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 30, 2008

RESPONSE OF LOCALS 369 AND 590, UTILITY WORKERS UNION OF AMERICA, AFL-CIO IN OPPOSITION TO MOTION OF ENTERGY NUCLEAR OPERATIONS, INC. TO STRIKE REPLY FILING

Pursuant to 10 C.F.R. § 2.1325(b), Locals 369 and 590, Utility Workers Union of America, AFL-CIO ("UWUA Locals") respond in opposition to the April 25, 2008, "Motion to Strike" of Entergy Nuclear Operations, Inc. ("ENO Motion"). The ENO Motion asks that the Commission strike substantial portions of UWUA Locals' April 15, 2008, "Reply" in this

proceeding.[1] The Motion should be denied in its entirety. The April 15 Reply is not an attempt to state new contentions, or to amend existing contentions without either seeking permission or making the requisite showings to obtain such permission. Far from a set of "multifarious new arguments or bases to bolster … deficient proposed contentions" (ENO Motion at 6), the April 15 Reply is a response to the arguments ENO itself proffered in its April 8 Filing, and otherwise "amplifies" the concerns that UWUA Locals have already raised.

Moreover, it is telling that while ENO vigorously asserts that NRC rules have been violated and required procedures ignored, it nowhere explains how ENO has been prejudiced by anything the UWUA Locals presented in the April 15 Reply. Given the scope of the April 15 Reply, we submit that no such showing could reasonably be made. However, to the extent there were any "prejudice," it may be in the other direction. ENO has addressed the problem it claims is present in the April 15 Reply by using its "Motion" as a vehicle for presenting new arguments of its own. ENO Motion at 10 (with respect to the concerns raised by Affiant Whitfield A. Russell) and 12 (with respect to the potential for "deadlock" under the dispute resolution mechanism proposed by ENO).

As we will demonstrate *infra*, ENO has only itself to blame for the arguments presented in the April 15 Reply, and has no basis on which to claim foul. The ENO Motion should be denied in its entirety.

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[1] 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," filed April 15, 2008 ("April 15 Reply"). The April 15 Reply was submitted in response to the "Answer of Entergy Nuclear Operations, Inc. Opposing Petition for Leave to Intervene and Request for Hearing of Locals 369 and 590, Utility Workers Union of America, AFL-CIO," filed April 8, 2008 ("April 8 Filing").

ARGUMENT

UWUA Locals' pleadings in these proceedings have focused on a central contention: that ENO's proposal to "spin-off" six nuclear plants from a far larger and far more diversified enterprise poses considerable financial risk, that this risk impacts the financial standing of the six nuclear plants at issue, and that the Commission should be concerned about, and evaluate, the extent of this risk. We have asserted that this issue is evident on the face of the proposal and requires no extensive, "expert" testimony to either identify or describe. The basis for UWUA Locals' interest in the proposed restructuring, and therefore its "standing" to raise these concerns, has likewise been clear from the outset. Our members work in at least two of the six nuclear facilities at issue, and the proposed restructuring will link the financial futures of each of the six facilities such that an event occurring at any of them could have a significant impact on the financial health both of the remaining facilities, and of the overall venture. Indeed, it would be difficult to imagine an organization or membership with a more direct and substantial interest in the matters at issue in these proceedings than UWUA Locals.

Nonetheless, in its April 8 Filing, ENO challenged both UWUA Locals' standing and the strength of the four contentions raised by the Unions in their March 18 Filing.[2] With respect to standing, ENO alleged, *inter alia*, that we had failed to demonstrate that the UWUA Locals were authorized by their members to pursue their concerns about the proposed restructuring. With respect to our contentions, the April 15 Reply is an effort to address and respond to the arguments raised by ENO, including the oft-repeated claim that our presentation was not accompanied by "expert" affidavit support. The Commission has made clear that litigants can

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[2] "Statement of New or Amended Contentions of Locals 369 and 590, Utility Workers Union of America, AFL-CIO Supplementing Petitions for Leave to Intervene and Related Requests for Relief," filed March 18, 2008 ("March 18 Filing").

answer each other in responsive pleadings; responding to another party's arguments is, of course, the reason for filing a "reply." There is no prohibition on including an affidavit in a reply pleading. In framing our reply, UWUA Locals were mindful of the limitations imposed by the Commission. Indeed, we stated expressly that our pleading -- including the Affidavit of Whitfield A. Russell – was limited to reiterating (or amplifying) previously-expressed concerns and addressing ENO's arguments presented in its April 8 Filing.

I. THE NRC HAS MADE CLEAR THAT LITIGANTS CAN SUBMIT REPLIES THAT ADDRESS THE "LEGAL, LOGICAL, AND FACTUAL ARGUMENTS" PRESENTED BY OTHERS

ENO asserts that the Commission prohibits the submission of "new arguments in replies" (Motion at 4), and describes the showings that must be made to justify the submission of late-filed or amended contentions. *Id.* at 6. Of course, and although not mentioned by ENO, the Commission has determined that a party may file a "reply" addressing the arguments advanced by its opponent. As explained in *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, LBP-06-23, 64 N.R.C. 257, 359 (2006) (citing *La. Energy Serv., L.P. (National Enrichment Facility)*, LBP-04-14, 60 N.R.C. 40, 58, *aff'd*, CLI-04-25, 60 N.R.C. 223 (2004)), "[a] petitioner may … respond to and focus on any legal, logical, or factual arguments presented in the answers, and the 'amplification' of statements provided in an initial petition is legitimate and permissible."[3] Moreover, the Commission noted in *Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 N.R.C. 131, 191 (2006) (citation omitted) that:

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[3] More generally, we note the Commission's reference to the "general admonition that technical perfection is not an essential element of contention pleading. It has been stated that the sounder practice is to decide issues on their merits, not to avoid them on technicalities." *Nuclear Mgmt. Co., LLC (Palisades Nuclear Plant)*, LBP-06-10, 63 N.R.C. 314, 339 (2006) (internal quotation omitted). Consideration of the "issues on their merits" here surely weighs in favor of the denial of the ENO Motion.

> While NRC practice does not permit petitioners to use reply briefs to provide the threshold level of support required for contention admissibility, petitioners may use replies to flesh out contentions that have already met the pleading requirements of 10 C.F.R. § 2.309(f)(1).

At the outset, we note some confusion on the part of ENO as to how UWUA Locals have purportedly run afoul of the Commission's regulations. ENO claims (Motion at 2) that UWUA Locals have failed to request "leave to amend their contentions." On the very next page, however, ENO alleges that UWUA Locals have "belatedly introduc[ed] new arguments and documents in support of the proffered contentions." *Id*. at 3. It is unclear from these two passages whether ENO is claiming that UWUA Locals modified their contentions, their arguments, or both. Whatever ENO in fact intended to convey, the gravamen of its concern seems to be that UWUA Locals have violated the rules by offering data to which ENO will have no chance to respond, and that much of the April 15 Reply should therefore be struck. This argument is baseless. However, in order to demonstrate the correctness of our position, it is necessary to review both the arguments made in the April 15 Reply, and the points raised by ENO to which UWUA Locals sought to address in the April 15 Reply.

II. THE COMMISSION SHOULD NOT STRIKE THE ARGUMENTS IN THE APRIL 15 REPLY CONCERNING STANDING, INCLUDING THE RELATED AFFIDAVITS

ENO cites no precedent for the proposition that affidavits supporting a claim of representational standing cannot be submitted in a reply, nor does (or could) it suggest that the efficiency-based argument against allowing new *contentions* in a reply should apply to additional evidence of standing.[4] UWUA Locals have demonstrated both organizational and

[4] ENO has spent time concocting arguments supporting its request that documents related to UWUA Locals' standing be struck, and UWUA Locals have had to spend time replying to those arguments, and Commission Staff will be forced to read and assess these additional pleadings. However, the submission of additional evidence of

representational standing without any need for affidavits where, as here, the UWUA Locals are charged with representing, pursuing and protecting their members' work-related interests. Nonetheless, and in response to ENO's objection to the lack of standing-related affidavits, UWUA Locals submitted three such affidavits, which surely should allay any concern as to UWUA Locals' authorization to represent their members' interests in this proceeding.

If it was error for the UWUA Locals to refrain from submitting affidavits with their initial Petition to Intervene, the error was harmless and has now been cured. [5]

III. THE RUSSELL AFFIDAVIT SHOULD NOT BE STRUCK BECAUSE IT IS PROPERLY RESPONSIVE TO CLAIMS ADVANCED BY ENO IN ITS APRIL 8 FILING

ENO alleges that the Russell Affidavit, included as part of the April 15 Reply, "presents a slew of new arguments that are nowhere to be seen in UWUA Locals' Petition to Intervene." ENO Motion at 8. In fact, and as we review immediately below, Mr. Russell's Affidavit accomplishes two purposes, neither of which is prohibited by NRC regulations or related Commission decisions. First, Mr. Russell repeats several of the statements made in the March 18 Filing. Second, Mr. Russell responds to specific arguments raised by ENO.[6] UWUA Locals'

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standing does not itself impose any additional burdens on anyone, nor does it prolong the administrative process.

[5] ENO claims that the NRC should not leap to any conclusions about the UWUA Locals' authority to represent its members in this litigation, noting that there has been no showing that "the scope of a union's authorization encompasses *any* litigation in *any* forum …" ENO Motion at 8. This argument is not well-founded or fairly advanced. As ENO knows, Affiant David Leonardi is named in the Confidentiality and Non-Disclosure Agreement (executed in this proceeding by ENO and UWUA Locals) as one of the UWUA Locals' "representatives" entitled to review ENO-designated "confidential" information. Agreement at Section 3 (listing of Petitioner Representatives). Affiant Murray Williams is the President of UWUA Local 590, and is therefore also "named" in the same section of the Agreement (which includes reference to the "President of Local 590" as one of the "representatives"). Given the direct involvement of Messrs. Williams and Leonardi in the pursuit of this litigation through the UWUA Locals, it is at least far-fetched to argue that there is a legitimate issue as to UWUA Locals' "authorization" to represent them here. Again, we urge the Commission not to stand on "technical perfection" as the reason to reject a standing claim that commonsense demonstrates is valid. *See* n.4, *supra*.

[6] ENO's description of Mr. Russell as an "alleged expert" (ENO Motion at 8) is as regrettable as it is inaccurate. Mr. Russell's expertise is described in his Affidavit (¶¶ 1-2; Affidavit Exhibit), and speaks for itself. In any event, if ENO is convinced that Mr. Russell lacks the credentials to make the assertions contained in his Affidavit, then the

inclusion in a reply of an affidavit to accomplish these purposes is not at odds with Commission regulations or related case law. For the same reasons, and as explained further in Section III.B, *infra*, there is no basis on which to strike either of the two documentary attachments to the Affidavit, both of which were authored by Entergy.

A. Mr. Russell's Affidavit Reiterates Statements in the March 18 Filing or Replies to Contentions Advanced by ENO

In their April 15 Reply, UWUA Locals explained fully why they had included Mr. Russell's affidavit, noting that they were addressing a concern, expressed repeatedly by ENO in its April 8 Filing, that UWUA Locals' positions were somehow deficient because they were not accompanied by expert testimony. However, in offering the Affidavit, UWUA Locals made clear that it was limited to (a) reiterating prior contentions; and (b) responding to ENO's arguments.[7] As we explained:

> 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

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Affidavit should pose little cause for concern. Moreover, we are constrained to note that whatever its merits, Mr. Russell's Affidavit remains the *only* substantive testimony filed in this proceeding either for or against the proposed restructuring. ENO has not submitted any affidavit or other testimony in support of its positions, including the new claims contained in the ENO Motion (at 10 and 12).

[7] ENO notes (Motion at 9) that Mr. Russell executed a non-disclosure agreement on March 7, 2008, and therefore had access to the unredacted NRC filings as of that date. Mr. Russell did review the ENO filings and assisted in the preparation of both the March 18 Filing and, of course, the April 15 Reply. Indeed, and as reviewed further *infra*, much of the information in the Russell Affidavit simply repeats points made in the March 18 Filing. ENO states that "UWUA Locals provide no reasonable explanation as to why they failed to include an expert affidavit in their Petition to Intervene." ENO Motion at 9. The explanation is simple: while Mr. Russell helped draft the March 18 Filing, UWUA Locals concluded that it was unnecessary to incur the burden of including an "expert" affidavit to address issues that appeared to be self-evident, especially given that the Commission does not require that contentions be accompanied by expert testimony. *AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)* LBP-06-07, 63 N.R.C. 188, 220 n.33 (2006). (Nor does the Commission require an expert affidavit from Entergy, as evidenced by the absence of one (or more) accompanying their proposal). However, given ENO's strenuous objections, we decided to memorialize Mr. Russell's observations in an affidavit, which both reiterated prior assertions and replied to ENO's contentions. Oddly, having now filed the Affidavit that ENO seemed to believe was essential, it argues that that the Affidavit is untimely.

> response to Entergy's claims, amplifies the concerns expressed in our earlier filings and described here.

April 15 Reply at 9 & n.7.[8]

The proof of these assertions is evident on the face of Mr. Russell's Affidavit, and belies ENO's contention that the Affidavit is "unmistakably … impermissible." ENO Motion at 9. In brief, the Affidavit addresses the following topics:

- ¶¶ 1-4: These paragraphs contain basic background information: a statement of Mr. Russell's qualifications, including his professional experience (details of which are included in an Exhibit to the Affidavit), and the assertion that he is appearing on behalf of UWUA Locals. Mr. Russell also provides (¶ 4) a description of documents reviewed in preparing the Affidavit. ENO raises no specific concerns about these paragraphs; assuming UWUA Locals are otherwise permitted to submit the entirety or at least a portion of Mr. Russell's Affidavit, these passages should be included.
- ¶ 5: Mr. Russell comments on the lack of data presented by ENO in support of its proposal, which reiterates concerns raised in the March 18 Filing at pages 3-4. Despite moving to strike this paragraph, ENO in fact seems to have no issue with UWUA Locals advancing this contention, as the reference in the April 15 Reply to the "paucity of information provided by Entergy" (at 9 n.7) is not among the statements that ENO has requested be struck.[9]

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[8] In the attachment to its Motion, ENO suggests striking the last sentence of the quoted passage. This sentence describes the scope and purposes of the Russell Affidavit; striking the sentence will not change the facts.

[9] In addition, ENO asserted in its April 8 Filing (at 34-36) that the information it has provided is sufficient, a claim to which UWUA Locals are surely entitled to respond.

- ¶¶ 6-8: As explained further below in response to specific concerns raised by ENO, the statements in these paragraphs reiterate concerns raised on page 3 of the March 18 Filing, including footnote 2 to that pleading.
- ¶ 9: Mr. Russell provides a statement of the UWUA Locals position that the proposal raises financial stability concerns associated with the assumption by the six nuclear facilities of substantial financial guarantees. The March 18 pleading clearly raises this concern (*e.g.*, at 8-9). This passage also cites information from Entergy's 2007 SEC Form 10-K Report, addressed *infra.*
- ¶ 10: In its April 8 Filing, ENO wrongly argues (at 22-23, 37) that its business models and strategies are irrelevant to the issues before the NRC. Mr. Russell explains in this paragraph why that argument is wrong. UWUA Locals plainly can respond to ENO's legal and factual arguments.
- ¶ 11: In this paragraph, Mr. Russell reiterates concerns presented in the March 18 Filing (at 8-9) and, more generally, summarizes UWUA Locals' central concern: that "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." Affidavit ¶ 11. This is not a "new" contention.
- ¶¶ 12 and 15: These paragraphs amplify the concerns raised in paragraph 11, and respond to ENO's contention (*e.g.*, April 8 Filing at 40) that under the proposed restructuring, "NewCo" will have "more than adequate resources to stand behind the $700 million financial Support Agreement being provided by NewCo."

Again, the use in this passage of information obtained from Entergy's 2007 SEC Form 10-K Report is addressed further below.

- ¶¶ 13-14: ENO argues in its April 8 Filing (*e.g.*, at 43) that its Support Agreement, in combination with other potential resource sources, will be sufficient to "operate and maintain the plants." UWUA Locals have argued that the availability of sufficient financial resources may be an issue if the there are extended outages or other problems at one or more of the six facilities. These paragraphs respond to ENO's claims that there is no basis on which to contend that the resources to be provided under Support Agreement may be insufficient. UWUA Locals note that ENO's allegations with respect to the Support Agreement were made in response to concerns that ENO attributes to UWUA Locals (April 18 Filing at 40); as such, there should be no issue with UWUA Locals amplifying the concerns that led to ENO's responsive claims, or to replying to ENO's assertions.
- ¶ 16: In the March 18 Filing, UWUA Locals expressed concern that the proposed restructuring involves a significant shift away from power purchase agreements and contracted-for payments, and in the direction of market revenues. In its April 8 Filing, ENO argues that this shift poses no risk, stating (at 41) that the "financial projections demonstrate that there is reasonable assurance that Entergy Pilgrim will have an adequate source of funds …." Mr. Russell replies to ENO's statement that, in essence, "there is nothing to worry about" by pointing that Entergy has separately acknowledged that a "dramatic[]" shift "from contracts to

the markets over the 5-year forecast period" (April 8 Filing at 41) is contrary to its "preference for contract rather than market payments." Affidavit ¶ 16.

- ¶ 17: As explained further below, ENO's complaint about Mr. Russell's reference to the failed Mirant Corporation spin-off from Southern Company is nothing more than an illustration (or amplification) of a point included in the March 18 Filing. That Filing refers (at 3 & n.2) to "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."
- ¶¶ 18-20: Again, as discussed further below, Mr. Russell responds to ENO's concern (April 8 Filing at 43-44) that UWUA Locals had "ignore[d] portions of [Ms. Curry's Vermont Public Service Board testimony] that contradict or undermine their proposed contentions." ENO includes a lengthy Curry quote that it contends "supports the contrary proposition." *Id*. at 44. Mr. Russell addresses this claim, made for the first time in ENO's April 8 Filing, head-on, and explains that Ms. Curry's claims depend on the outcome of events that are, as of now, unknown and unknowable.
- ¶ 21: This passage reiterates concerns expressed in the March 18 Filing (at 9-10) about the potential for deleterious impacts as a result of the financial strains associated with the proposed restructuring.

The bases for both ENO's general claim (Motion at 9) that UWUA Locals "failed to adequately support their claims at the outset," and its specific claims with respect to particular points in the Affidavit (*id.* at 8-9) must be rejected in the face of the analysis presented above, and the additional assertions advanced below.

In support of the claim that the Russell Affidavit contains "new arguments or information concerning" certain topics, ENO makes four points. First, ENO challenges (at 8, first bullet) Mr. Russell's reference to "the inability of the Securities and Exchange Commission ("SEC") to review the merits of NewCo's capital structure and debt arrangements (Russell Affidavit ¶¶ 6-8)." The statements contained in these three paragraphs are virtually identical to the statements contained in the March 18 Filing at 3 and n.2. ENO was fully aware of the contention at the time it drafted its April 8 Filing.

Second, ENO states (Motion at 8, second bullet) that Mr. Russell refers in his Affidavit to "purportedly undefined 'hedging arrangements' (¶ 15)." Mr. Russell's reference to "hedging" was based on statements made in testimony submitted by Entergy witness Wanda Curry before the Vermont Public Service Board, which is conducting its own proceeding to review the impact of the proposed restructuring on Vermont Yankee. Thus, ENO is complaining about the "late" use of testimony that the Company itself presented to the VPSB. Moreover, quoting this testimony is not late; Ms. Curry's reference to "hedging" is quoted in an excerpt from her testimony in the UWUA Locals' March 18 Filing (at 6-7). Mr. Russell's statement "some portion of the $2 billion left with NewCo will be used for undefined 'Hedging Arrangements'" was already included in the March 18 Filing, which quotes Ms. Curry's statement that

> a Term LC Facility of up to $2,000,000,000, which will be available to NewCo and its affiliates for "Term Letters of Credit" (the aggregate amount of the Senior Revolving Credit Facility and Term LC Facility will not exceed $2,000,000,000); and a Commodity Collateral Revolver Facility, the purpose of which is to provide credit support for hedging by NewCo and its affiliates.

Id.

Finally, while Mr. Russell does more than simply quote the Curry testimony, the general lack of information provided by ENO (both here and in the Vermont PSB proceeding) leaves

him with little to say beyond the existence of the testimony itself: "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. This is nothing more than an acknowledgement of what the Curry testimony itself states (or does not state), and hardly justifies "striking" the statement in the Affidavit, or a related statement in the April 15 Reply itself, at 27 (ENO proposes to strike the phrase, "or, perhaps, hedging arrangement").

Third, ENO notes Mr. Russell's testimony concerning the "historical failures associated with the spin-off of generating assets to a separate company trading in the competitive marketplace (¶ 17)." Mr. Russell refers in the cited paragraph to the failure of the April 2001 spin-off by Southern Company of its wholly-owned subsidiary, Mirant Corporation. He notes that Mirant went bankrupt in July 2003, "after slumping power prices left it unable to refinance a $4.9 billion debt." This statement of historical fact is an illustration (or amplification) of a point included in the March 18 Filing, which refers (at 3 & n.2) to "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." Moreover, the statement is responsive to statements by ENO in its April 8 Filing that there should be no cause for concern that its spin-off strategy involves undue financial risk. *E.g.*, April 8 Filing at 40 (stating that "NewCo will still have more than adequate resources to stand behind the $700 million financial support agreement being provided by NewCo").

Next, ENO asserts (Motion at 9, fifth bullet) that Mr. Russell wrongly addressed "alleged disparities between Entergy's proposed debt-to-enterprise values and statements contained in Entergy's 2007 SEC Form 10-K report (*id*. ¶ 18)." While Mr. Russell does address the debt-to-enterprise issue (Affidavit ¶¶ 18-20); there is nothing inappropriate in his having done

so. As explained *supra*, Mr. Russell was simply explaining why ENO was off-base in claiming that Ms. Curry's testimony supports a finding that NewCo will not be in a "precarious financial condition." April 8 Filing at 44.

Further, ENO argues in a footnote (Motion at 8 n.28) that UWUA Locals failed to include a discussion in their March 18 Filing of the "reasonable assurance" standard set forth in 10 C.F.R. § 50.33(f). The statement is correct, but irrelevant. UWUA Locals made plain in the March 18 Filing that they were concerned over the financial implications of the proposed restructuring, and with the ability of the new entity to meet its financial obligations:

> Entergy's proposed "NewCo" or "SpinCo" corporate restructuring poses potentially enormous financial risks for Pilgrim and, it appears, for the five other Entergy nuclear facilities that would likewise be involved in the restructuring. The transaction is structured such that the six Entergy nuclear plants will have backstop financial responsibility for NewCo's highly leveraged borrowings.
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> * * *
>
> Once the NewCo transaction is approved, the protections of investors, consumers and the public that have long flowed from Entergy's legacy as a PUHCA registered system will be removed, NewCo will be saddled with massive debt, and the public, investors and consumers can look only to the much-diminished cash flow from the six nuclear plants in the event of a financial downturn. What little we know of NewCo's structure provides cold comfort to the public and the employee workforce at the plants, which will be dependent upon NewCo to operate a nuclear fleet in a safe manner, free from operating neglect and excessive outages.

March 18 Filing at 2-3 (footnotes omitted). Whether or not the specific NRC regulatory standard is cited in the March 18 Filing, the April 15 Reply does not present a markedly different picture of UWUA Locals' concerns. We have stated, and continue to maintain, that the proposed restructuring poses financial risks, and that under the "NewCo" structure, the six facilities are essentially on their own "in the event of a financial downturn." Indeed, while arguing that we

have failed to present contentions that are within the scope of this proceeding, even ENO admits (April 8 Filing at 36) that UWUA Locals' fourth contention can be viewed as "an ostensible health-and-safety-related challenge to the Applicants' financial qualifications." The discussions in the April 15 Reply concerning Commission case law under this regulatory standard are similarly limited to responding to ENO claims that UWUA Locals' arguments constitute "speculation" (April 15 Reply at 17), that market and business "strategies" are off-limits from Commission review (*id.* at 16-17), and that the Commission's standards are not relevant to the protection of the "public interest." *Id.* at 15. Given ENO's claims, all of these discussions are properly included in a reply pleading.

B. The Documents Appended to the April 15 Reply Should Not Be Struck

ENO argues (Motion at 11) that excerpts from two public documents – Entergy's SEC 2007 Form 10-K Report and its 2007 Annual Report to Shareholders – should be "struck" from the April 15 Reply because they could have and should have been presented earlier, and because UWUA Locals have not sought permission to file them out-of-time. ENO's claims should be rejected.

In general, ENO cannot credibly claim "surprise" because of the use of documents that Entergy itself either (a) filed with the United States Securities and Exchange Commission; or (b) authored and sent to its shareholders.[10]

In specific, both documents serve legitimate, reply-related purposes. The excerpt from the SEC 2007 Form 10-K Report in the April 15 Reply is used to refute ENO's claim that even a "dramatic[]" "shift" "from contracts to the markets over the 5-year forecast period" is no cause

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[10] *See AmerGen Energy Co., LLC*, LBP-06-07, 63 N.R.C. 188, 227 (2006) ("we deny AmerGen's motion to strike Exhibits 10, 11, and 12, because those documents -- which were in AmerGen's possession -- legitimately responded to AmerGen's Answer and amplified arguments in NIRS's Petition").

for concern. April 8 Filing at 41. As Mr. Russell explains, this assertion is at odds with statements in the 10-K Report. In addition, data in the Report is used in support of Mr. Russell's critique of the Curry testimony concerning debt-to-enterprise value. Affidavit ¶ 18. As explained above, ENO argued in the April 8 Filing that UWA Locals erred in failing to address Ms. Curry's testimony on this issue.

The excerpt from the 2007 Annual Shareholders Report is, again, used to address ENO's argument that there is no undue financial risk associated with the proposal. This was a central theme of the March 18 Filing, was a focus of ENO's April 8 Filing, and is fairly addressed in the April 15 Reply. And, again, ENO should be hard-pressed to explain how it has been harmed by the inclusion of data from a document it authored and provided to its shareholders.

IV. THE "DEADLOCK ARGUMENT" ADVANCED BY UWUA LOCALS SHOULD NOT BE STRUCK BECAUSE IT PROPERLY RESPONDS TO NEW INFORMATION SUBMITTED BY ENO AND TO ARGUMENTS MADE IN THE APRIL 8 FILING

As UWUA Locals explained in their April 15 Reply (at 12), "Entergy objects [in its Opposition] 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." UWUA Locals' further analysis of the potential for managerial conflict was submitted in the April 15 Reply in response to ENO's objection, and in fulfillment of UWUA Locals' promise in their March 18 filing (at 7-8) to submit further analysis of Entergy's March 17 Supplement as soon as feasible. Given this explanation, it seems that the purpose of this portion of ENO's Motion was to give it an excuse to answer UWUA Locals' analysis, which ENO has now done (Motion at 12). The Motion should therefore be denied.[11]

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[11] In light of the timing of Entergy's March 17 Supplement and the quite comprehensible explanation in UWUA Locals' April 15 Reply, Entergy's claim (Motion at 11, emphasis added) that "it is *unclear* why UWUA Locals

CONCLUSION

WHEREFORE, for the foregoing reasons, UWUA Locals request that the Commission deny ENO's Motion to Strike. In addition, we 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

Law Offices of:
SPIEGEL&MCDIARMID LLP
1333 New Hampshire Ave., NW
Washington, DC 20036
(202) 879-4000

April 30, 2008

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failed to proffer the foregoing 'veto power' argument regarding the 'Joint Venture' between Entergy and NewCo in their March 18 Supplemental Petition" is difficult to fathom.

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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 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th 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:

Paul M. Bessette pbessette@morganlewis.com

Stephen Burdick	sburdick@morganlewis.com
Adria Byrdsong	atbl@nrc.gov
Ron Deavers	rxd@nrc.gov
Rebecca Giitter	rll@nrc.gov
Nancy Greathead	nsg@nrc.gov
Hearing Docket	hearingdocket@nrc.gov
Emile Julian	elj@nrc.gov
Richard J. Koda	rjkoda@earthlink.net
Mauri T. Lemoncelli	mlemoncelli@morganlewis.com
Linda Lewis	linda.lewis@nrc.gov
Circe Martin	ogcmailcenter@nrc.gov
John Matthews	jmatthews@morganlewis.com
Evangeline S. Ngbea	esn@nrc.gov
Kenny Nguyen	kdn@nrc.gov
OCAAMAIL	OCAAMAIL@nrc.gov
OGCMailCenter	ogcmailcenter@nrc.gov
Martin O'Neill	martin.oneill@morganlewis.com
Christine Pierpoint	cmp@nrc.gov
Kristy Remsburg	ogcmailcenter@nrc.gov
Tom Ryan	tpr@nrc.gov
Susan Shapiro	palisadesart@aol.com
Kathryn M. Sutton	ksutton@morganlewis.com
Leslie Vincent	lev@nrc.gov

Sarah Wagner	sarahwagneresq@gmail.com
Annette White	annette.white@morganlewis.com
Vincent Zabielski	vzabielski@morganlewis.com

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

/s/ *Scott H. Strauss*

Scott H. Strauss
SPIEGEL & MCDIARMID LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Tel. (202) 879-4000
Fax (202) 393-2866
scott.strauss@spiegelmcd.com

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