notwithstanding, it appears to UWUA Locals that the information presented with respect to Contention 2 is likewise relevant to Contention 4, which addresses expressly the financial impacts of the proposed restructuring. UWUA Locals address Contention 4 *infra*. For administrative convenience, UWUA Locals are willing to withdraw Contention 2, assuming that the same information presented in support of this Contention 2 can be addressed in connection with Contention 4, both at this stage of the proceeding and at any hearing that is ordered.

C. UWUA Locals contend that the Application should not be approved because the proposed “NewCo” structure admits the possibility of managerial conflict, yet does not explain how any disputes will be resolved.

UWUA Locals’ third contention goes to the potential for “managerial conflict” in that post-restructuring, the licensed operator will be owned equally by Entergy and NewCo. In its Opposition, Entergy objects to UWUA Locals’ purported failure to evaluate thoroughly new information provided by Entergy after business hours the evening before UWUA Locals’ supplemental contentions were due. Opposition at 31. As promised in their March 18 Filing (at 8), UWUA Locals here expand on the bases for this contention.

Entergy suggests that matters such as “incurring significant indebtedness” and “variation or termination of material contracts,” Opposition at 29-30, would not affect the safe operations of

⁸ For the same reasons, and for those expressed here (and elsewhere in the March 18 Filing), the Commission should likewise reject Entergy’s claim that we have failed to “meaningfully engage the specifics” of Entergy’s financial projections. Notwithstanding that the utility of these data are limited by the absence of testimony or meaningful supporting or backup information, the March 18 Filing addresses Entergy’s presentation in reasonable detail. Indeed, the “public version” of the March 18 Filing shows redactions at pages 2-10 and 12-14 (the pleading is 16 pages in length), in each instance because these pages contain information from (or based upon) Entergy’s financial projections. Entergy’s apparent refusal to address these contentions (its filing contains no protected data) does not entitle it to claim that UWUA Locals have failed to present an assessment of these data.

the plants. As explained *supra* and *infra*, “incurring significant indebtedness” can certainly increase the level of financial risk assumed by each of the plant-guarantors, and thereby impact safe plant operations. There is also no question that termination of a material contract, depending on the nature of the contract, may go directly to plant safety and performance.

Entergy complains that, in the event of a dispute, “UWUA Locals do not explain what ‘circumstances’ might require ‘a more expedited decision,’ or how much more ‘expedited’ such a decision would need to be. With respect to the arbitration provisions, it is unclear what ‘limitations’ UWUA Locals are alluding to, and why such limitations are of concern to UWUA Locals.” Opposition at 31. An expedited decision could be necessary if, for example, a costly accident at one of the plants made it necessary for NewCo to raise funds quickly (“incurring significant indebtedness,” to use Entergy’s phrase). The “limitations” on the arbitrator’s authority are clear on the face of Entergy’s March 17, 2008 Supplement:

[T]he arbitrator is not empowered to amend the provisions of Articles IV [Capital] or VII [Management] of this Agreement or otherwise amend this Agreement where such amendment would, in any way whatsoever, change or be likely to change the effect of the provisions set forth in Article VII of this Agreement, any other fundamental governance provisions of this Agreement specified by the Members in writing, or *require a Member to make a Capital Contribution to which it has not given its prior consent.*

March 17 Supplement at 4 (emphasis added). The emphasized text is particularly important, as unforeseen needs for capital may arise, and this provision would prevent an arbitrator from ordering the “Members” to make a contribution even if necessary for the safe plant operations.

Thus, Entergy will retain influence over the plants equal to NewCo’s, subject only to mediation and arbitration provisions if NewCo concludes that Entergy is acting contrary to the good of the spun-off facilities. February 5 Filing at 12. Entergy’s proposal is to retain an exactly even one-half interest in the Entergy subsidiary that will operate Entergy’s merchant nuclear

plants, while retaining full control over Entergy's nuclear plants embedded in Entergy's traditional vertically integrated electric utilities. Entergy will have what amounts to a potential veto power over decisions concerning the operation, maintenance and modification of these non-utility nuclear plants, but with no apparent responsibility for the consequences of that control. Entergy's ability to deadlock the decision-making process and an equal say in what the operating subsidiary does, could lead it to, for example, skew allocation of needed spare parts or plant personnel to those nuclear plants that serve Entergy's utilities. Entergy's ability to influence decisions to favor its regulated utility nuclear fleet at the expense of Entergy's non-utility nuclear plants at issue here is a serious concern and goes directly to the extent to which the proposed restructuring will result in safe and financially secure nuclear units. Thus, this contention is relevant to the matters at issue, there is a sound basis for concern, and there is a genuine dispute between the parties. This matter should be set for hearing.

D. UWUA Locals contend that the Application should not be approved because the financial impacts of the NewCo proposal are unknown, and call into question whether the new entity can provide the requisite "reasonable assurance" as to financial and, ultimately, technical qualifications.

UWUA Locals asserted in the March 18 Filing that the financial impacts of Entergy's NewCo proposal are "unknown" and that no approval of the proposed indirect license transfer should be granted without an evidentiary hearing. Entergy spends much of its Opposition attacking this important contention, which goes to the heart of the matters at issue in this proceeding. Entergy's opposition should be rejected and the matter set for hearing.

1. The issue UWUA Locals seek to raise concerns the financial impacts of the proposed transaction, which is material to, and well within the scope of, this proceeding (10 C.F.R. § 2.309(f)(1)(i), (iii) and (iv))

The Commission has stated that the “question in indirect transfer cases ...is whether the proposed shift in ultimate corporate control will ‘affect’ a licensee’s existing financial and technical qualifications.” *Millstone, supra*, 52 N.R.C. at 133, quoting 65 Fed. Reg. at 18,381. UWUA Locals have proposed as a contention their concern that the proposed transaction will impact adversely the ability of the plant licensees to meet their ongoing financial obligations. As such, there should be no question that this contention falls well within the scope of the matters at issue. 10 C.F.R. § 2.309(f)(1)(i) and (iii). Indeed, even Entergy is constrained to admit (Opposition at 36) that UWUA Locals’ contention can be viewed as “an ostensible health-and-safety-related challenge to the Applicants’ financial qualifications.”

Nonetheless, Entergy claims (Opposition at 33) that we seek relief that is beyond the scope of this proceeding, arguing that UWUA Locals have wrongly suggested that the Commission consider conditioning approval in ways that protect “the public interest.” Entergy’s claim that UWUA Locals are basing their contention on the wrong standard proves nothing. The concerns UWUA Locals raise go to whether approval will adversely impact the ability of the affected plant licensees to meet their financial and, ultimately, safety-based obligations. The Commission clearly has the authority and responsibility to address our concerns and, in that fashion, to protect the “public interest,” whether or not this express standard is applied. While mindful that the Commission has stated that its mission is “solely to protect health and safety,” and “not to make general judgments about what is or is not otherwise in the public interest,”⁹ the

⁹ *Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, CLI-02-16, 55 N.R.C. 317, 342 (2002), quoting *Consol. Edison Co. of N.Y. (Indian Point, Units 1 and 2)*, CLI-01-19, 54 N.R.C. 109, 149 (2001).

arguments raised and the relief sought by UWUA Locals fall well within the scope of the Commission's "mission."

Entergy next asserts that the "relevant inquiry" in this case is whether the Company has demonstrated that it "possesses or has reasonable assurance of obtaining funds necessary to cover estimated operation costs for the period of the license." Opposition at 34, quoting 10 C.F.R. § 50.33(f)(2) (emphasis removed from Opposition). To the extent this is correct, that is precisely the focus of UWUA Locals' presentation. Based on analysis of the (albeit limited) information provided by Entergy, we have sought to challenge whether that "reasonable assurance" has been demonstrated where the proposal calls for a shift from the conservative capital structure provided by Entergy, to a far riskier financial arrangement in which the six operating plants become guarantors of billions of dollars in new debt, and where there has been no showing that the payment of operating costs will have priority over debt service obligations. Russell Affidavit ¶¶ 11, 13-14. The issue raised is therefore well within the scope of the NRC regulatory standards that Entergy contends must be met in order to obtain relief. As UWUA Locals' challenge goes directly to whether the "reasonable assurance" standard has been met, Entergy cannot credibly contend (Opposition at 36) that we have failed to specify a "particular ... legal reason[]" why the application should not be granted. UWUA Locals have likewise raised "particular safety ... reasons," in support of this contention, as addressed further below.

In addition, Entergy responds (Opposition at 37) to concerns over the structure of this arrangement by claiming that its "business" and "market strategies" are outside the scope of the Commission's purview, relying upon the NRC's statement that it "is not in the business of regulating the market strategies of licensees." *Id.* at 23, quoting *Hydro Res., Inc. (P.O. Box 15910, Rio Rancho, NM 87174)*, CLI-01-4, 53 N.R.C. 31, 48 (2001). Entergy's claim is not

well-founded. In *Hydro Res., Inc.*, the Commission stated that “business decisions that relate to costs and profit” are not the Agency’s concern, but that the Commission “looks to whether [the regulated entity] can conduct operations safely.” 53 N.R.C. at 49. The Commission never stated that where business strategies bear directly on financial qualifications or operational safety concerns, they are nonetheless off limits from NRC scrutiny.¹⁰ Moreover, as the issues here include financial stability, it would seem to be fairly obvious that the Commission must examine an applicant’s proposed market or business strategies. Phrased differently, the issue here is whether Entergy’s chosen business or market strategy — the proposed indirect license transfer and the related corporate restructuring — provides the requisite “reasonable assurance” to satisfy the Commission’s regulation-based financial and technical standards. In order to answer that question, it is appropriate (if not essential) to evaluate Entergy’s strategic objectives. Russell Affidavit ¶ 10.

Moreover, the question of whether the terms of a proposed license transfer provide the requisite “reasonable assurance” is fundamentally a forward-looking analysis. *Id.* In challenging whether that showing has been made, intervenors must have the latitude to engage in some degree of “speculation” as to what might or might not happen if an applicant’s strategy and related forecast of the future turn out to be wrong. Considerations about the future are not off-limits. As the Commission itself has recognized, “[s]peculation’ of some sort is unavoidable when the issue at stake concerns predictive judgments about an applicant’s future financial capabilities.” *N. Atl. Energy Serv. Corp., supra*, 49 N.R.C. at 219-220.

¹⁰ In fact, the Commission explained as much in a case cited by Entergy. In *CBS Corp. (Waltz Mill Facility)*, CLI-07-15, 65 N.R.C. 221, 234 (2007), the Commission stated that it “will not be drawn into [commercial] disputes, absent a concern for the public health and safety or the common defense and security, except to carry out its responsibilities to act to enforce its licenses, orders, and regulations.” Opposition at 24 n.95. UWUA Locals have expressed concern about Entergy’s business strategy because it goes directly to related public health and safety concerns.

2. UWUA Locals have provided an explanation for this contention, a statement of alleged facts or opinions relevant to the contention, and sufficient information concerning the existence of a genuine dispute (10 C.F.R. § 2.309(f)(1)(ii), (v) and (vi))

UWUA Locals contend that the proposed new structure poses unacceptable financial risks, that “reasonable assurance” has not been provided, and that approval may call into question the ability of the licensees, post-restructuring, to meet their technical, financial and safety-related obligations. As explained in the March 18 Filing, and addressed further below and in the Russell Affidavit, the specific alleged facts or statements of opinion that form the premises for this contention include:

- Entergy intends through the proposal to eliminate its liability for the six nuclear plants, meaning that a far smaller pool of assets — the six non-utility nuclear plants — will be responsible for guaranteeing a new and enormous set of debt obligations. Russell Affidavit ¶ 11.
- Entergy’s proposed Support Agreement is of limited value, in that guaranteed coverage of a certain level of fixed O&M charges hardly constitutes satisfying the entire universe of financial risks associated with a nuclear plant. The Support Agreement does not demonstrate that under the new structure, the licensees will be able to weather extended outages at any one plant, or support normal needs for capital improvements and betterments, new capital investment obligations normally associated with refurbishing and extending the useful lives of aging facilities, and any debt service obligations that could not be met from plant revenues in the event of extended outages, whether for refurbishments or extended forced outages. The new structure means that the six plants will have

significant financial vulnerability in the event of an extended outage, incident or other event at any of them. Russell Affidavit ¶ 13.

- The application does not provide a clear picture of NewCo's capitalization. While the application, and data provided elsewhere, seem to indicate borrowings of up to \$4.5 billion in "Senior Notes" and an additional \$2 billion for a "Senior Revolving Credit Facility," a large portion of these funds will apparently be flowing back to Entergy, which has elsewhere explained that it expects through the spin-off to receive \$4 billion as compensation, including \$1.5 billion that it expects to employ in reducing its debt and in carrying out a \$2.5 billion share repurchase program. Moreover, some portion of the \$2 billion left with NewCo will be used for undefined "Hedging Arrangements." The extent to which these arrangements will involve additional risk and, if so, the nature of any such risk, is unclear. It is not clear where NewCo will be, from the perspective of financial resources, once Entergy has received a substantial portion of the proceeds generated by the transaction in order to meet other Entergy corporate objectives. It is clear, however, that all of the plant licensees will be guarantors of whatever arrangements NewCo chooses to undertake. Russell Affidavit ¶ 15.
- Over the next few years, the proposed new arrangement involves movement away from fixed price contracts and toward heavy reliance upon the competitive marketplace, even as Entergy has elsewhere stated a preference not to move in that direction. While significant reliance on the deregulated marketplace is not, by itself, a show-stopper, moving in that direction clearly entails substantially more risk, and offers (in this case) the added concern of NewCo facing those risks

with much reduced financial reserves. At a minimum, this structure heightens the need for Entergy to supply backup and supporting data that have not been provided. Russell Affidavit ¶ 16.

- Entergy asserts that it plans to have a debt-to-enterprise value of 30 to 45%. If that is the case, then the overall enterprise value would be at or above \$10 billion. Entergy has not reconciled this debt-to-enterprise value objective with statements in Entergy's 2007 SEC 10-K report to the effect that the six nuclear assets carry a valuation of \$7 billion. Russell Affidavit ¶ 18.
- The NRC should be mindful that the regulatory structure associated with this transaction has undergone recent and substantial change, and that the United States Securities and Exchange Commission can no longer be relied upon to review the merits of NewCo's capital structure and of the debt that is projected to be taken on in connection with this proposal. Russell Affidavit ¶¶ 6-8.
- UWUA Locals are concerned that as financial risk is increased by the proposed restructuring, there will be pressure on the operating companies to cut costs, and (especially if there is an extended outage at one or more of the plants) this pressure will result in unhealthy incentives to defer maintenance, cut staff and otherwise undermine the ability of the new entity to meet its technical, financial and, ultimately, safety-related obligations. Russell Affidavit ¶ 21.

We review each of these assertions below and in the Russell Affidavit.

- a) The proposal involves heightened financial risk because Entergy's generation portfolio will no longer be available as a financial backstop

There should be little doubt that the proposed transfer involves an arrangement which, when compared with the *status quo*, presents substantially more financial risk for the licensees, the workforces at each plant, and the consuming public. As explained in UWUA Locals' March 18 Filing (*e.g.*, at 8-9), and reviewed further below, Entergy seeks to move to a far riskier structure as compared with the current arrangement. As of now, the six non-utility nuclear plants are part of an enterprise with a large and diversified generation portfolio (including nuclear, coal, oil, gas, renewables, etc.), and a balance sheet that includes substantial amounts of equity, meaning relative financial security and relatively low leverage. Once the spin-off is implemented, NewCo will be saddled with substantially increased debt obligations for which it will be 100% responsible. NewCo sales and revenues may end up being below forecasted levels if, for example, its market price projections prove to overly optimistic, or if unit capital expenditures and operating costs rise and revenues fall as a result of an extended outage, a catastrophic failure, or any unexpected event.

The heightened risk is demonstrated by financial data submitted by Entergy to the United States Securities and Exchange Commission as part of its 2007 Form 10-K Report. Entergy states in this filing that the asset value of its non-utility nuclear units (*i.e.*, the six plants involved in this proceeding) is roughly \$7.0 billion. By contrast, the overall value of Entergy's resources is stated to be roughly \$33.6 billion.¹¹ If the \$7.0 billion figure is a rough approximation of the value of the NewCo resources, then Entergy plans to cut-off NewCo's access to roughly 80% of

¹¹ Form 10-K Report at 156, *available at* <http://www.sec.gov/Archives/edgar/data/7323/000006598408000052/a10k.htm>.

the resources currently available to support its operations, or to replace plant output if one or more of the nuclear units is taken out of service. Russell Affidavit ¶ 12. This change raises significant concerns.¹²

- b) The proposed “Support Agreement” is inadequate to alleviate concerns about the financial risk posed by the proposal

Entergy touts its “financial Support Agreement with the Applicants,” noting that it will execute this arrangement with “each of the corporate entities licensed to own the facilities, in the total amount of \$700 million, to pay for O&M costs for all six operating facilities.” Opposition at 35. The Company goes on to state that:

Under the Support Agreement, *each* of the licensed entities will have access to up to a total of \$700 million, to the extent not previously utilized, for any single plant outage or for multiple-plant outages, should the circumstances necessitate access to such funds. Thus, the total amount available would fund approximately six-month’s worth of fixed O&M expenses for *all* six Facilities (or, for any one facility, for a period significantly exceeding the 6-month period specified in the SRP).

Id. at 35-36, footnotes omitted. While this sounds significant, in the context of the proposal on the table it does not appear to be adequate. If there is a substantial outage at one (or more) of the units, \$700 million may well be insufficient.¹³ Moreover, in the event of an outage, NewCo or

¹² As explained by Mr. Russell (Affidavit ¶ 17):

Concerns about the possible failure of a spin-off of generating assets to a separate company that will trade in the competitive marketplace and assume enormous financial obligations are not financial fantasy. In April 2001, the Southern Company spun-off its wholly-owned subsidiary, Mirant Corporation, which was created to build unregulated power plants and to sell their output into deregulated and competitive markets. By July 2003, Mirant had filed for bankruptcy protection, after slumping power prices left it unable to refinance a \$4.9 billion debt. Mirant emerged from bankruptcy nearly three years later, in January 2006.

¹³ For example, in 1987, the Nine Mile 1 unit began a 34-month outage, which the unit’s owner, Niagara Mohawk, estimated cost at least \$375 million *in 1990 dollars*. *Niagara Mohawk Power Corp.*, 31 N.Y. P.S.C. 1745, 1765 (1991).

some subset of the plants may well need to be in the market to obtain replacement power. To the extent fixed price contracts associated with these plants do not sufficiently limit NewCo's liability for replacement power costs or obligations, the dollar impact of these undertakings can become substantial. Russell Affidavit ¶ 14. In addition, UWUA Locals are uncertain where the obligation to pay debt service costs associated with the borrowings proposed as part of the license transfer will be included in the payment priority structure. Russell Affidavit ¶ 11. Assuming these obligations are ahead of most other (if not all other) obligations, then an outage may exert financial pressures well in excess of whatever is covered under the Support Agreement. In any event, guaranteed coverage of a certain level of fixed O&M charges hardly constitutes satisfying the entire universe of fixed financial obligations associated with a nuclear plant. The Support Agreement does not demonstrate that under the new structure, the licensees will be able to weather extended outages at any one plant, new capital investment obligations in aging facilities, and whatever debt service obligations are not being met because of the outages. Russell Affidavit ¶ 9.

- c) Much of NewCo's borrowings will flow back to Entergy, or be used in undefined "Hedging Arrangements"

Entergy's NRC application does not provide a clear picture of NewCo's capitalization. In testimony filed with the Vermont Public Service Board, Entergy states that while none of its proposed debt arrangements have yet been placed, the plan is for NewCo to enter into several debt arrangements with independent financial institutions. Entergy Witness Curry testifies:

First, NewCo is expecting to issue up to \$4,500,000,000 in aggregate principal amount of Senior Notes. Some of these Senior Notes will be exchanged with Entergy Corporation for outstanding equity interests as part of the proposed transaction. Entergy Corporation will use the Senior Notes to pay down Entergy Corporation's Credit Facilities, exchange and retire existing Entergy Corporation senior notes and possibly conduct an

exchange offer to repurchase existing Entergy Corporation common stock. NewCo will also enter into a Senior Revolving Credit Facility to establish lines of credit up to \$2,000,000,000, a portion of which will be available for letters of credit; a Term LC Facility to post letters of credit; and Hedging Arrangements to provide credit support for hedging by NewCo, its marketing affiliate and its Units. Hedging Arrangements include but are not limited to a Commodity Collateral Revolver (or “CCR”). The aggregate amount of the Senior Revolving Credit Facility and the Term LC Facility will not exceed \$2,000,000,000. The Senior Revolving Credit Facility, the Term LC Facility and the CCR Facility (to which I refer collectively, as the “Credit Facilities”) may each be secured, *pari passu*, in all respects with respect to the other facilities and will be used for working-capital purposes and to support NewCo’s commodity-collateral requirements. The Senior Notes may also be secured.

Testimony of Wanda C. Curry at page 17 of 44, line 9 through page 18, line 3.

It is clear from other sources that a substantial portions of the funds raised through these borrowings will flow back to Entergy rather than, it appears, to NewCo. In its 2007 Annual Report to shareholders (entitled, “Unlocking Value”), Entergy states:

As part of the spin-off, Entergy Corporation expects to receive \$4 billion, \$1.5 billion of which is targeted to reduce debt. The remaining \$2.5 billion is targeted for a share repurchase program, \$0.5 billion of which has already been authorized by the Entergy Board of Directors, with the balance to be authorized and to commence following completion of the spin-off. Post-spin, Entergy Classic’s dividend payout ratio aspiration ranges from 70 to 75 percent.

An excerpt from this document is Attachment 3 to this pleading, and is addressed by Mr. Russell. Russell Affidavit ¶ 15.

Thus, it appears that the majority of the funds to be raised by NewCo (\$4 billion of the \$6.5 billion, or 61.5 percent), will be going back to Entergy. The remaining \$2.5 billion will apparently be used, *inter alia*, for “Hedging Arrangements,” the scope of which is neither defined nor explained. The extent to which these arrangements will involve additional risk and,

if so, the nature of any such risk, is not stated. Russell Affidavit ¶ 15. Absent an opportunity to probe further, it is not known what risks, if any, are involved in the use of NewCo funds to “hedge” other obligations, or how the assumption of these additional risks bears on the overall “reasonable assurance” required by the Commission.

- d) Entergy itself acknowledges that its proposal to rely increasingly on market revenues creates considerable financial risk

Entergy contends that UWUA Locals have failed to establish a “genuine dispute” with respect to its estimates of market revenues, and have misunderstood the role those revenues play in establishing “reasonable assurance.” The Company is wrong, and the matter should be set for hearing.

Entergy claims that the marked shift in reliance upon market rather than contract revenues over the 5-year period at issue “merely reflects the NewCo business model” and cannot “defeat a finding of reasonable assurance.” Opposition at 41. This statement makes no sense. If Entergy’s business model fails to provide the requisite “assurance,” then the proposed restructuring should not be approved. In any event, Entergy has explained elsewhere that it would prefer not to engage in the contract-to-market revenue shift that apparently forms the basis for the proposed restructuring.

Entergy’s 2007 SEC Form 10-K Report states, under the general heading, “Significant Factors and Known Trends,” the Company’s general concern about the sale of non-utility nuclear plant output through the market rather than via contract, stating:

The sale of electricity from the power generation plants owned by Entergy’s Non-Utility Nuclear business, unless otherwise contracted, is subject to the fluctuation of market power prices. Entergy’s Non-Utility Nuclear business has entered into PPAs and other contracts to sell the power produced by its power plants at prices established in the PPAs. Entergy continues to pursue

opportunities to extend the existing PPAs and to enter into new PPAs with other parties.

SEC Form 10-K Report at 42. In other words, Entergy is concerned about the “fluctuation of market power prices,” and intends to “continue[] to pursue” power purchase agreements. *Id.* The preference for fixed price contracts is hardly startling. However, Entergy’s stated preference for contract payments is hard to reconcile with NewCo’s apparent plan to pursue market revenues, which are of course potentially more volatile.¹⁴ The difference in preference and perspective highlights the need for a further examination of the bases for Entergy’s market revenue projections. As Mr. Russell explains:

Moving in the direction of more substantial reliance on the deregulated marketplace clearly entails substantially more financial risk, and offers (in this case) the added concern of NewCo facing those risks while having much reduced financial reserves. At a minimum, this structure heightens the need for Entergy to supply backup and supporting data that have not been provided.

Russell Affidavit ¶ 16.¹⁵

In response to concerns about its forecasts, Entergy makes much of its having provided all required information, suggesting that the NRC Staff can assess the projections based on what has been produced. (Opposition at 39). However, this claim is hard to understand when Entergy has provided no backup or other supporting data for its projections. Moreover, the suggestion in its SEC 2007 Form 10-K Report that substantially lower contract revenues are preferable to the risk of payments through the markets suggests that the “uncertainties” are ““significantly greater

¹⁴ Opposition at 41 (confirming the observation that NewCo’s “business model” includes shifting the source of nuclear plant revenues “from contracts to the markets over the 5-year forecast period”). The specifics of Entergy’s average market price forecasts, which are addressed in the March 18 Filing, have been designated as “confidential” by Entergy and are not being repeated here.

¹⁵ In its SEC 2007 Form 10-K Report, Entergy states (at 42) that its average contract price per MWh as of 2012 will be \$51 (\$55 in 2011). Entergy’s forecasts in this proceeding of average per MWh market prices are reviewed by UWUA Locals in the March 18 Filing (at 13).

than those that usually cloud business outlooks.” Opposition at 39, quoting *N. Atl. Energy Serv. Corp.*, 49 N.R.C. at 222. As for the data requirements set forth in the Commission’s regulations, the NRC has previously made clear that compliance with the obligation to provide five years’ worth of data may be necessary, but is not *per se* sufficient to meet its requirements. As explained in *North Atlantic Energy Service Corporation*, five year projections may not “prove adequate in any and all cases.” 49 N.R.C. at 220:

Although satisfaction of those requirements is *necessary* to the grant of a license transfer application, such satisfaction cannot be deemed always *sufficient* to satisfy the Applicant’s burden of proof, else the NRC be irrevocably bound by Applicants’ own estimates and left without authority to look behind them.

Id. at 220-221. See 10 C.F.R. § 50.33(f)(4). In this case, UWUA Locals urge the Commission to require Entergy to provide the data needed to “look behind” the projections that have been provided.

Entergy contends that the market price forecasts offered in support of the proposal are “largely irrelevant” in that they “do not have any material impact on Entergy Pilgrim’s financial qualifications” because Pilgrim’s power purchase contracts apparently insulate it from market fluctuations. Opposition at 40. This is cold comfort. If, perhaps because of an event at one of the other five nuclear plants, NewCo is unable to raise sufficient funds to cover its obligations, then Pilgrim is a guarantor of the related debt service (or, perhaps, hedging arrangement) costs. Entergy has not proposed, nor do we understand it to be the case, that Pilgrim’s contracts permit the plant to opt-out from the financial impact of the linked guarantees inherent in the proposed restructuring arrangements. While Entergy claims that UWUA Locals have failed to “present ... information to suggest otherwise,” Opposition at 41, it seems clear that the very structure of the Entergy proposal calls into question Pilgrim’s financial qualifications.

e) Entergy's proposed debt-to-total enterprise figures do not add up

Entergy cites testimony provided in the Vermont Public Service Board proceeding stating that NewCo will have a comparatively more conservative capital structure, with an "expected debt-to-total-enterprise value of 30 to 45%." Opposition at 44, quoting Curry Testimony at 22-23. If that is the case, and given that Entergy proposes anywhere from \$4.5 billion to \$6.5 billion in debt offerings in connection with NewCo, then it appears that the enterprise value is planned to be in excess of \$10 billion. Mr. Russell explains that these data are "hard to understand" given that the nuclear assets are stated (in Entergy's Form 10-K Report) to have a value of roughly \$7 billion on Entergy's books. Russell Affidavit ¶ 18. He goes on to explain that the \$6.5 billion in debt in a company now valued at \$7 billion will represent a debt-to-enterprise value much higher than 30% to 45%. *Id.* Nonetheless, under this scenario, Entergy apparently expects that equity in NewCo that will be distributed to Entergy's shareholders will carry a market valuation on the order of at least \$6 billion. Mr. Russell observes (*id.*):

In order to sustain Entergy's assertion, the market must agree with ... [Ms.] Curry's [valuation].... While this valuation is critical to Entergy's representation that NewCo will be conservatively capitalized, Entergy has provided no assurance that the market will give NewCo shares such a high valuation.

However, assuming Entergy decides to keep investing and supports the high price of NewCo stock, Mr. Russell notes that the overall leverage of Entergy and NewCo viewed together can be expected to increase as a result of incremental upstream borrowings undertaken by Entergy in order to make equity investments in NewCo. Russell Affidavit ¶ 19. He observes that Entergy will not be inclined to issue new equity to invest in NewCo equity because doing so would lessen Entergy's "double" leverage. *Id.* Mr. Russell concludes:

Lenders to NewCo (and to Entergy) can be expected to take this “double” leverage into account when pricing debt to NewCo. In other words, no matter what Entergy does, the market will eventually assign its own objective enterprise value to the NewCo. Ms. Curry’s assertions about NewCo’s enterprise value will not be tested until the newly issued NewCo stock starts trading in the secondary market.

Id.

If Entergy does not elect to increase its equity investments in NewCo so as to avoid diluting its control over the future, new equity will have to come from new investors who may not be as sanguine as Entergy about the risks of investing in NewCo, and who may demand high yields on their equity investments in order to reflect the higher risk. Russell Affidavit ¶ 20. High equity yields mean low prices and dilution of the original equity holders. If this were to occur, Mr. Russell notes that this plausible scenario undermines Ms. Curry’s assertions about NewCo having a conservative capital structure. *Id.*

- f) In evaluating Entergy’s proposal, the Commission should take into account major changes in the regulatory landscape

Mr. Russell observes that in conducting its analysis of the “reasonable assurance” issue, the Commission should be mindful that the regulatory context within which the instant proposal is presented has undergone recent and substantial change. Russell Affidavit ¶ 6. He goes on to explain that Entergy is a conservatively-capitalized corporate entity whose status as a registered holding company system under the now-repealed Public Utility Holding Company Act of 1935 (“PUHCA”) meant that for decades its securities, capital structure and bond indentures were reviewed by the United States Securities and Exchange Commission. *Id.* ¶ 7.¹⁶ Mr. Russell notes:

¹⁶ In reviewing his qualifications, Mr. Russell notes in his affidavit that from 1972-1976, he served as

In registered PUHCA systems, certain limitations were generally imposed on debt issuances, common equity ratios and the payments of dividends, and upstream and downstream transactions within the holding company were closely scrutinized. The value and importance of adhering to those conservative financial traditions has been demonstrated time and again by the collapse of entities who abandoned these practices, including energy traders and highly leveraged funds secured by mortgages, bonds and other volatile cash flows that figure in today's headlines. The importance of these conservative traditions notwithstanding, Entergy has provided virtually nothing in the way of corporate charters, bond indentures, loan agreements or fundamental data upon which the Commission can test whether NewCo will adhere to this needed tradition of financial conservatism.

Id. ¶ 8. Mr. Russell goes on to point out that under the post-PUHCA structure, the SEC will no longer be regulating the financial offerings of NewCo (or other holding company entities). In this context, and as Mr. Russell explains, the Commission should not

accept at face value predictions as to the financial stability of that the proposed restructuring. It will involve at least \$6.5 billion in debt offerings in an enterprise now valued at \$7 billion on Entergy's books, and guarantees for those obligations that will be assumed by six nuclear plants, some of which are older and undoubtedly facing the need for substantial upcoming capital expenditures for refurbishment and life extension.

Id. ¶ 9. In a footnote to this passage, Mr. Russell states that the commercial operation dates for the six plants at issue in this proceeding are: (1) Fitzpatrick (1975); (2) Indian Point 2 (1974); (3) Indian Point 3 (1976); (4) Palisades (1971); (5) Pilgrim (1972); and (6) Vermont Yankee (1972). *Id.* at n.1.

Engineer and eventually Chief Engineer for the United States Securities and Exchange Commission's Division of Corporate Regulation. That Division, in administering the Public Utility Holding Company Act of 1935, regulated registered public utility holding company systems representing approximately 20% of the gas and electric industries in the United States. Entergy and its predecessor company, Middle South Utilities, was one of those registered public utility holding company systems.

Russell Affidavit ¶ 2.

- g) UWUA Locals have understandably expressed concern that mounting financial pressures may result in negative impacts on employees and the public

Based on the concerns expressed here (and in the earlier filings), UWUA Locals asserted that it was plainly foreseeable that under an arrangement of this nature, there could be mounting pressure on the licensees to cut costs, and (especially if there is a lengthy outage at one or more of the plants) this will result in unhealthy pressures to defer maintenance, cut staff and otherwise call into question the ability of the new entity to meet its technical, financial and, ultimately, safety-related obligations. Entergy dismisses these concerns as “conjectural and pessimistic prognostications,” and claiming that UWUA Locals have ignored the evidence demonstrating “financial qualifications.” Opposition at 43.

For all of the reasons stated here, in prior pleadings, and in Mr. Russell’s Affidavit, we do not believe that any such evidence has been presented. Given the financial pressures that these plants will be under, there is every reason for concern that may not be sufficient financial resources to cover outstanding obligations. To the extent this turns out to be the case, there is a legitimate basis for concern that there will be layoffs, deferred maintenance, poor performance, and heightened safety risk. We would add that, as Entergy notes, there is a significant change in the level of Accrued Pension liability. While Entergy states that this statistic is irrelevant (Opposition at 41), UWUA Locals assert that its relevance depends upon what the change is intended to convey. If the increase is, for example, the result of employee terminations, that could be directly relevant to ongoing plant operational performance and safety. As the basis for the change is, at the moment, unknown, Entergy should not be able to dismiss this concern as irrelevant.

Entergy makes much (Opposition at 42) of UWUA Locals' having framed these concerns as possibilities. Given the lack of data provided by Entergy, it is hard to imagine how much more of a showing UWUA Locals could have made on these issues.

- h) There should be no question that a "genuine dispute" exists with respect to the financial qualifications of the licensees under the proposed restructuring

Entergy spends thirteen pages of its pleading (Opposition at 32-44) attempting to explain that there is no "genuine dispute" with respect to the issue of the licensees' financial qualifications under the proposed restructuring. In fact, given the showing here and in the earlier pleadings, UWUA Locals urge the Commission to find that such a dispute exists, and to set it for hearing. *See N. Atl. Energy Serv. Corp., supra*, 49 N.R.C. at 219, in which the Commission notes with respect to a dispute about financial qualifications that the intervenor's "pleadings[] and the Applicants' own vigorous responses[] demonstrate that a genuine dispute exists regarding this issue." The same observation could certainly be made here.

CONCLUSION

WHEREFORE, for the foregoing reasons, and those stated in the February 5 and March 18 filings, UWUA Locals continue to respectfully request that the Commission: (a) grant Locals 369 and 590 leave to intervene in each of the captioned proceedings; (b) initiate hearing procedures with respect to the contentions as addressed herein; and (c) take any other actions consistent with the requests contained herein.

Respectfully submitted,

/s/ Scott H. Strauss

Scott H. Strauss
Rebecca J. Baldwin

Attorneys for
Locals 369 and 590, Utility Workers,
Union of America, AFL-CIO

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April 15, 2008

ATTACHMENT 1

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

| | | |
|---|---|--|
| In the Matter of |) | |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Palisades Nuclear Plant) |) | Docket Nos. 50-255-LT and 72-7-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. Fitzpatrick Nuclear Power Plant) |) | Docket Nos. 50-333-LT and 72-12-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR GENERATION COMPANY (Pilgrim Nuclear Power Station) |) | Docket No. 50-293-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR VERMONT YANKEE, LLC (Vermont Yankee Nuclear Power Station) |) | Docket No. 50-271-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY NUCLEAR INDIAN POINT 2, LLC; and ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3) |) | Docket Nos. 50-003-LT, 50-247-LT, and 50-286-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Big Rock Point) |) | Docket Nos. 50-155-LT and 72-43-LT |
| |) | |
| |) | April 14, 2008 |

AFFIDAVIT

Commonwealth of Massachusetts

Fred DiCristofaro, being first duly sworn, deposes and says:

That he has been employed as a worker in various functions (including Test Engineer, Shift Technical Advisor, Control Room Supervisor, Senior Operations Specialist and Work Week Manager) at Pilgrim Nuclear Power Station ("Pilgrim") since June 1988 and intends to

continue to work at that location indefinitely. Mr. DiCristofaro spends an average of 40 hours per week at Pilgrim. In addition, his residence, at 10 Kings Landing Way in Hanson, is within 20 miles of Pilgrim, and his ordinary activities take him within a 5-mile radius of Pilgrim approximately 20 hours per week, in addition to the time he spends working at Pilgrim and time spent at his residence. Mr. DiCristofaro is a member of Local 369 of the Utility Workers Union of America, AFL-CIO ("UWUA"), and authorizes UWUA Locals 369 and 590 to represent his interests in this proceeding.


Fred DiCristofaro

Subscribed and sworn to before me this 14th day of April, 2008, by Fred DiCristofaro.

Notary Public



My Commission expires: 8-6-2010



**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

| | | |
|---|---|--|
| In the Matter of |) | |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Palisades Nuclear Plant) |) | Docket Nos. 50-255-LT and 72-7-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. Fitzpatrick Nuclear Power Plant) |) | Docket Nos. 50-333-LT and 72-12-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR GENERATION COMPANY (Pilgrim Nuclear Power Station) |) | Docket No. 50-293-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR VERMONT YANKEE, LLC (Vermont Yankee Nuclear Power Station) |) | Docket No. 50-271-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY NUCLEAR INDIAN POINT 2, LLC; and ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3) |) | Docket Nos. 50-003-LT, 50-247-LT, and 50-286-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Big Rock Point) |) | Docket Nos. 50-155-LT and 72-43-LT |
| |) | |
| |) | April 13, 2008 |

AFFIDAVIT

Commonwealth of Massachusetts

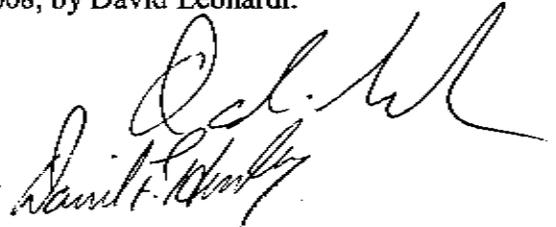
David Leonardi, being first duly sworn, deposes and says:

That he has been employed as a Senior Operation Training Instructor at Pilgrim Nuclear Power Station ("Pilgrim") since 2004, and has worked at Pilgrim since 1987 and intends to continue to work at that location indefinitely. Mr. Leonardi has spent thousands of hours

working at Pilgrim, and currently spends 3 to 4 hours a week at the Pilgrim site. In addition, his residence, at 1 Pine Tree Circle, Sandwich, Massachusetts 02563, is approximately 20 miles from Pilgrim, and his ordinary activities take him within a 4-mile radius of Pilgrim approximately 35 hours per week, in addition to the time he spends working at Pilgrim and time spent at his residence. Mr. Leonardi is a member of Local 369 of the Utility Workers Union of America, AFL-CIO ("UWUA"), and authorizes UWUA Locals 369 and 590 to represent his interests in this proceeding.

Subscribed and sworn to before me this 13 day of April, 2008, by David Leonardi.

Notary Public



My Commission expires: 8-6-2010



**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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

AFFIDAVIT

Commonwealth of Massachusetts

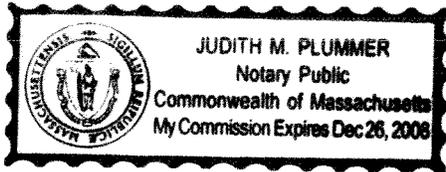
Murray E. Williams, being first duly sworn, deposes and says:

That he has been employed as an engineer at Pilgrim Nuclear Power Station ("Pilgrim") since 1983 and intends to continue to work at that location indefinitely. Mr. Williams spends an average of 42 hours per week at Pilgrim. In addition, his residence, at 3 Trade Wind Lane,

Plymouth, MA 02360, is within 10 miles of Pilgrim, and his ordinary activities take him within a 5 mile radius of Pilgrim approximately 10 hours per week, in addition to the time he spends working at Pilgrim and time spent at his residence. Mr. Williams is a member of Local 590 of the Utility Workers Union of America, AFL-CIO ("UWUA"), and authorizes UWUA Locals 369 and 590 to represent his interests in this proceeding.

Murray E Williams
Murray E. Williams

Subscribed and sworn to before me this 15 day of April, 2008, by Murray E. Williams.



Notary Public *Judith M. Plummer*

My Commission expires: *December 26, 2008*



ATTACHMENT 2

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

| | | |
|---|---|--|
| In the Matter of |) | |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Palisades Nuclear Plant) |) | Docket Nos. 50-255-LT and 72-7-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. Fitzpatrick Nuclear Power Plant) |) | Docket Nos. 50-333-LT and 72-12-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR GENERATION COMPANY (Pilgrim Nuclear Power Station) |) | Docket No. 50-293-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR VERMONT YANKEE, LLC (Vermont Yankee Nuclear Power Station) |) | Docket No. 50-271-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY NUCLEAR INDIAN POINT 2, LLC; and ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3) |) | Docket Nos. 50-003-LT, 50-247-LT, and 50-286-LT |
| |) | |
| ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Big Rock Point) |) | Docket Nos. 50-155-LT and 72-43-LT |
| |) | |
| |) | April 15, 2008 |

**AFFIDAVIT OF WHITFIELD A. RUSSELL IN SUPPORT OF REPLY OF LOCALS 369
AND 590, UTILITY WORKERS UNION OF AMERICA, AFL-CIO TO ANSWER OF
ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING PETITIONS FOR LEAVE TO
INTERVENE, REQUEST FOR HEARING, AND RELATED REQUESTS FOR RELIEF**

1. My name is Whitfield A. Russell. I am a public utility consultant and principal in Whitfield Russell Associates. I hold a Bachelor of Science degree in Electrical Engineering from the University of Maine at Orono, a Master of Science degree in

Electrical Engineering from the University of Maryland, and a Juris Doctor degree from Georgetown University Law Center. I have been accepted as an expert on bulk power systems in more than 150 proceedings before State and Federal courts, administrative agencies and other tribunals in approximately 30 States and in two Canadian provinces. My complete resume and a description of cases on which I have worked are attached as an Exhibit to this Affidavit.

2. I founded Whitfield Russell Associates in 1976. From 1972 to 1976, I served as Engineer and eventually Chief Engineer for the United States Securities and Exchange Commission's Division of Corporate Regulation. That Division, in administering the Public Utility Holding Company Act of 1935, regulated registered public utility holding company systems representing approximately 20% of the gas and electric industries in the United States. Entergy and its predecessor company, Middle South Utilities, was one of those registered public utility holding company systems.
3. I have prepared this Affidavit on behalf of Locals 369 and 590, Utility Workers Union of America, AFL-CIO ("UWUA Locals") and in support of their April 15, 2008, "Reply" in the captioned proceedings.
4. As part of my preparation of this Affidavit, I have reviewed unredacted versions of the substantive filings made in the captioned proceedings by the Applicants with the U.S. Nuclear Regulatory Commission. In addition, I reviewed Entergy's January 28, 2008, filing with the Vermont Public Service Board.

5. At the outset, I would make two points. First, the lack of supporting data for the financial projections submitted by Entergy to the Commission is perhaps the most striking feature of its submissions in this proceeding. Entergy's submittals represent an unusually sparse amount of support for such a large transaction. In my experience, such a substantial transaction would ordinarily involve considerable internal Entergy review and interaction with outside advisors (including accounting, legal and investment bankers). While I have every reason to believe that such interactions have occurred, no data concerning them have been provided.
6. Second, in reviewing Entergy's proposal the NRC should bear in mind that the regulatory structure associated with this transaction has undergone recent and substantial change. Due to statutory changes, the United States Securities and Exchange Commission ("SEC") can no longer be relied upon to review the merits of "NewCo's" capital structure and of the debt that is projected to be taken on in connection with this proposal.
7. Entergy is a conservatively-capitalized corporate entity whose status as a registered holding company system under the now-repealed Public Utility Holding Company Act of 1935 ("PUHCA") meant that for decades its securities, capital structure and bond indentures were reviewed by the SEC.
8. In registered PUHCA systems, certain limitations were generally imposed on debt issuances, common equity ratios and the payments of dividends, and upstream and downstream transactions within the holding company were closely scrutinized. The value and importance of adhering to those conservative financial traditions has been demonstrated time and again by the collapse of entities who abandoned these practices,

including energy traders and highly leveraged funds secured by mortgages, bonds and other volatile cash flows that figure in today's headlines. The importance of these conservative traditions notwithstanding, Entergy has provided virtually nothing in the way of corporate charters, bond indentures, loan agreements or fundamental data upon which the Commission can test whether NewCo will adhere to this needed tradition of financial conservatism.

9. For these reasons, and as explained further below, I urge the Commission not to accept at face value predictions as to the financial stability of the proposed restructuring. It will involve at least \$6.5 billion in debt offerings in an enterprise now valued at \$7 billion on Entergy's books, and guarantees for those obligations that will be assumed by six nuclear plants, some of which are older and undoubtedly facing the need for substantial upcoming capital expenditures for refurbishment and life extension.¹
10. In order to answer the question of whether the proposed restructuring meets the "reasonable assurance of obtaining adequate funds" standard in the NRC regulations, it is necessary to engage in a forward-looking analysis. This analysis should include a review of the Applicants' business or market strategies upon which the proposal is premised, as they bear directly on the ultimate financial success of the proposal, which relates directly to the NRC standards. In other words, the Applicants' strategies, and their likelihood of success, are at the core of the matters before the Commission.

¹ I note that the commercial operation dates for the six plants at issue in this proceeding are: (1) Fitzpatrick (1975); (2) Indian Point 2 (1974); (3) Indian Point 3 (1976); (4) Palisades (1971); (5) Pilgrim (1972); and (6) Vermont Yankee (1972).

11. If approved, the restructuring will mean a shift from the conservative capital structure provided by Entergy, to a far riskier arrangement in which the six operating plants become guarantors of billions of dollars in new debt, and where there has been no showing that the payment of operating costs will have priority over debt service obligations. Entergy intends through the proposal to eliminate its liability for the six nuclear plants. This means that a far smaller pool of assets -- the six non-utility nuclear plants involved in the license transfer and related restructuring -- will be responsible for guaranteeing the new and significant debt obligations associated with NewCo.
12. Assuming that the \$7.0 billion figure contained in Entergy's SEC Form 10-K Report is a rough approximation of the value of the NewCo resources (and that the overall value of Entergy's resources is roughly \$33.6 billion, as stated in the same Report), then approval of the proposed restructuring means that NewCo will not have access to roughly 80% of the resources currently available to support plant operations, or to replace plant output if one or more of the nuclear units is out of service.
13. The proposed new structure will leave the six plants with significant financial vulnerability in the event of an extended outage, incident or other event at any of them. Entergy's proposed Support Agreement promises guaranteed coverage of a certain level of fixed O&M charges. This does not constitute satisfaction of the entire universe of financial risks associated with a nuclear plant. The Support Agreement, by itself, does not show that the licensees will be able to weather extended outages at any one plant, or support normal needs for capital improvements and betterments, new capital investment obligations normally associated with refurbishing and extending the useful lives of aging

facilities, and any debt service obligations that cannot be met from plant revenues in the event of extended outages, whether for refurbishments or extended forced outages.

14. For example, in the event of an outage, NewCo or some subset of the plants may well need to be in the market to obtain replacement power. To the extent fixed price contracts associated with these plants do not sufficiently limit NewCo's liability for replacement power costs or obligations, the dollar impact of these undertakings can become substantial.

15. The information filed with the Commission does not provide a clear picture of NewCo's capitalization. While the data provided here and elsewhere seem to indicate borrowings of up to \$4.5 billion in "Senior Notes" and an additional \$2 billion for a "Senior Revolving Credit Facility," a large portion of these funds will apparently be flowing back to Entergy, which has elsewhere explained that it expects through the spin-off to receive \$4 billion as compensation, including \$1.5 billion that it expects to employ in reducing its debt and in carrying out a \$2.5 billion share repurchase program. Moreover, some portion of the \$2 billion left with NewCo will be used for undefined "Hedging Arrangements." The extent to which these arrangements will involve additional risk and, if so, the nature of any such risk, is not stated. Once Entergy has received a substantial portion of the proceeds generated by the transaction in order to meet other corporate objectives, NewCo's financial standing will be uncertain. It is clear, however, that each of the plant licensees will be guarantors of whatever arrangements NewCo chooses to undertake.

16. Over the next few years, the proposed new arrangement involves movement away from fixed price contracts and toward reliance upon the competitive marketplace. At the same time, in its SEC Form 10-K Report for 2007 Entergy states a preference for contract rather than market payments in connection with the same six nuclear plants at issue here. It is hard to reconcile the SEC Form 10-K statement with NewCo's apparent plan to pursue market revenues, which are potentially more volatile. Moving in the direction of more substantial reliance on the deregulated marketplace clearly entails substantially more financial risk, and offers (in this case) the added concern of NewCo facing those risks while having much reduced financial reserves. At a minimum, this structure heightens the need for Entergy to supply backup and supporting data that have not been provided.
17. Concerns about the possible failure of a spin-off of generating assets to a separate company that will trade in the competitive marketplace and assume enormous financial obligations are not financial fantasy. In April 2001, the Southern Company spun-off its wholly-owned subsidiary, Mirant Corporation, which was created to build unregulated power plants and to sell their output into deregulated and competitive markets. By July 2003, Mirant had filed for bankruptcy protection, after slumping power prices left it unable to refinance a \$4.9 billion debt. Mirant emerged from bankruptcy nearly three years later, in January 2006.
18. Entergy asserts that it plans for NewCo to have a debt-to-enterprise value of 30 to 45%. If that is the case, and given that Entergy proposes anywhere from \$4.5 billion to \$6.5 billion in debt offerings in connection with NewCo, then it appears that the enterprise

value is planned to be in excess of \$10 billion. This is hard to understand given that the nuclear assets are stated (in Entergy's SEC Form 10-K Report) to have a value of roughly \$7 billion on Entergy's books. The issuance of \$6.5 billion in debt in a company now valued at \$7 billion represents a debt-to-enterprise value that is much higher than 30% to 45%. Under this scenario, Entergy apparently expects that the equity in NewCo that will be distributed to Entergy's shareholders will carry a market valuation on the order of at least \$6 billion. In order to sustain Entergy's assertion, the market must agree with the valuation asserted by Wanda Curry in her pre-filed testimony filed with Entergy's application to the Vermont Public Service Board with respect to this proposal. While this valuation is critical to Entergy's representation that NewCo will be conservatively capitalized, Entergy has provided no assurance that the market will give NewCo shares such a high valuation.

19. Other scenarios are at least equally plausible (especially in the absence of additional data from Entergy). Assuming Entergy decides to keep investing in, and supports the high price, of NewCo stock, overall leverage of Entergy and NewCo viewed together can be expected to increase as a result of incremental upstream borrowings undertaken by Entergy in order to make equity investments in NewCo. (My expectation is that Entergy will be disinclined to issue new equity to invest in NewCo equity, because doing so would lessen Entergy's "double" leverage.) Lenders to NewCo (and to Entergy) can be expected to take this "double" leverage into account when pricing debt to NewCo. In other words, no matter what Entergy does, the market will eventually assign its own objective enterprise value to the NewCo. Ms. Curry's assertions about NewCo's

enterprise value will not be tested until the newly issued NewCo stock starts trading in the secondary market.

20. Alternatively, if Entergy does not elect to increase its equity investments in NewCo so as to avoid diluting its control over the future, new equity will have to come from new investors who may not be as sanguine as Entergy about the risks of investing in NewCo, and who may demand high yields on their equity investments in order to reflect the higher risk. High equity yields mean low prices and dilution of the original equity holders. The potential for the occurrence of this plausible scenario undermines Ms. Curry's assertions about NewCo having a conservative capital structure.
21. As financial risk is increased following completion of the proposed restructuring, there will be pressure on the operating companies to cut costs. This pressure will -- especially if there is an extended outage at one or more of the plants -- result in unhealthy incentives to defer maintenance, cut staff and otherwise undermine the ability of the new entity to meet its technical, financial and, ultimately, safety-related obligations.
22. This completes my Affidavit.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

| | |
|---|--------------------------|
| _____) | |
| In the Matter of) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | |
| and ENTERGY NUCLEAR PALISADES, LLC) | Docket Nos. 50-255-LT |
| (Palisades Nuclear Plant)) | and 72-7-LT |
| ENTERGY NUCLEAR OPERATIONS, INC.) | |
| and ENTERGY NUCLEAR FITZPATRICK, LLC) | Docket Nos. 50-333-LT |
| (James A. Fitzpatrick Nuclear Power Plant)) | and 72-12-LT |
| ENTERGY NUCLEAR OPERATIONS, INC.) | |
| and ENTERGY NUCLEAR GENERATION COMPANY) | Docket No. 50-293-LT |
| (Pilgrim Nuclear Power Station)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | |
| and ENTERGY NUCLEAR VERMONT YANKEE, LLC) | Docket No. 50-271-LT |
| (Vermont Yankee Nuclear Power Station)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.;) | |
| ENTERGY NUCLEAR INDIAN POINT 2, LLC; and) | Docket Nos. 50-003-LT, |
| ENTERGY NUCLEAR INDIAN POINT 3, LLC) | 50-247-LT, and 50-286-LT |
| (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | |
| and ENTERGY NUCLEAR PALISADES, LLC) | Docket Nos. 50-155-LT |
| (Big Rock Point)) | and 72-43-LT |
| _____) | March 18, 2008 |

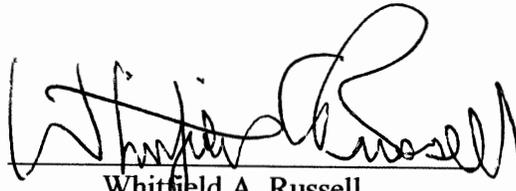
AFFIDAVIT

of

WHITFIELD A. RUSSELL

I, Whitfield A. Russell, certify that the attached Affidavit on behalf of the Locals 369 and 590, Utility Workers Union of America, AFL-CIO, which bears my name, was prepared by me or under

my direct supervision and is true and accurate to the best of my knowledge and belief formed after a reasonable inquiry.


Whitfield A. Russell

Subscribed and sworn to before me this 15th day of April, 2008, by Whitfield A. Russell.

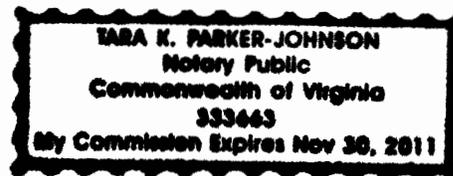
City of Alexandria

Commonwealth of Virginia

Notary Public: Tara K. Parker-Johnson

Notary registration Number: 333663

My Commission Expires: November 30, 2011



**WHITFIELD RUSSELL ASSOCIATES
PUBLIC UTILITY CONSULTANTS
4232 KING STREET
ALEXANDRIA, VA 22302
PHONE: (703) 894-2200
FAX: (703) 894-2207**

**WHITFIELD A. RUSSELL
STEPHEN P. FLANAGAN
ANTOINE A. GAMARRA**

**ACCOUNTING
COMPUTER MODELING
ECONOMICS
ENGINEERING
FINANCE**

**STATEMENT
OF
QUALIFICATIONS**

WHITFIELD RUSSELL ASSOCIATES

Whitfield Russell Associates is a public utility consulting firm providing analyses in all areas of electric utility regulation. The members of the firm have training and experience in engineering, finance, accounting, economics, law, and computer science. The firm provides expertise in electric utility system planning and operations, computer modeling, project evaluation, economic studies, contract negotiations, energy and demand forecasts, and rate determinations and design.

Whitfield Russell Associates was formed in 1976. Currently, the firm has seven staff members and is located at 4232 King Street Alexandria, VA 22302. The firm's e-mail address is "wrussell@wrassoc.com", and the telephone number is (703) 894-2200.

Whitfield Russell Associates' professionals have appeared as regulatory and litigation expert witnesses in electric utility planning, operations, and rates before state and federal courts and agencies in more than 30 states, the District of Columbia, and three Canadian Provinces.

Clients of the firm include large energy users, load aggregators, State agencies and commissions, federal agencies, independent power producers and electric utilities owned by investors, municipalities, cooperatives, States and State subdivisions, Canadian provinces and agencies and other subdivisions of the United States government.

The industrial enterprises for which Whitfield Russell Associates has worked include The Dow Chemical Company, its partially-owned subsidiary, Destec Energy, Exxon, Newmont Gold Company, Barrick Goldstrike Mines, MidAtlantic Cogen Inc., the Westlake Group, Cyprus Minerals, FMC Corporation, Big Three Industries, Occidental Petroleum, Coastal Power Production, Ethyl Corporation, Zeigler Coal, Triton Coal (Shell Oil), O'Brien Energy, AES, Foster Wheeler, Wheelabrator-Frye, Phibro (oil refinery) and British Petroleum. Other clients include the Cities of Chicago, Indianapolis, Gillette (WY), Madison (NJ), North California Power Agency, Massachusetts Municipal Wholesale Electric Company, North Carolina Eastern

Municipal Power Agency, the Northern California Power Agency, the States of Colorado, South Dakota, Minnesota, South Carolina, Pennsylvania, and Hawaii, and the District of Columbia.

Additionally, Whitfield Russell Associates is nationally recognized as a leader in electric utility regulatory issues, electric utility competition, transmission access, and the unbundling of traditional electric utility services. Mr. Russell has lectured on such issues many times including at the Regulatory Studies Program sponsored by the National Association of Regulatory Utility Commissioners at Michigan State University, at the Wisconsin Public Service Commission, at various seminars of the American Public Power Association and of California's TURN and at the Annual Conference of the Electricity Consumers Resource Council. Whitfield Russell Associates has participated in the development of a national transmission access proposal submitted to the Federal Energy Regulatory Commission on behalf of the Transmission Access Policy Study Group (TAPS), and has had partners testify before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce and before the Pennsylvania House Committee on Conservation regarding electric transmission issues.

WHITFIELD A. RUSSELL

Whitfield A. Russell is an electrical engineer, attorney and President of Whitfield A. Russell and Associates, P.C., a corporate Partner of Whitfield Russell Associates. He holds a Bachelor of Science degree in Electrical Engineering from the University of Maine at Orono, a Master of Science in Electrical Engineering from the University of Maryland, and a Juris Doctor degree from Georgetown University Law Center.

Mr. Russell is experienced in electric utility system planning (transmission and generation), ratemaking and bulk power contracts. Mr. Russell has been qualified as an expert witness in 27 states (as well as in the Provinces of Alberta and Manitoba and the District of Columbia) and has been accepted as an expert in approximately 150 proceedings before state and federal Courts, arbitration panels, public service commissions, the Federal Energy Regulatory Commission and other administrative agencies. Mr. Russell's clients have included public power utilities, state and federal power marketing agencies, investor owned utilities, independent power producers, and State regulatory bodies and their staffs. Mr. Russell has written and spoken extensively on matters relating to regulated electric utilities.

Mr. Russell founded Whitfield Russell Associates in 1976. From 1972 to 1976, Mr. Russell served as Engineer and subsequently as Chief Engineer, at the Division of Corporate Regulation of the Securities and Exchange Commission. The Division administered the Public Utility Holding Company Act of 1935.

From 1971 to 1972, Mr. Russell was on the staff of the Federal Power Commission. He served as a consultant to staff attorneys in proceedings, and as an expert witness in an administrative proceeding before the Atomic Energy Commission.

From 1969 to 1971, Mr. Russell served as an Associate Engineer in the System Planning Division of the Potomac Electric Power Company. At PEPCO, he conducted system studies of load flows and stability. He was also a member of numerous study groups concerned with planning and operation of the Pennsylvania-New Jersey-Maryland Interconnection.

OTHER

Mr. Russell testified before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce. His testimony favored a transmission bill which was subsequently enacted as Title VII of the Energy Policy Act of 1992.

Mr. Russell was chosen to be an arbitrator in a dispute between Big Rivers Electric Cooperative and the Municipal Energy Agency of Mississippi.

Lectures given at the Regulatory Studies Program sponsored by the National Association of Regulatory Utility Commissioners at Michigan State University. Topics include revenue requirements, system planning and power pooling.

Lecture given at the Wisconsin Public Service Commission Seminar on "Regulating Diversified Electric Utilities: Accounting and Financial Issues."

Lecture given at the Annual Conference of the Electricity Consumers Resource Council on the Pacific Northwest-Pacific Southwest Intertie.

Participated in the development of a national transmission access proposal submitted to the Federal Energy Regulatory Commission on behalf of the Transmission Access Policy Study Group.

For a number of years, Mr. Russell controlled two companies owning small hydro plants in Maine that are PURPA qualifying facilities.

**Proceedings In Which
Whitfield A. Russell
Has Testified**

1. Anaheim v. Kleppe, U.S. District Court, Arizona (Civil No. 74-542 PHX-WEC), concerning the availability of transmission capacity in the Pacific Southwest.
2. In re: Potomac Electric Power Company, before the Maryland Public Service Commission, Case No. 7004, concerning the need for proposed 500 kV transmission lines in the Washington, D.C. area.
3. In re: Baltimore Gas and Electric Company, and Potomac Electric Power Company, before the Maryland Public Service Commission, Case No. 6984, involving the same transmission lines mentioned in the preceding case.
4. Perry v. The City of Monroe, Louisiana (State of Louisiana, Parish of Ouachita, Fourth District Court; Nos. 111145, 111146, 111147 filed August 16, 1977) regarding the necessity of Monroe's disposing of its municipal utility system.
5. In re: Potomac Electric Power Company, before the District of Columbia Public Service Commission, in Case No. 685, concerning the system planning of the Potomac Electric Power Company and the PJM Pool.
6. In re: Generic Hearings on Rate Structure, before the Colorado Public Utilities Commission, Case No. 5693, regarding the engineering aspects of marginal cost pricing and power pooling in Colorado.
7. In re: Pacific Gas and Electric Company, FERC Docket No. ER76-532, regarding the proper level of rates to be charged by PG&E to the Central Valley Project for transmission service.
8. In re: Pacific Power and Light Company, FERC Docket No. E-7796, regarding the Seven Party Agreement and related matters.
9. In re: Pacific Gas and Electric Company, FERC Docket No. E-7777 (II), concerning the provisions of numerous bulk power arrangements governing electric utilities in California.
10. In re: Potomac Edison Company, before the Maryland Public Service Commission, Case No. 7055, concerning the need for a 230 kV transmission line in Montgomery County, Maryland.
11. In re: Delmarva Power and Light Company, before the Maryland Public Service Commission, Case Nos. 7239F, 7239G, 7239H, 7239I, 7239J, 7239K, 7239L, 7239M and 7239N concerning fuel rate adjustments.

**Proceedings In Which
Whitfield A. Russell
Has Testified**

12. In re: Baltimore Gas and Electric Company, before the Maryland Public Service Commission, Case Nos. 7238G, 7238H, 7238I, 7238J, 7238L and combined dockets 7238P, Q, R and S, concerning fuel rates.
13. In re: Potomac Electric Power Company, before the Maryland Public Service Commission, Case Nos. 7240A, 7240B, 7240C, 7240D, 7240E, 7240F and 7240G, concerning fuel rate adjustments.
14. In re: Florida Power & Light Company, FERC Docket No. E-9574, concerning system planning for the City of Vero Beach, Florida. FP&L withdrew its application to acquire the Vero Beach system.
15. In re: Oklahoma Gas and Electric Company, FERC Docket No. ER77-465, concerning rates for energy banking and transmission services rendered to the Western Farmers Electric Cooperative.
16. In re: Idaho Power Company, before the Idaho Public Utility Commission, Case No. U-1006-158, concerning the value of interruptible industrial loads and Idaho Power Companies entitlement to Federal secondary energy.
17. In re: Potomac Electric Power Company, before the District of Columbia Public Service Commission, Case No. 737, concerning the Company's construction program.
18. In re: Virginia Electric and Power Company, before the Virginia State Corporation Commission, Case No. PUE 800006, concerning construction of transmission lines in the Charlottesville, Virginia area.
19. In re: Pacific Gas and Electric Company, FERC Project Nos. 2735 and 1988, concerning the Helms Project, a pumped storage generating unit.
20. Southeastern Power Administration v. Kentucky Utilities Company, FERC Docket No. EL 80-7, concerning SEPA's attempt to obtain a FERC wheeling order under the Public Utility Regulatory Policies Act of 1978.
21. In re: Sierra Pacific Power Company, before the Public Service Commission of Nevada, Docket No. 81-105, concerning construction and transmission planning.
22. In re: Virginia Electric and Power Company, before the North Carolina Utilities Commission, Docket No. E-22, Sub 257, concerning production cost simulation and normalized fuel adjustment clause formula.

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23. In re: the Investigation of the Capital Expansion For Electric Generation, before the New Mexico Public Service Commission, Case No. 1577, concerning construction programs of the Public Service Company of New Mexico and El Paso Electric Company.
24. In re: Potomac Edison Company, before the Maryland Public Service Commission, Case Nos. 7241A, 7241B, 7241C and 7241D, concerning fuel rate adjustments and productivity of generating units.
25. In re: Potomac Edison Company, before the Maryland Public Service Commission, Case No. 7528, concerning the method of calculating Potomac Edison's fuel rate.
26. In re: Delmarva Power & Light Company, before the Maryland Public Service Commission, Docket No. 7570, concerning transmission loss allocation methodology.
27. In re: Nebraska Public Power District, before the South Dakota Public Utilities Commission, Docket No. F-3371, concerning proposed construction and operation of the 500 kV MANDAN Transmission Facility.
28. In re: Sierra Pacific Power Company, before the Public Service Commission of Nevada, Docket No. 81-660, concerning construction and transmission planning.
29. In re: Kentucky Utilities Company, FERC Docket Nos. ER-81-341-000 and ER81-267-000, concerning construction planning and the market for short term power.
30. In re: Kentucky Power Company et al., before the Kentucky Public Service Commission, Case No. 8566, concerning cogeneration and avoided costs.
31. In re: Appalachian Power Company, before the West Virginia Public Service Commission, Case No. 82-162-42T, concerning the wholesale market and short-term power sales.
32. In re: Central Maine Power Company, before the Maine Public Utility Commission, Docket No. 82-137, concerning the application of Central Maine Power Company to reorganize in the form of a holding company.
33. In re: Houston Lighting & Power Company, before the Public Utility Commission of Texas, Docket No. 4712, concerning rates to be paid to cogenerators and small power producers.
34. In re: Dow Chemical Company, before the Public Utility Commission of Texas, Docket Nos. 4802, 5050 and 5062, concerning rates for interruptible service.

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35. In re: Nevada Power Company, before the Nevada Public Service Commission, Docket No. 83-707, concerning the Reid Gardner No. 4 Participation Agreement.
36. Dow Chemical Company vs. Houston Lighting & Power Company, before the District Court of Brazoria County, Texas, 149th Judicial District, No. 79-F-2620, regarding the custom and usage of contract terms in the electric utility industry. Live direct testimony in a jury trial. No transcript available.
37. In re: The Montana Power Company and the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Project Nos. 5-004 and 2776-000, concerning the Tribes' intention and ability to sell its output to one or more entities in the Western states, if obtaining the license to the Kerr Project.
38. In re: the Dow Chemical Company vs. Gulf States Utilities Company, before the Louisiana Public Service Commission, Docket No. U-16038, concerning cogeneration and small power production.
39. In re: Petition of the Dow Chemical Company, before the Public Utility Commission of Texas, Docket No. 5651, for an order compelling Houston Lighting & Power Company to comply with the Commission Order concerning cogeneration and small power production.
40. In re: Oklahoma Gas and Electric Company, before the Oklahoma Corporation Commission, Cause No. 29017, concerning priority for recognition of capacity costs to Qualifying Facilities.
41. In re: Kansas City Power & Light Company of Kansas City, Missouri, before the Missouri Public Service Commission, Case Nos. ER-85-128 and EO-85-185, regarding rate design and allocation of production-related costs for the Company's Wolf Creek Generating Station on behalf of the United States Department of Energy.
42. In re: Kansas City Power and Light Company, before the State Corporation Commission of the state of Kansas, Docket Nos. 142,099-U and 120,924-U, concerning operating problems caused by excess capacity, mitigation measures and regulatory requirements, on behalf of Johnson County Joint Intervenors.
43. In re: Duke Power Company, before the North Carolina Utilities Commission, Docket No. E-7, Sub 391, concerning the Company's use of an Extended Cold Shutdown program to mitigate its excess capacity situation resulting from the Catawba Units, on behalf of the Department of Justice for the State of North Carolina.

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44. Sierra Pacific Power Company, before the Public Service Commission of the State of Nevada, Docket No. 85-430, on behalf of the State of Nevada Attorney General's Office of Advocate for Customers of Public Utilities, concerning the effects upon retail rates of placing Valmy Unit No. 2 in service.
45. United States of America Department of Energy, before the Bonneville Power Administration, on behalf of the City of Vernon, California, concerning the 1985 Proposed Firm Displacement Power Rate.
46. In re: City of Anaheim, et al., v. Southern California Edison, Docket No. 78-0810, on behalf of five partial requirements wholesale customers of Southern California Edison Company, making claims under Federal antitrust laws for access to the Pacific Northwest-Pacific Southwest Intertie.
47. In the Matter of the Application of Sierra Pacific Power Company for Approval of its 1986-2006 Electric Resource Plan, Docket No. 86-701, on behalf of the State of Nevada Attorney General's Office of Advocate for Customers of Public Utilities, concerning efforts of Sierra Pacific Power Company to develop a new interconnection (the SMUD Tie) with the Sacramento Municipal Utility District.
48. The Federal Executive Agencies, Complainant v. Public Service Company of Colorado, before the Public Utilities Commission of the State of Colorado, Case No. 6551, on behalf of the Federal Executive Agencies concerning the feasibility of wheeling federal preference power to the Government's facilities at Rocky Flats, the Lowry Air Force Base, the Rocky Flats Technical Center and the Denver Federal Center.
49. Commonwealth Edison Company, before the State of Illinois, Illinois Commerce Commission, Docket Nos. 87-0043, 87-0044 and 87-0057 Consolidated, on behalf of Intervenor, Citizen's Utility Board of Illinois, concerning Edison's proposal to form a generating subsidiary.
50. Nevada Power Company, before the Nevada Public Service Commission, Docket No. 87-750, concerning a 345 kV transmission line proposed to connect Nevada Power Company to Utah Power and Light Company.
51. Utah Power & Light Company, PacifiCorp, PC/UP&L Merging Corporation, FERC Docket No. EC88-2-000, establishing conditions for the proposed merger; also challenging PP&L's/UP&L's assertion that the claimed coordination benefits would not be attainable through power pooling or by contract.

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52. Rosemount Cogeneration Joint Venture, Biosyn Chemical Corporation and Oxbow Power Corporation vs. Northern States Power Company, before the Minnesota Public Utilities Commission, Docket No. E-002/GG-88-491, on behalf of Petitioners, Rosemount Cogeneration Joint Venture, Biosyn Chemical Corporation and Oxbow Power Corporation, concerning a contract between Northern States Power and Biosyn Chemical Corporation covering the 50 MW output of a yet-to-be-constructed power plant based on the forecast costs of Sherburne County Unit #3 ("Sherco Unit 3").
53. In re: Potomac Electric Power Company, before the District of Columbia Public Service Commission, Case No. 869, on behalf of the District of Columbia Office of the People's Counsel, concerning the prudence of off-system purchases.
54. In re: Wisconsin Public Power Inc. System, Advance Plan 5, before the Public Service Commission of the state of Wisconsin, on behalf of the Wisconsin Public Power System, Inc., concerning transmission planning in the state of Wisconsin.
55. In re: Nevada Power Company, before the Public Service Commission of Nevada, Docket No. 88-701, on behalf of the Attorney General's Office of Advocate for Customers of Public Utilities, concerning NPC's 1988 Resource Plan.
56. In re: Commonwealth Edison Company, before the Illinois Commerce Commission, Docket Nos. 87-0427, 87-0169, 88-0189 and 88-0219, on behalf of the Citizens Utility Board, concerning rejection of an unfair, Staff-proposed rate order.
57. In re: Dow Chemical Company vs. Houston Lighting & Power Company, before the Texas Public Utilities Commission, Docket No. 8425, 8431, on behalf of The Dow Chemical Company, concerning application of Houston Lighting & Power Company for authority to change rates; Fuel Reconciliation, Revenue Requirements and Rate Design.
58. Dow Chemical Company vs. Houston Lighting & Power Company, before the Texas Public Utilities Commission, Docket No. 8555, on behalf of The Dow Chemical Company, concerning rate discrimination, cost to serve and class load characteristics.
59. In re: Sierra Pacific Power Company, before the Public Service Commission of Nevada, Docket No. 89-676, on behalf of the Attorney General's Office of Advocate for Customers of Public Utilities, concerning Sierra's system planning.

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60. In re: Northern California Power Agency vs. Pacific Gas and Electric Company, before the Federal Energy Regulatory Commission, Docket No. EL89-4-000, on behalf of the Northern California Power Agency ("NCPA"), concerning the Interconnection Agreement between Pacific Gas & Electric Company and NCPA.
61. In re: M-S-R Public Power Agency vs. Tucson Electric Power Company, before the United States District Court of Arizona, No. CIV-86-521-TUC-ACM, on behalf of M-S-R, concerning TEP's breach of contract.
62. In re: Southern California Edison Company and San Diego Gas & Electric Company, before the Federal Energy Regulatory Commission, Docket No. EC89-5-000, on behalf of the City of Vernon, California concerning expected effects of the proposed merger on competition, system operation and transmission access.
63. In re: Farmers Electrical Cooperative Corporation and City Water & Light Plant of the City of Jonesboro, Arkansas, v. Arkansas Power & Light Company, No. LR-C-86-118. Presented deposition testimony on AP&L's liability and assisted in settlement negotiations of treble damage claims for transmission line foreclosure made by plaintiffs, City Water and Light Department of Jonesboro, Arkansas and the Farmers Electric Cooperative.
64. In re: Southern California Edison Company and San Diego Gas & Electric Company, before the California Public Utilities Commission, Docket No. 88-12-035, on behalf of the City of Vernon, California concerning expected effects of the proposed merger on competition, system operation and transmission access.
65. In re: Northeast Utilities Service Company and Public Service Company of New Hampshire, before the Federal Energy Regulatory Commission, Docket Nos. EC90-10-000, ER90-143-000, ER90-144-000, ER90-145-000 and EL90-9-000, on behalf of Massachusetts Municipal Wholesale Electric Company, concerning the effect of a proposed merger on competition and transmission access.
66. Report to the Public Utilities Board of Manitoba concerning 1990 Manitoba Hydro Capital Projects Review: Generation and Transmission Requirements. Whitfield Russell Associates was appointed to report to The Public Utilities Board on matters regarding the economic consequences to the domestic customers of the Manitoba Hydro capital program.
67. In re: Northeast Utilities Service Company, before the Federal Energy Regulatory Commission, Docket Nos. ER90-373-000, et al., on behalf of the Massachusetts Municipal Wholesale Electric Company, evaluating the Preferred Transmission Service Agreement between MMWEC and Northeast Utilities Service Company, for the transmission of MMWEC's power purchase from the New York Power Authority.

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68. In re: New Hampshire Electric Cooperative Rate Plan Proposal, before the New Hampshire Public Utilities Commission, Docket No. DR90-078, on behalf of the New Hampshire Electric Cooperative, concerning contract valuation.
69. Tampa Electric Company v. Zeigler Coal Company. This was an arbitration held in August 1991, concerning provisions of a coal contract in which Mr. Russell offered testimony for Zeigler to the effect that Tampa Electric was not suffering a hardship by measures commonly used in the electric utility industry.
70. In re: The Long Range Forecast of Ohio Power Company, before the Ohio Public Utilities Commission, Docket No. 90-660-EL-FOR (Phase II). Mr. Russell presented and defended testimony on behalf of Ormet Aluminum Corporation concerning Ormet's right to allowances to emit sulfur dioxide from the Kammer Power Plant of Ohio Power Company under the Clean Air Act Amendments of 1990 and the propriety of Ohio Power's Compliance Plan.
71. In re: Application of Tex-La Electric Cooperative to Increase Rates. Mr. Russell presented testimony in 1991, demonstrating that Tex-La was prudent in selling its entitlement in a nuclear plant and in settling its 1988 claims against Texas Utilities concerning Texas Utilities' fraud and imprudence in the construction of the Comanche Peak Nuclear Plant.
72. In re: Southern California Edison Company, before the Federal Energy Regulatory Commission, Docket No. ER88-83, on behalf of the City of Vernon, California concerning expected effects of Edison's administration of its transmission network on competition, system operation and transmission access.
73. In the Matter of the Application of the Public Service Company of New Mexico for Approval to Construct, Own, Operate and Maintain the Ojo Line Extension and for Related Approvals before the New Mexico Public Service Commission, Case No. 2382, on behalf of the United States Department of Energy, concerning transmission line construction programs of the Public Service Company of New Mexico.
74. In re: Wisconsin Public Power Inc. System et al., Advance Plan 6, before the Public Service Commission of the state of Wisconsin, Docket No. 05-EP-6, concerning Eastern Wisconsin Utility Joint Transmission System and Interface Study.
75. In re: MidAtlantic Energy v. Monongahela Power Company and the Potomac Edison Company, before the Public Service Commission of West Virginia, Case No. 89-783-E-C, on behalf of MidAtlantic Energy, concerning need for capacity and the appropriate avoided cost.

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76. In re: Northeast Utilities Service Company, before the Federal Energy Regulatory Commission, Docket No. EL91-36-000, on behalf of the Massachusetts Municipal Wholesale Electric Company evaluating the tie-line adjustment charge borne by MMWEC that arose under a Transmission Service Agreement between New England Power Company and Northeast Utilities.
77. In re: Application of Houston Lighting & Power Company for a Certificate of Convenience and Necessity for the DuPont Project, before the Public Utility Commission of Texas, Docket No. 11000, on behalf of Destec Energy, Inc.
78. In re: Investigation on the Commission's Own Motion into Barriers to Contracts Between Electric Utilities and Nonutility Cogenerators and Certain Related Policy Issues, before the Public Service Commission of the state of Wisconsin, Docket No. 05-EI-112, on behalf of JOINT PARTIES: DESTEC Energy, Inc., EnerTran Technology Company, LS Power Corporation, The AES Corporation, LG&E Development Corporation, National Independent Energy Producers, and Citizens' Utility Board, concerning appropriate QF contract provision.
79. In re: Application of Cap Rock Electric Cooperative, Inc. for a Certificate of Convenience and Necessity, before the Public Utility Commission of Texas, Docket No. 11248, on behalf of Cap Rock Electric Cooperative, Inc., concerning its proposed transmission system improvements.
80. In re: Application of Texas Utilities for Authority to Change Rates, before the Public Utility Commission of Texas, Docket No. 11735, on behalf of Cap Rock Electric Cooperative, Inc., concerning standby rates, wholesale rate contracts and terms and conditions of the Power Sales Agreement.
81. In re: Determination of Houston Lighting & Power Company's Standard Avoided Cost Calculation for the Purchase of Firm Energy and Capacity from Qualifying Facilities Pursuant to P.U.C. Subst. R. 23.66(H)(3), before the Public Utility Commission of Texas, Docket No. 10832, on behalf of Destec Energy, Inc.
82. In re: Complaint of Phibro Refining, Inc. v. HL&P, Docket No. 11989, before the Public Utility Commission of Texas, on behalf of Phibro Energy, USA, Inc., concerning electric service contracts and terms and conditions of HL&P's industrial rate schedule.

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83. In re: Application of Texas Utilities Electric Company for Authority to Implement Economic Development Service, General Service Competitive Pricing, Wholesale Power Competitive Pricing, and Environmental Technology Service, Docket No. 13100, before the Public Utility Commission of Texas, on behalf of Rayburn Country Electric Cooperative, Inc., concerning TU Electric's so-called "competitive rates."
84. In re: Complaint of Kenneth D. Williams v. HL&P, Docket No. 12065, on behalf of Destec before the Public Utility Commission of Texas.
85. In re: Rebuttal testimony in a Complaint of Tex-La v. TUEC, Docket No. 12362, on behalf of Rayburn County Electric Coop. before the Public Utilities Commission of Texas.
86. In re: Application for Authorization and Approval of Merger Between Wisconsin Electric Power Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Cenergy, Inc., in Docket No. EC-95-16-000, before the Federal Energy Regulatory Commission (on behalf of Certain Intervenors, including Madison Gas & Electric Company, Wisconsin Public Service Corporation, Minnesota Power & Light Company, Otter Tail Power Company and the Lincoln Electric System), and:
 87. in Docket Nos. 6630-UM-100 and 4220-UM-101 before the Wisconsin Public Service Commission, and in Docket Nos. 6630-UM-100 and 4220-UM-101, and Docket No. 6-2500-10601-2 before the Minnesota Office of Administrative Hearings for the Minnesota Public Utilities Commission (both on behalf of Madison Gas & Electric, Wisconsin Industrial Energy Group, Wisconsin Federation of Cooperatives and the Citizen's Utility Board), concerning the effect upon transmission access of the merger of NSP and WEPCO into Primergy.
88. In re: Merger of The Washington Water Power Company and Sierra Pacific Power Company, Docket Nos. EC94-23-000 and ER95-808-000, before the Federal Energy Regulatory Commission, on behalf of Truckee Donner Public Utility District, concerning ancillary services and single system transmission rates.
89. In re: Alberta Electric Utilities 1996 Tariff Application before the Alberta Energy And Utilities Board, on behalf of the Industrial Power Consumers Association of Alberta concerning calculation of charges for ancillary services.
90. In re: Surrebuttal Testimony in Docket Nos. EC95-16-000, ER95-1357-000 and ER95-1358-000, on behalf of Madison Gas & Electric Company, Citizens Utility Board and Wisconsin Electric Cooperative Association.

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91. In re: City Public Service Board of San Antonio Filing in Compliance with Subst. Rule 23.67, Docket No. 15613, before the Public Utility Commission of Texas, on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas.
92. In re: City of Austin Filing in Compliance with Subst. Rule 23.67, Docket No. 15645, before the Public Utility Commission of Texas, on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas.
93. In re: Central Power and Light and West Texas Utilities Filing in Compliance with Subst. Rule 23.67, Docket No. 15643, before the Public Utility Commission of Texas, on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas.
93. In re: Texas Utilities Electric Company, Filing in Compliance with Subst. Rule 23.67, Docket No. 15638, before the Public Utility Commission of Texas, on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas.
94. In re: Docket No. 15840, Regional Transmission Proceeding to Establish Postage Stamp Rate and Statewide Load Flow Pursuant to P.U.C. Subst. Rule. 23.67 on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas.
95. In re: Application of Wisconsin Energy Corporation, Wisconsin Electric Power Company, Northern States Power Company, and Northern States Power Company-Wisconsin for Approval of a Series of Transactions by Which Northern States Power Company-Wisconsin is merged into Wisconsin Electric Power Company, Northern States Power Company becomes a Subsidiary of Wisconsin Energy Corporation, and Wisconsin Energy Corporation is Renamed Primergy Corporation: Direct Testimony, Rebuttal Testimony and Surrebuttal Testimony on behalf of The Wisconsin Industrial Energy Group (“WIEG”), The Citizens’ Utility Board (“CUB”), The Wisconsin Federation of Cooperatives (“WFC”) and Madison Gas and Electric (“MG&E”) in Docket Nos. 6630-UM-100 and 4220-UM-101 before the Public Service Commission of Wisconsin. The purpose of the direct testimony was to address Certain Intervenors’ Transmission System Control Agreement and ISO Bylaws; October 8, 1996. The purpose of the rebuttal testimony was to address Applicants’ Unilateral Settlement Offer which was submitted to FERC in their FERC merger proceeding; October 24, 1996. The purpose of the surrebuttal

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testimony was to address two sets of Rebuttal testimony of Jose Delgado and the Rebuttal Testimonies of Malcolm Bertsch of the Applicants and Don Carlson of Minnesota Power and Light; November 5, 1996.

- 95a. In re: In the Matter of Northern States Power Company's Petition for Approval to Merge with Wisconsin Energy Corporation; OAH Docket No. 6-2500-10601-2: Direct Testimony and Exhibits and Rebuttal Testimony and Exhibits on behalf of Madison Gas and Electric ("MG&E"), The Wisconsin Federation of Cooperatives ("WFC"), and The Citizens' Utility Board ("CUB") in Docket No. E,G-002 and PA-95-500 before the Minnesota Office of Administrative Hearings for the Minnesota Public Utilities Commission. The purpose of the direct testimony is to remedy a Wisconsin Energy Corporation merger, in order to prevent anti-competitive effects with an Independent System Operation which actually operates the transmission system and which is truly independent of the proposed Primergy; October 21, 1996. The purpose of the rebuttal testimony is to address the direct testimony of Dr. Eilon Amit of Minnesota Department of Public Service and Dan Carlson of Minnesota Power and Light; November 8, 1996.
- 95b. In re: Joint Application of WPL Holdings, Inc. and Wisconsin Power & Light Company for all Requisite Approvals in Connection with a Series of Related Transactions by which Interstate Power Company Becomes a Subsidiary of WPL Holdings, Inc., IES Industries, Inc. is Merged into WPL Holdings, Inc. and is Renamed Interstate Power Corporation and for Certain Related Transactions and Matters: Direct Testimony and two Surrebuttal Testimonies on behalf of Badger Cooperative Group ("BCG"), The Citizens' Utility Board ("CUB"), Madison Gas and Electric ("MG&E"), The Wisconsin Federation of Cooperatives ("WFC"), Wisconsin Industrial Energy Group ("WIEG") and Municipal Wholesale Power Group ("MWPG") in Docket No. 6680-UM-100 before the Public Service Commission of Wisconsin. The purpose of the direct testimony was to discuss the characteristics of an appropriate ISO and present the ISO recommended by Certain Intervenors; May 7, 1997. The purpose of surrebuttal testimony #1 was to answer the rebuttal testimony of WP&L's witness Rodney Frame, Arnold Kehrlie and Scott Wallace; May 30, 1997. The purpose of surrebuttal testimony #2 was to address the rebuttal testimony of WP&L's witness Arnold Kehrlie; May 30, 1997.
96. In re: Houston Lighting & Power Company Filing in Compliance with Subst. Rule 23.67, Docket No. 15639, before the Public Utility Commission of Texas, on behalf of Certain Power Marketers and Independent Power Producers, Destec Power Services and Enron Power Marketing, concerning Ancillary Services under the state-wide rate in Texas; September 30, 1996.

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97. In re: IES Utilities, Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company, Heartland Energy Services, and Industrial Energy Applications, Inc., Docket Nos. EC96-13-000, ER96-1236-000, and ER96-2560-000, before the Federal Energy Regulatory Commission, on behalf of Wisconsin Intervenors ("WI"). Mr. Russell simultaneously filed 2 sets of testimony; the first, sponsored by the intervenors listed above as well as by Wisconsin Public Service Corporation ("Pub Service"), and Dairyland Power Cooperative. ("Dairyland") analyzed engineering and operating problems created by the merger of WP&L, IPW and IES. The second set of testimony discusses how the IEC Independent System Operator ("ISO") fails in general to meet the rigorous and comprehensive ISO standards promulgated by the Wisconsin Public Service Commission (WPSC). Both sets of testimony (Engineering and ISO) were filed before the Federal Energy Commission; March 27, 1997.
98. In re: Joint Application of WPL Holdings, Inc. and Wisconsin Power & Light Company for all Requisite Approvals in Connection with a Series of Related Transactions by which Interstate Power Company Becomes a Subsidiary of WPL Holdings, Inc., IES Industries, Inc. is Merged into WPL Holdings, Inc. and is Renamed Interstate Power Corporation and for Certain Related Transactions and Matters, in Docket No. 6680-UM-100, before the Public Service Commission of Wisconsin; May 7, 1997.
99. In re: City of College Station, FERC Docket No. TX 96-2-000, concerning transmission rates; November 7, 1997.
100. In re: Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, in Docket No. R-00973981 on behalf of Mid-Atlantic Power Supply Association, before the Pennsylvania Public Utility Commission; November 7, 1997.
101. In re: Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, in Docket No. R-00974104 on behalf of Mid-Atlantic Power Supply Association, before the Pennsylvania Public Utility Commission; November 7, 1997.
102. In re: New England Power Company, FERC Docket No. OA96-74-000, concerning proposed formula rates for Tariffs No. 9 and 4, on behalf of the Massachusetts Municipals; December 12, 1997.

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103. In re: Sierra Pacific Power Company before the Federal Energy Regulatory Commission in Docket Nos. ER97-3593-000, ER97-3779-000, ER97-4462-000 on behalf of Truckee Donner Public Utility District, addressing lack of comparable access to transmission systems; February 23, 1998.
104. In re: Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, on behalf of Newmont Gold Company and Barrick Goldstrike Mines, in Docket Nos. 97-11018 and 97-11028, before the Public Service Commission of Nevada; February 1, 1998.
105. In re: Southern California Edison Company before the Federal Energy Regulatory Commission in Docket No. ER97-2355-000 on behalf of Department of Water Resources of the State of California, regarding lower pricing for off-peak transmission services; April 1998.
106. In re: Response to Procedural Order Number Three Load Pockets, on behalf of Newmont Gold Company and Barrick Goldstrike Mines, Docket Number 97-8001, before the Public Utilities Commission of Nevada; May 15, 1998.
107. In re: Supplemental Testimony in an Application for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code, on behalf of Newmont Gold Company and Barrick Goldstrike Mines, Docket Numbers 97-11018 and 97-11028, before the Public Utilities Commission of Nevada, May 22, 1998.
108. In re: Southern California Edison Company, on behalf of The Department of Water Resources of The State of California, Docket No. ER97-2355, before FERC in reference to Transmission Revenue Balancing Account Adjustment ("TRBAA"); November 16, 1998.
109. In re: Ormet Primary Aluminum Corporation, on behalf of Ormet Primary Aluminum Corporation, Arbitration Number 55-199-0051-94, before the American Arbitration Association, concerning the relationship between AEP and other power systems within NERC and ECAR; July 14 1998.
110. In re: Rebuttal Testimony in response to Mr., Walter R. Kelley and Mr. Thomas Kennedy, on behalf of Ormet Primary Aluminum Corporation, Arbitration Number 55-199-0051-94, before the American Arbitration Association; September 2, 1998.
111. In re: Application No. RE95081 – TransAlta Utilities Corp., on behalf of Albchem Industries Ltd., CXY Chemicals and Dow Chemicals Canada Ltd., before the Alberta Energy & Utilities Board addressing ACD's interest in providing interruptible service; October 1998.

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112. In re: Tri-State Generation and Transmission Assoc., Inc., in Arbitration No. 77 Y 181 0023097 before the American Arbitration Association; September 14, 1998.
113. In re: Joint Application for Approval of Merger, Docket No. 98-7023 on behalf of The Staff of the Public Utilities Commission, before the Public Utilities Commission of Nevada; November 9, 1998.
114. In re: Independent System Administrator, Docket No. 97-8001 on behalf of The Staff of the Public Utilities Commission, before the Public Utilities Commission of Nevada; December 11, 1998.
115. In re: Petition for Order Concerning Delineation of Transmission and Local Distribution Facilities, Docket No. 98-0894 on behalf of The City of Chicago, before the Illinois Commission in reference to re-functionalization; April 2, 1999.
116. In re: Consolidated Edison Company, Docket No. EL99-58-000 on behalf of The Village of Freeport, New York, before FERC in reference to remedies for the breach of contract to provide firm service on a non-discriminatory basis; July 22, 1999, August 3, 1999, August 18, 1999 and September 9, 1999.
117. In re: Wisconsin Public Power, Inc. Docket No. 05-EI-119 on behalf of Wisconsin Transmission Customer Group (WTCG"), before the Public Service Commission of Wisconsin to address the concerns of municipally-owned utilities within Wisconsin; March 6, 2000.
118. In re: Joint Application of Utilicorp United Inc. & St. Joseph Light & Power Co., Docket No. EM-2000-292 on behalf of Springfield (MO) City Utilities before the PSC of the State of Missouri to address why the merger between the two is detrimental to the public interest; May 1, 2000.
119. In re: Utilicorp United Inc. and Empire District Electric Co. Docket No. EM-2000-369 on behalf of Springfield (MO) City Utilities before the Public Service Commission of the State of Missouri to explain why the merger between the two is detrimental to the public interest; June 19, 2000.
120. In re: Arrowhead - Westin Transmission Line Project, Docket No. 05-CE-113 on behalf of the Wisconsin Public Service Corporation ("WPSC"), before the Public Service Commission of the State of Wisconsin to provide support for the transmission project as proposed by WPSC and Minnesota Power; November 22, 2000.

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121. In re: Kansas Municipal Energy Agency ("KMEA"), Docket No. ER00-2644-000 on behalf of the Kansas Municipal Energy Agency ("Kansas Municipal"), before the Federal Energy Regulatory Commission ("FERC") to review, assess and comment on the actions taken by the Southwest Power Pool in connection with two transmission service requests made by the Kansas Municipal Energy Agency aggregating 39 MW of contract demand; December 8, 2000.
122. In re: Arrowhead - Weston 345 kV Transmission Line, Rebuttal testimony in Docket No. 05-CE-113 on behalf of the Wisconsin Public Service Corporation ("WPSC"), before the Public Service Commission of the State of Wisconsin to address matters set forth in the direct testimony of Dr. Richard A. Rosen on behalf of Save Our Unique Lands ("SOUL"), Mr. David Schoengold on behalf of Wisconsin's Environmental Decade, and Mr. George R. Edgar on behalf of the Citizens' Utility Board ("CUB"); December 18, 2000.
123. In re: Ethyl Corporation versus Gulf States Utilities Company, Civil Docket No. M, live direct testimony in a dispute over direct assignment of substation facilities; April 2001.
124. In re: Joint Application of Entergy Louisiana, Inc. and Entergy Gulf States, Inc., Docket No. U-25533 on behalf of Occidental Chemical Corporation ("OxyChem"), before the Louisiana Public Service Commission for authorization to participate in contracts for the purchase of capacity and electric power for the Summer of 2001; May 3, 2001.
125. In re: Petitioners' Joint Proposal for Merger & Rate Plan, testimony in Case No. 01-M-0075 on behalf of Alliance for Municipal Power before the New York State Public Service Commission. The purpose of this testimony is explain (1) the inappropriateness of Rule 52 in the post merger competitive energy markets; (2) to have stranded transmission cost and distribution costs expunged; and (3) to show how merged Companies exacerbates the incentive to abuse Rule 52 against newly formed municipal utilities; November 5, 2001.
126. In re: Northeast Utilities Service Company Transmission Line Project, direct testimony in Docket No, 217 before the Connecticut Siting Council of the State of Connecticut on behalf of the Attorney General, State of Connecticut for the purpose of (1) Whether there is a need for the 345 f transmission line from Plum-tree to Norwalk; (2) whether the proposed transmission system design is the best option based on current transmission design and (3) whether any approval of the project by the Siting Council should be conditioned upon CL&P and NU's agreement; March 12, 2002.

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127. In re: Alliance Companies, et al., Affidavit in Docket Nos. RM01-12-000, RT01-87-000 and RT01-88-000, before the Federal Energy Regulatory Commission on behalf of the Ormet Primary Aluminum Corporation, for the purpose of providing relevant engineering fundamentals related to the proper design of methodology for quantifying transmission losses and for allocating such losses to the customers of regional transmission organizations; March 12, 2002.
128. In re Cannon Power Corporation., Affidavit in Docket No. ER02-2189-000, before the Federal Energy Regulatory Commission on behalf of Whitewater Hill Wind Partners, LLC developing a 66 MW wind power project to be interconnected to Southern California Edison Company; July 29, 2002.
129. In re Cannon Power Corporation., Affidavit in Docket No. ER02-1764, before the Federal Energy Regulatory Commission on behalf of Cabazon Wind Partners, LLC developing a 66 MW wind power project to be interconnected to Southern California Edison Company; August 2, 2002.
130. In re: Response to Pacificorp's Motion: Affidavit in Response to Pacificorp's Daubert Motion Regarding Richard Slaughter and Supplemental Expert Report on behalf of Snake River Valley Electric Association; September 10, 2002.
131. In re: Pacific Gas & Electric Company : Direct Testimony in Docket No. ER01-2998, before the Federal Energy Regulatory Commission on behalf of Northern California Power Agency to explain what level of firmness is required of transmission service under the Stanislaus Commitments; December 20, 2002.
132. In re: American Electric Power Corp.: Affidavit in Docket No. ER03-242, before the Federal Energy Regulatory Commission on behalf of Ormet Primary Aluminum Corp. to respond to AEP's proposed electric transmission rates to be included in the OATT of the PJM Interconnection; December 24, 2002.
133. In re: Application of the CT Light & Power Company: Supplemental Direct Testimony in Docket No. 217, before the State of CT Siting Council on behalf of The Attorney General, State of CT as a follow-up to the direct testimony filed on March 12, 2002 and to address various studies and reports that have been filed since that original testimony; January 14, 2003.
134. In re: Pacific Gas & Electric: Rebuttal Testimony before the Federal Energy Regulatory Commission in Docket No. ER01-2998 on behalf of Northern California Power Agency ("NCPA") to respond to testimony from witnesses Judi K. Mosley, Kevin J. Dasso, Dr. Roy Shanker and Linda Patterson; April 1, 2003.

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135. In re: Order Instituting Investigation into implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply: Direct testimony before the Public Utilities Commission of California on behalf of Oak Creek Energy Systems. The purpose of the testimony is to provide comments on and recommendations with respect to the Tehachapi Transmission Conceptual Facility Study (“Tehachapi CFS” or “TCFS”), performed by Southern California Edison (“SCE” or “Edison”); April 22, 2003.
136. In re: Order Instituting Investigation into implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply: Rebuttal testimony before the Public Utilities Commission of California on behalf of Oak Creek Energy Systems. The purpose of the testimony is to rebut the testimony of Mr. Jorge Chacon and Mr. Melvin Stark on behalf of Southern California Edison Company, taking into account the testimony of Mr. Robert Sparks filed on behalf of the California Independent System Operator (“CA ISO” or “ISO”); May 13, 2003.
137. In re: California Independent System Operator Corporation: Direct testimony before the Federal Energy Regulatory Commission in Docket No. ER00-2019 on behalf of State Water Contractors and the Metropolitan Water District of Southern California. The purpose of the testimony is to provide a critical analysis of ISO’s proposed Transmission Access Charge; June 2, 2003.
138. In re: Ameren Services Company, et al.: Affidavit in Docket No. EL03-212-000, before the Federal Energy Regulatory Commission on behalf of Ormet Primary Aluminum Corp. to respond to AEP's Submission in Response to the Commission’s Section 206 Investigation; September 2, 2003.
139. In re: Pacific Gas and Electric Company: Direct Testimony in Phase I before the Federal Energy Regulatory Commission in Docket Nos. ER00-565-000, ER00-565-003, and ER00-565-007 on behalf of the Northern California Power Agency. The purpose of the testimony is to explain the nature of the costs for which Pacific Gas and Electric Company seeks recovery through its Scheduling Coordinator Service Tariff; September 15, 2003.
140. In re: California Independent System Operator Corporation: Surrebuttal Testimony before the Federal Energy Regulatory Commission in Docket Nos. ER00-2019-006, ER01-819-002, and ER03-608-000 on behalf of State Water Contractors and the Metropolitan Water District of Southern California. The purpose of the testimony is to respond to the Prepared Rebuttal Testimony of Mr. Johannes P. Pfeifenberger on behalf of the ISO; October 20, 2003.

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141. In re: Midwest Independent Transmission System Operator, Inc. and Public Utilities With Grandfathered Agreements in the Midwest ISO Region: Prepared Testimony before the Federal Energy Regulatory Commission in Docket Nos. ER04-691-000 and EL04-104-000 on behalf of Marshfield Electric & Water District. The purpose of the testimony is to review Marshfield Electric & Water District's transmission arrangements in order to respond to the Commission's May 26, 2004 Order in this proceeding; June 25, 2004.
142. In re: Pacific Gas and Electric Company: Direct Testimony in Phase II before the Federal Energy Regulatory Commission in Docket Nos. ER00-565-000 and ER00-565-003 on behalf of the Northern California Power Agency ("NCPA"). The purpose of the testimony is to discuss PG&E's propriety in passing through ISO Charge Type costs as Scheduling Coordinator Service charges to NCPA under the terms of the NCPA-PG&E Interconnection Agreement; September 13, 2004.
143. In re: Southern California Edison Company: Prepared Direct Testimony before the Federal Energy Regulatory Commission in Docket No. ER02-2189-003 on behalf of Whitewater Wind Hill Partners. The purpose of the testimony is to provide support for Whitewater's request that the Commission revise the Interconnection Facilities Agreement ("IFA") between Whitewater and Southern California Edison Company ("SCE or Edison"); September 14, 2004.
144. In re: Cabazon Wind Partners, LLC Complainant vs. Southern California Edison Company Respondent: Affidavit in Docket No. EL04-137 before the Federal Energy Regulatory Commission on behalf of Cabazon Wind Partners, LLC ("Cabazon"). This Affidavit provides support for Cabazon's request that Southern California Edison Company ("SCE") grant Cabazon reimbursement, in the form of a transmission credit or otherwise, for the cost of certain upgrades Cabazon has borne to interconnect its generation to SCE; September 27, 2004.
145. In re: Southern California Edison Company: Cross Answering Testimony before the Federal Energy Regulatory Commission in Docket No. ER02-2189-003 on behalf of Whitewater Hill Wind Partners. The purpose of the testimony is to respond to testimony filed on October 28, 2004, in this proceeding by Commission Staff witnesses, Ms. Tania Martinez Navedo and Mr. Edward W. Mills. As discussed in my prior testimony, the issue in this case involve the designation of disputed upgrades contained in the IFA between Whitewater and Southern California Edison Company; November 22, 2004.
146. In re: Pacific Gas and Electric Company: Direct and Answering Testimony before the Federal Energy Regulatory Commission in Docket No. ER01-1639-006 on behalf of Northern California Power Agency. The purpose of this testimony is

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- to explain 1) PG&E's failure to justify the pass-through of Reliability Service charges to Western and PG&E's additional failure to "unbundle the rates in its ETCs and provide a full cost of service analysis supporting the unbundled rates," 2) PG&E's attempt to pass-through Scheduling Coordinator Service Charges to Western, and 3) The inappropriateness of PG&E's imposition of interest charges; November 23, 2004.
147. In re: Petition for a Declaratory Order or Advisory Opinion as to the Applicability of the Commission's Decision in Docket No. 03-10003, Plant Project in Orange County, California: Affidavit in Docket No. 04-10023, before the Public Utilities Commission of Nevada on behalf of Ridgewood Renewable Power, LLC ("Ridgewood") with respect to a landfill methane gas powered electric generating project located at the Olinda/ Alpha landfill in Orange County, California; December 30, 2004.
148. In re: Southern California Edison Company and Cabazon Wind Partners, LLC: Prepared Direct Testimony before the Federal Energy Regulatory Commission in Docket No. EL04-137, on behalf of Cabazon Wind Partners, LLC. The purpose of this testimony is to provide support for Cabazon's request that Southern California Edison ("SCE") grant Cabazon reimbursement, in the form of transmission credit or otherwise, for the cost of certain upgrades Cabazon has borne to interconnect generation to SCE; February 4, 2005.
149. In re: Pacific Gas and Electric Company: Phase II Answering Testimony to PG&E's Supplemental Testimony; Cross Answering Testimony; and Errata of Whitfield A. Russell before the Federal Energy Regulatory Commission in Docket No. ER00-565-000, et al and ER04-1233-000, on behalf of Northern California Power Agency. The purpose of this testimony is to respond to Mr. Bray's contention that the SCS Tariff is a formula rate, to respond to aspects of the Prepared Direct and Answering Testimony of Ms. Linda M. Patterson on behalf of the Federal Energy Regulatory Commission Staff and to provide updates to my previously filed testimony, March 8, 2005.
150. In re: Southern California Edison Company: Affidavit before the Federal Energy Regulatory Commission in Docket No. EL05-80-000, on behalf of the California Wind Energy Association ("CalWEA"). The purpose of this affidavit is to explain how and why the proposed Antelope-Tehachapi 230 kV line will be integrated into the regional transmission grid and thereby constitute a network upgrade facility; April 14, 2005.
151. In re: American Electric Power Service Corporation: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER05-751-000, on behalf of Ormet Primary Aluminum Corporation. The purpose of this affidavit is to respond to American Electric Power Corporation's (AEP's) request (a) to increase

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- its annual Network Integration Transmission Service (NTS) revenue requirements to \$486 million per year and (b) to increase the NTS rates; April 29, 2005.
152. In re: Southern California Edison Company and Cabazon Wind Partners, LLC: Prepared Rebuttal Testimony before the Federal Energy Regulatory Commission in Docket No. EL04-137, on behalf of Cabazon Wind Partners, LLC. The purpose of this testimony is to respond to direct testimony filed on March 14, 2005 and cross answering testimony filed on May 3, 2005 by Mr. Daniel J. Allstun, the witness of Southern California Edison and to respond to testimony filed on April 14, 2005 by Commission Staff witness, Ms. Emily White; May 20, 2005.
153. In re: In the Matter of the Arbitrations between PG&E Energy Trading-Power, LP Claimant, Counter-Respondent and Southaven Power, LLC, and Caledonia Generating, LLC, Respondents, Counter-Claimants: Expert Report and litigation before the American Arbitration Association in AAA Nos. 16-198-00206-03 & 16-198-00207-03, on behalf of Williams & Connolly LLP (counsel of Southaven Power, LLC) and Bingham McCutchen LLP (counsel for Caledonia Generating, LLC). The purpose of this expert report was to provide my opinion on certain elements of the matters in dispute between PG&E Energy Trading-Power, L.P., on the one hand, and each of Southaven and Caledonia, on the other hand. These disputes have arisen in connection with two similar tolling agreements, each titled "Dependable Capacity and Conversion Services Agreement;" September 8, 2005.
154. In re: Midwest Independent Transmission System Operator, Inc: Pre-Filed Answering Testimony before the Federal Energy Regulatory Commission in Docket No. ER05-6-001, et al, on behalf of Ormet Primary Aluminum Corporation. The purpose of this testimony is to analyze the proposed SECA rate design as it relates to Ormet; October 24, 2005.
155. In re: Berkshire Power Company, LLC: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER05-1179-001, on behalf of Massachusetts Municipal Wholesale Electric Company, Chicopee Municipal Lighting Plant, and South Hadley Electric Light Department. The purpose of this affidavit is to review the engineering analysis performed by ISO New England in support of its determination of the system reliability for the Springfield, Massachusetts area in Western Massachusetts and, more specifically, the ISO's analysis of the reliability need for two units in that area: (1) the 245 MW Berkshire facility operated by Berkshire Power Company; and (2) the 107 MW West Springfield Unit 3 operated by Consolidated Edison Energy Massachusetts, Inc.; November 7, 2005.

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156. In re: Consolidated Edison Energy Massachusetts, Inc.: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER05-903-002, on behalf of Massachusetts Municipal Wholesale Electric Company, Chicopee Municipal Lighting Plant, and South Hadley Electric Light Department. The purpose of this affidavit is to review the engineering analysis performed by ISO New England in support of its determination of the system reliability for the Springfield, Massachusetts area in Western Massachusetts and, more specifically, the ISO's analysis of the reliability need for two units in that area: (1) the 245 MW Berkshire facility operated by Berkshire Power Company; and (2) the 107 MW West Springfield Unit 3 operated by Consolidated Edison Energy Massachusetts, Inc.; November 10, 2005.
157. In re: Pittsfield Generating Company, LP: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER06-262-000, on behalf of Massachusetts Municipal Wholesale Electric Company, Chicopee Municipal Lighting Plant, and South Hadley Electric Light Department. The purpose of this affidavit is to review the engineering analysis performed by ISO New England in support of its evaluation of the system reliability for the Pittsfield, Massachusetts area of Western Massachusetts and, more specifically, the ISO's analysis of the reliability need for the 160 MW facility operated by Pittsfield Generating Company, L.P.; December 21, 2005.
158. In re: Mystic Development LLC: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER06-427-000, on behalf of Massachusetts Municipal Wholesale Electric Company, Wellesley Municipal Light Plant, Reading Municipal Light Department and Concord Municipal Light Plant. The purpose of this affidavit is to (a) respond to portions of the testimony offered by Mystic witnesses Messrs. Theodore Horton, Robert B. Stoddard, and Alan C. Heintz; and (b) review the engineering analysis of the December 7, 2004, "Need for Mystic Units 7, 8 and 9 for System Reliability," performed by ISO New England ("ISO") and included by Mystic in its filing as support for the assertion that Mystic Units 8 and 9 are needed to ensure system reliability in the Northeast Massachusetts/Boston Area load pocket; January 19, 2006.
159. In re: In the Matter of the Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corporation, In the Matter of the Joint Petition of Ohio Power Company and South Central Power Company for Reallocation of Territory, In the Matter of: Ormet Primary Aluminum Corporation and Ormet Primary Mill Products Corporation v. South Central Power Company and Ohio Power Company: Pre-Filed Testimony before the Public Utilities Commission of Ohio in Docket Nos. 96-999-EL-AEC, 96-1000-EL-PEB and 05-1057-EL-CSS, on behalf of Ormet Primary Aluminum Corporation. The purpose of this testimony is to analyze: (a) the effect upon the

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- ratepayers of South Central and Buckeye of requiring South Central to serve Ormet and (b) the effect upon the ratepayers and stockholders of Ohio Power Company (“OPCO”) of requiring OPCO to serve Ormet’s full requirements under OPCo’s retail GS-4 rate schedule; September 8, 2006.
160. In re: Mystic Development, LLC: Direct Testimony before the Federal Energy Regulatory Commission in Docket No. ER06-427-000, on behalf of Massachusetts Municipal Wholesale Electric Company, Reading Municipal Light Department Wellesley Municipal Light Plant and Concord Municipal Light Plant. The purpose of this testimony is to assess whether a cost-of-service (“COS”), Reliability Must-Run (“RMR”) Agreement is needed in order to keep Mystic Development LLC’s (“Mystic’s”) Units 8 and 9 available to provide reliability service and if, contrary to my testimony, the Commission finds that a COS RMR agreement is needed to keep Mystic Units 8 and 9 available to provide reliability service, the Commission would be required to determine a just and reasonable COS rate to be imposed on customers under the RMR agreement. I testify regarding adjustments that need to be made to Mystic’s proposed COS rates in order to render them just and reasonable; November 9, 2006.
161. In re: Hydroelectric Production Rates and Rate Modification Plan-2007 and 2008 Rate Years: Direct Testimony and Supporting Exhibits before the New York Power Authority, on behalf of the New York Association of Public Power. The purpose of this testimony is to address the understatement of capacity at the Niagara and St. Lawrence Projects of the New York Power Authority (“NYPA”) and how that understatement of capacity improperly reduces the amount of capacity made available to preference customers of the Niagara Project and improperly increases the rates applicable to capacity sold to those customers; April 9, 2007.
162. In re: ISO New England Inc: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER08-190-000, on behalf of Massachusetts Municipal Wholesale Electric Company (“MMWEC”). The purpose of this testimony is to review the engineering analysis performed by ISO New England Inc. in support of its determination that MMWEC’s Phase II Stony Brook Unit is not qualified to participate in the first Forward Capacity Market auction, scheduled to be held in February 2008; November 21, 2007.

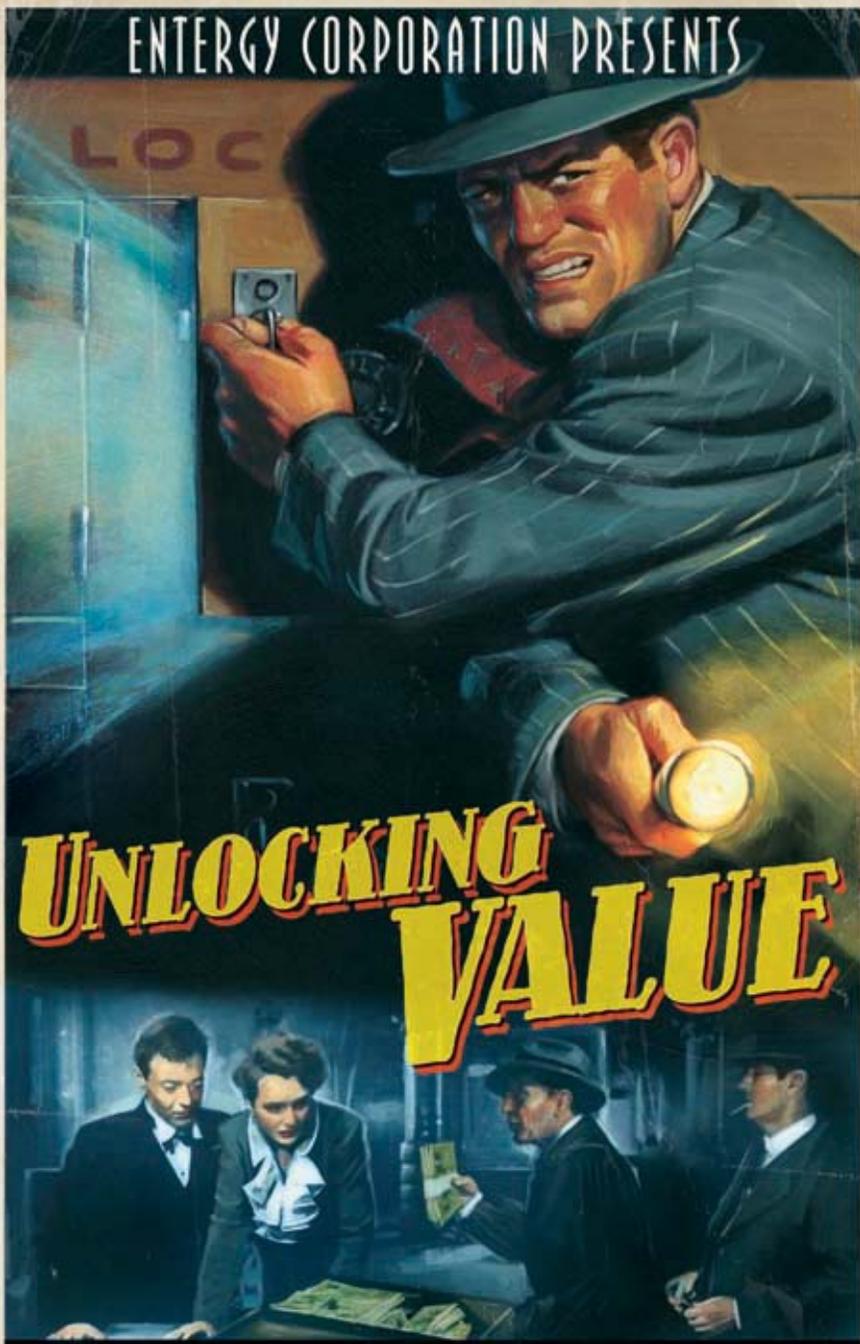
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163. In re: Columbus Southern Power Company and Ohio Power Company: Affidavit before the Public Utilities Commission of Ohio in Case Nos. 07-1132-EL-UNC, 07-1191-EL-UNC, 07-1278-EL-UNC, and 07-1156-EL-UNC, on behalf of Ormet Primary Aluminum Company. The purpose of this affidavit is in the matter of the Application of Columbus Southern Power Company and Ohio Power Company for approval of an additional generation service rate increase pursuant to their post-market development period rate stabilization plans and to update each company's transmission cost recovery rider; February 28, 2008.

164. In re: Niagara Mohawk Power Corporation: Affidavit before the Federal Energy Regulatory Commission in Docket No. ER08-552-000, on behalf of the New York Association of Public Power and several of its members which include Green Island Power Authority, Jamestown Board of Public Utilities, City of Salamanca Board of Public Utilities, City of Sherrill Power & Light and Oneida-Madison Electric Cooperative, Inc. The purpose of this affidavit is review the filing by NMPC for Amendments to its Wholesale Transmission Service Charge for Point-to-Point Transmission service and Network Integration Transmission Service; March 17, 2008.

165. In re: Braintree Electric Light Department, Hingham Municipal Lighting Plant, Hull Municipal Lighting Plant, Mansfield Municipal Electric Department, Middleborough Gas and Electric Department and Taunton Municipal Light Plant v. ISO New England Inc.: Direct Testimony and Exhibits before the Federal Energy Regulatory Commission in Docket No. EL08-48, on behalf of the individual municipally-owned power systems serving the Massachusetts communities of Hull, Mansfield, Middleborough, Taunton, Braintree and Hingham. The purpose of this testimony is to provide technical support for the Municipal Public Systems' complaint; March 28, 2008.

ATTACHMENT 3



ENTERGY CORPORATION PRESENTS

LOC

**UNLOCKING
VALUE**

Cracking even the toughest of cases!

Featuring 14,300 EMPLOYEES Directed by BOARD OF DIRECTORS
Produced by SHAREHOLDER STUDIOS Story by ENTERGY'S LEADERSHIP TEAM



TO OUR STAKEHOLDERS

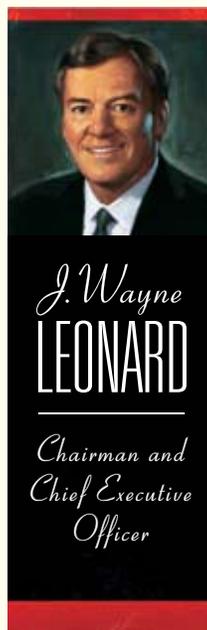
Are we having fun yet? To most people winning is fun. As they say, it beats losing.

From the theme of this year's report, you could properly conclude that we are having fun, and not because we have actually won anything. In part, we are having fun because we are "winning" on things that not only make a difference today, but also on things that set the foundation for the future of this company. We are winning in battles that we have been fighting for a long time; winning on things that matter to each of you, such as:

- Delivering the *highest total shareholder return* in our industry, 414.3 percent from Dec. 31, 1998 to Dec. 31, 2007 compared to 134.1 percent for the Philadelphia Utility Index over the same period. In 2007, we delivered total shareholder return of 32.5 percent, once again ranking in the top quartile of our peer group.
- Creating the *safest possible work environment* as evidenced by lowering our Lost Work Day Incident Rate to 0.22 in 2007, our best year ever, from 1.08 in 1998. While this is still short of our goal, an accident-free work environment, clearly we can see measurable progress every year.
- Keeping the *prices* our customers pay as low as practical. Our residential utility customers have essentially seen *no increase* in base rates for nine years. Average residential base rates in 1998 were 4.90 cents per kWh compared to 4.97 cents per kWh in 2007. When adjusted for inflation, our customers experienced a real decrease in base rates over the past nine-year period.
- Providing the *best possible service* when it matters most. Obviously, in 2005 with hurricanes Katrina and Rita we proved we could write the book on emergency response. But that was no surprise. We have received the Edison Electric Institute Emergency Storm Response Award or Emergency Assistance Award every year

for 10 consecutive years, the only company to be honored each year since the awards were created. For 2007, we received the EEI Emergency Assistance Award for the work of our dedicated employees in helping to restore power in Oklahoma following an ice storm.

- Investing in *people*. We have provided \$35 million in grants since we began our low-income customer assistance initiative in 1999, leveraging at least \$24.5 million in additional public and private funds to help low-income families and individuals throughout Arkansas, Louisiana, Massachusetts, Mississippi, New York, Texas and Vermont. In 2007, Entergy received the U.S. Chamber of Commerce Award for Community Service and in early 2008, we were recognized for a third time with the EEI Advocacy Excellence Award for our low-income initiative.
- Backing up our environmental concerns with actions. On climate change, we have articulated a clear vision for change and made a second *voluntary* commitment to stabilize our own carbon dioxide emissions at 20 percent below year 2000 levels from 2006 to 2010. In 2007, *for the sixth consecutive year*, we were the *only U.S. utility named to the Dow Jones Sustainability World Index* in recognition of our sustainability efforts.



We are proud of our track record of accomplishment. But we don't believe in declaring victory every time we have a good year. Nor do we believe in giving in because we're out-numbered in our point of view, or giving up because the path to success is unclear.

For example, for a number of years we have been frustrated in our aspiration of realizing the full value of our non-utility nuclear fleet. After considerable time and effort, we believe in 2007 we found the key to unlock the full value in a way that assures those

who share and have supported Entergy's point of view on nuclear or carbon are rewarded for their patience.

UNLOCKING VALUE – SEPARATION OF OUR NON-UTILITY NUCLEAR BUSINESS

In 2007, our Board of Directors approved plans to pursue the spin-off of Entergy's non-utility nuclear business to our shareholders and the formation of a nuclear services joint venture to be owned equally by Entergy and the spun-off entity, referred to as SpinCo.

While the operating results of the non-utility nuclear plants contribute substantially to Entergy's current share price, market capitalization and profitability, the full value of the business has not and is unlikely to be realized or recognized embedded in a regulated "utility". Over the last nine years, shareholders have put considerable capital at risk as we started and grew this business. While shareholders have seen substantial rewards, the proposed structure provides a very real opportunity for full value realization while maintaining the safety, security and operational excellence of our entire (utility and non-utility) nuclear fleet.

Following the spin, Entergy shareholders will hold two distinct equities – Entergy stock, comprised of the regulated utility business, referred to as Entergy Classic, and a 50 percent stake in the nuclear services joint venture, and stock in SpinCo, comprised of the non-utility nuclear plants, a power marketing operation, and the remaining 50 percent stake in the nuclear services joint venture. SpinCo will be uniquely positioned as the only pure-play, emission-free nuclear generating company in the United States, at a time when the states, the nation and the world move inevitably toward a less carbon-intensive future.

The option value of this transaction cannot be overstated. In the spin-off, shareholders will receive a highly liquid, publicly traded stock that we believe will be better recognized for its innate and scarcity value. Good corporate governance dictates that the decision to buy, hold or sell this uniquely positioned segment of our business and this industry be made available to individual shareholders to execute consistent with their individual points of view and risk appetite. This structure provides owners what we would consider a free option.

As part of the spin-off from the regulated utility, SpinCo will have the opportunity to maintain an efficient risk profile for its business, while aspiring to strong merchant credit relative to others in the sector. Conceptually, that means increased borrowing capacity and increased flexibility in the decisions on when or whether to enter into financial hedges for the plants' output. That is particularly valuable in an illiquid long-term market that has yet to

reflect the full value of carbon-free energy. Robust cash projections, with line of sight at \$2 billion 2012 earnings before interest, income taxes, depreciation and amortization, support assuming more financial risk or accepting greater volatility in return for greater cash flows than is practical as part of the "utility". Specifically, SpinCo expects to execute roughly \$4.5 billion of debt financing, subject to market terms and conditions – a stark contrast to when we started this business and it had to be all internally financed with shareholder money, limiting our dividend payout and other potential investments.



The nuclear services joint venture retains the talented, experienced nuclear operations team that currently operates our non-utility nuclear assets and Nebraska Public Power District's Cooper Nuclear Station, reflecting Entergy's commitment to maintaining safety, security and operational excellence. As a premier nuclear operator, the joint venture will have broad experience operating boiling and pressurized water reactor technologies, enabling it to grow through offerings of nuclear services to third parties, including plant operations, decommissioning and relicensing.

As part of the spin-off, Entergy Corporation expects to receive \$4 billion, \$1.5 billion of which is targeted to reduce debt. The remaining \$2.5 billion is targeted for a share repurchase program, \$0.5 billion of which has already been authorized by the Entergy Board of Directors, with the balance to be authorized and to commence following completion of the spin-off. Post-spin, Entergy Classic's dividend payout ratio aspiration ranges from 70 to 75 percent.

Post-spin, primary focus from Entergy's leadership team will be on the utility business, enabling continued value creation and growth. We will pursue strategies that benefit our customers through greater energy efficiency, including new, more efficient generating technologies, better price signals and more effective usage of our product. Entergy Classic offers a unique utility investment



CORPORATE

We ranked number one in total shareholder return over the nine-year period from Dec. 31, 1998 to Dec. 31, 2007.

opportunity with a unique base rate path and earnings per share growth prospect. The utilities' investment opportunities to reduce fuel cost and volatility are substantial relative to their own balance sheet. In that regard, we will not take on more than we can handle. Innovative financing with structures allowing for third-party investment or financing in specific projects (e.g., nuclear) will be extensively evaluated and implemented if it contributes to maintaining a strong credit rating, lowering customers' bills or protecting shareholder value. Through this transformation, Entergy Classic aspires to a "real" decrease in customer rates, with a base rate path less than projected inflation, while simultaneously growing earnings per share six to eight percent through 2012, creating value for all stakeholders.

It is rare to uncover an opportunity with the potential to deliver substantial value to all stakeholders. Moreover, as an Entergy shareholder, we clearly expect that you will be advantaged by both the value of SpinCo and the enhanced value of Entergy Classic. We will continue to take the necessary actions, including seeking requisite regulatory approvals, in order to complete the transaction around the end of the third quarter of 2008.



UTILITIES

We are pursuing our portfolio transformation strategy to meet demand, diversify our fleet and create opportunities to lower costs for our customers.

UNLOCKING VALUE THROUGH OPERATIONS – OUR 2007 RESULTS

Even as we continue to evaluate opportunities to realize the value inherent in our existing assets, our 14,300 employees remain focused on creating value through industry-leading performance in our ongoing operations. As a result of their efforts, Entergy delivered total shareholder return of 32.5 percent in 2007, placing us once again in the top quartile of our peer companies.

We achieved our *\$1 per share operational earnings growth* aspiration and did so in a challenging economic climate. Entergy's operational earnings were \$5.76 per share, up 22 percent from \$4.72 per share in 2006. As-reported earnings were \$5.60 per share, up 4.5 percent from \$5.36 per share in 2006. We initiated a new \$1.5 billion stock repurchase program in 2007, and returned nearly \$1 billion of cash to our owners through that program, doubling our repurchase aspiration of \$500 million. In addition, our Board of Directors increased the dividend for the first time since the last increase in 2004, consistent with our aspiration to achieve a 60 percent target payout ratio. And our operational return on invested capital increased, moving towards our 10 percent financial aspiration. These financial accomplishments were realized without sacrificing our solid credit metrics. We never lose sight of our point of view that a strong balance sheet is a fundamental component of long-term financial success.

A more detailed description of the performance of our Corporation, Utility and Nuclear Businesses – as well as our point of view on a carbon policy to address the climate change issue – can be found later in this report. Highlights include:

IN OUR UTILITY BUSINESS, we made solid progress in executing our portfolio transformation strategy in 2007 – announcing the acquisitions of the 789-megawatt Ouachita Power Facility in northern Louisiana and the 322-megawatt Calcasieu Generating Facility in southwestern Louisiana and receiving regulatory approval to proceed with the Little Gypsy Unit 3 repowering project. We continue to pursue buy, build and contract power purchase options through our portfolio transformation initiative in order to procure the right generating technologies for our customers in the most efficient manner possible. In addition, we're preserving our option to invest in the next, simpler, more efficient generation of nuclear plants, with potential new nuclear development at our Grand Gulf Nuclear Station and River Bend Station.

We essentially reached closure on the regulatory recovery process for the unprecedented devastation of the 2005 storm season. In May, Entergy New Orleans emerged from bankruptcy,

following approval of a \$200 million Community Development Block Grant from the Louisiana Recovery Authority and after reaching a regulatory recovery agreement with the New Orleans City Council. In August, we received the final regulatory approval for Entergy Louisiana and Entergy Gulf States Louisiana from the Louisiana Public Service Commission for recovery of roughly \$1 billion, representing the balance of storm restoration costs and the establishment of storm reserves. Securitization – a new, improved mechanism for cost recovery that results in lower overall bills to our customers – was also approved by the LPSC, consistent with actions taken in Mississippi and Texas, and final securitization proceeds are expected in 2008. In other utility matters, the long-studied jurisdictional separation became a reality at the end of 2007, when Entergy Gulf States, Inc. separated into two vertically integrated utilities – Entergy Gulf States Louisiana, L.L.C. and Entergy Texas, Inc.

IN OUR NUCLEAR BUSINESS, we closed on our acquisition of the 798-megawatt Palisades Nuclear Plant in Michigan. We also completed the implementation of our fleet alignment initiative for our utility and non-utility nuclear teams – with goals to eliminate redundancies, capture economies of scale and clearly establish organizational governance. Our first priority in our nuclear operations is safety and security. Only then do we pursue productivity improvements and cost efficiencies. When operational issues surface, we focus on resolving the issue at hand in the most appropriate manner and that may include temporarily suspending operations at a plant. While the forced outage levels we experienced in 2007 are not the performance we expect from our fleet, as good nuclear operators we take the opportunity to review our programs and procedures to ensure we adjust and perform up to our high standards going forward.

At the same time, it should be acknowledged not all forced outages are the same. Some were the result of events *outside* the plant itself, like the extended transformer-related outage at Indian Point 3. While there was some opportunity to mitigate the financial effect of this outage by starting the unit earlier using the other transformer at the plant and running at a lower capacity factor, we did not do that. It is simply not consistent with the Entergy Nuclear standards for safety, redundancy, reliability and risk management.

We continued our license renewal efforts and reached several key milestones. The Nuclear Regulatory Commission issued its final environmental impact statements for Vermont Yankee Nuclear Power Station, Pilgrim Nuclear Station, and most recently in January for the James A. FitzPatrick Nuclear Power Plant, finding

no environmental impacts that would preclude license renewal at these sites. All three sites are on track to receive renewed licenses during 2008. Also in 2007, the NRC accepted the license renewal application for the Indian Point Energy Center. While there has been significant public rhetoric surrounding the safety or need for Indian Point, we are confident the NRC license renewal process provides a fair hearing of any legitimate issues and concerns raised by the public and interested parties. We are confident Indian Point exceeds all the parameters for license renewal. Simply put, Indian Point is safe, secure and vital to the community interests.

NUCLEAR

Our premier nuclear fleet presents a major opportunity for value realization with its safe, secure and emission-free power generation.

AS A CORPORATION, we continued our unwavering commitment to sustainable development. We believe action must be taken to first stabilize and then reduce emissions of greenhouse gases. For this reason, we made a second voluntary commitment to stabilize our CO₂ emissions at 20 percent below year 2000 levels from 2006 to 2010 even as we continue to grow our electric production. Our cumulative CO₂ emissions for 2006 and 2007 were 79.0 tons, 7.2 percent better than our stabilization goal of 85.1 tons. Our belief in the realities of climate change and the principles that should guide us as a society as we develop a carbon policy are detailed later in this report.

I am proud of what we accomplished in 2007. I'm particularly proud to be part of a Board of Directors that over the last nine years has been faced with some of the hardest decisions Boards ever encounter. Without exception, they have never wavered from their obligations and commitments. The decision to pursue a spin-off of the non-utility nuclear business is evidence of this. It is one thing for companies to spin off businesses that are "losing" the war. It is another to spin off a winning, but relatively small segment, particularly under shareholder pressure. It is quite another, under no external pressures, to spin off the most profitable, highest growth business with potentially a bigger market capitalization than the remaining business. This was a hard decision, not because

the Board wasn't focused on doing the right thing, but because they were focused on absolutely assuring we get it right and not leave any money on the table in the transaction.



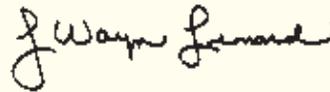
CLIMATE CHANGE

We believe now is the time to implement a smart carbon policy – using certain guiding principles – in order to stabilize harmful emissions of greenhouse gases.

For another example, I would remind you Entergy did not jump in front of the parade after climate change became “fashionable” or after stakeholder pressures were applied. More than six years ago, the Board directed the company to begin reducing emissions, not just talk about it. They have established principles for the climate change debate consistent with the economic realities and our company’s values. For example, we are a large independent power generator, but our principles for climate change do not promote free emission allowances under a cap-and-trade program to power generators. We believe any free allowances should go only to the end-use customers. We also believe the bulk of research and development money should go to research for the retrofit of existing coal plants even though almost all of our generating plants are nuclear- and natural gas-fueled. And even given the fact that we have been voluntarily reducing our own emissions for years, we are not prepared to support any mandatory plan for everyone else, who have done little or nothing, that does not consider the potential devastating financial effects on the poor and middle class. We recognize that it could be argued our principles are flawed. The company would be better off supporting free allowances for all generators based on output or not supporting research to “save” the existing competing coal plants. But that’s why they call them principles. You can read more about the facts supporting our principles later in the report.

I started by asking “Are we having fun yet?” Admittedly, it wasn’t much “fun” seven years ago to answer questions on why we were spending money to voluntarily reduce greenhouse gases before it was mainstream to even acknowledge climate change was real. It wasn’t much fun to hear the chuckles when we were buying nuclear plants when the conventional wisdom was they were a liability. It wasn’t much fun when the combination of hurricanes Katrina and Rita wiped out 120,000 square miles of our system, including our corporate headquarters, putting hundreds of employees out of a place to work or live, and thousands on the road day and night in the recovery effort. And we didn’t have answers to employee questions like, “When will we have a day off to check on our home?” or “Will the company ever be able to return to our home city – New Orleans?” It wasn’t much fun when, despite our best efforts, our goal of zero accidents was too distant to see. And it wasn’t much fun when the stock price of the company remained in the \$20s as it had for decades.

Now, it is fun to see the results of years of effort and executing on a solid point of view. But despite the skepticism of others or our own frustrations at the slow progress in some areas over the years, we have always had fun. It’s fun because we love what we do, and believe in the long run, doing it well while doing the right thing makes a difference. A difference for owners, for employees and their families, for our communities and for future generations.



J. WAYNE LEONARD

Chairman and Chief Executive Officer

CERTIFICATE OF SERVICE

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION**

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|---|--------------------------|
| _____) | |
| In the Matter of) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | Docket Nos. 50-255-LT |
| and ENTERGY NUCLEAR PALISADES, LLC) | and 72-7-LT |
| (Palisades Nuclear Plant)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | Docket Nos. 50-333-LT |
| and ENTERGY NUCLEAR FITZPATRICK, LLC) | and 72-12-LT |
| (James A. Fitzpatrick Nuclear Power Plant)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | Docket No. 50-293-LT |
| and ENTERGY NUCLEAR GENERATION COMPANY) | |
| (Pilgrim Nuclear Power Station)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | Docket No. 50-271-LT |
| and ENTERGY NUCLEAR VERMONT YANKEE, LLC) | |
| (Vermont Yankee Nuclear Power Station)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.;) | Docket Nos. 50-003-LT, |
| ENTERGY NUCLEAR INDIAN POINT 2, LLC; and) | 50-247-LT, and 50-286-LT |
| ENTERGY NUCLEAR INDIAN POINT 3, LLC) | |
| (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)) | |
| ENTERGY NUCLEAR OPERATIONS, INC.) | Docket Nos. 50-155-LT |
| and ENTERGY NUCLEAR PALISADES, LLC) | and 72-43-LT |
| (Big Rock Point)) | |
| _____) | April 15, 2008 |

CERTIFICATE OF SERVICE

I hereby certify that I have on this 15th day of April, 2008, caused the foregoing document to be served electronically via the Electronic Information Exchange to all parties whose names and respective email addresses appear on the service list compiled by the Office of the Secretary for the above-captioned dockets:

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This Certificate of Service is submitted in accordance with the requirements of 10 C.F.R. 2.305.

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April 15, 2008