

August 25, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO APPEAL OF WESTCHESTER
CITIZEN'S AWARENESS NETWORK, *ET AL.*,
FROM THE LICENSING BOARD'S ORDER
(STRIKING WESTCAN'S REQUEST FOR HEARING)

The NRC Staff ("Staff") hereby responds to the appeal filed by Westchester Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association ("RCCA"), Public Health and Sustainable Energy ("PHASE"), Sierra Club – Atlantic Chapter, and Assemblyman Richard Brodsky (collectively, "WestCAN"), on August 8, 2008,¹ from the Atomic Safety and Licensing Board's ("Licensing Board" or "Board") "Order (Striking WestCAN's Request for Hearing)," issued on July 31, 2008 ("WestCAN Order").²

¹ WestCAN filed a "Notice of Appeal" ("Notice"), a "Memorandum in Support of Petitioners' Appeal to the Commission" ("Memorandum"), Attachments 1 – 4, and a Certificate of Service ("COS") signed by WestCAN Counsel Susan Shapiro. As stated in the "NRC Staff's Notice (Concerning WestCAN's Appeal from the Licensing Board's Order Striking WestCAN's Request for Hearing)" ("NRC Staff's Notice") filed on August 15, 2008, the COS attached to WestCAN's appeal incorrectly states that electronic and "hard copy" service was made upon Staff Counsel on August 15, 2008; the Staff first received actual service of all documents comprising the appeal on August 14, 2008, in a FedEx package sent by WestCAN to Staff Counsel on August 13, 2008.

² As set forth in the NRC Staff's Notice of August 15, 2008, the Licensing Board's Order striking WestCAN's request for hearing was issued pursuant to 10 C.F.R. § 2.314(c). As the Staff noted, § 2.314(c) does not explicitly provide a right (or due date) for the filing of responses to an appeal filed under that regulation -- unlike 10 C.F.R. §§ 2.311(a), and 2.341(b)(3), which establish the right to file a response to appeals filed under those regulations. See Staff Notice at 3. In the event the Commission determines that a response to WestCAN's appeal is not permitted as of right under § 2.314(c), the Staff hereby requests leave to file the instant response.

For the reasons set forth below, the Staff submits that the Licensing Board correctly found that “WestCAN has repeatedly misrepresented facts in pleadings filed with [the] Board,” and properly concluded that “WestCAN’s appalling lack of candor” rendered it “impossible for the Board to meet its responsibilities under 10 C.F.R. § 2.319 to conduct a fair, orderly, and efficient adjudicative hearing with WestCAN as a participant.” WestCAN Order at 1. WestCAN’s appeal from the Licensing Board’s Order fails to demonstrate that these findings and conclusions were incorrect, or that the Board’s Order striking WestCAN’s request for hearing was clearly erroneous or constitutes an abuse of discretion. Accordingly, the Staff respectfully submits that the Licensing Board’s Order should be affirmed.

BACKGROUND

This matter arises from the application of Entergy Nuclear Operations, Inc. (“Applicant”) to renew its operating licenses for Indian Point Nuclear Generating Units 2 and 3 (“Indian Point”), located in Buchanan, NY. On August 1, 2007, the NRC published a Notice of Opportunity for Hearing on the Applicant’s license renewal application (“LRA”).³ WestCAN and various other persons requested, and were granted, extensions of time to file their hearing requests and petitions to intervene. Thereafter, petitions for leave to intervene and requests for hearing were filed by numerous petitioners; among these was a 387-page petition for leave to intervene, supported by voluminous exhibits, filed by WestCAN.⁴

³ “Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3, Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-26 and DPR-64 for an Additional 20-Year Period,” 72 Fed. Reg. 42,134, 42,135 (Aug. 1, 2007). The initial deadline for filing petitions for leave to intervene was later extended from October 1 to December 10, 2007, partly in consideration of WestCAN’s request for additional time to file. See (1) 72 Fed. Reg. 55,834 (Oct. 1, 2007); (2) Commission Order of November 16, 2007; and (3) Licensing Board Order of November 29, 2007 (granting WestCAN’s request for an additional extension of time).

⁴ “Petition for Leave to Intervene With Contentions and, Request for Hearing,” dated December 10, 2007 (“WestCAN’s Petition to Intervene”). WestCAN’s Petition to Intervene was filed by Susan Shapiro, Esq., who had previously served as Counsel for Friends United for Safe Energy (“FUSE”) (continued. . .)

On January 22, 2008, answers to WestCAN's Petition to Intervene were filed by the Applicant and Staff.⁵ WestCAN requested, and was granted, a two-week extension of time to file a reply to the Applicant's and Staff's Answers, such that WestCAN's Reply was required to be filed by Friday, February 15, 2008. See WestCAN Order at 3-4. WestCAN then filed a 124-page Reply to the Applicant's and Staff's Answers, in a pleading dated February 15, 2008.⁶ Attached to WestCAN's Reply was a certificate of service ("COS") dated February 15, signed by WestCAN co-Counsel Sarah Wagner, stating (a) that electronic service was made on February 15 to various persons (including, *inter alia*, the Office of the Secretary, the individual Licensing Board members, the Board's law clerk, and NRC Staff Counsel), and (b) that in addition to such electronic service, "paper copies have been deposit [sic] with a courier service" for the Office of the Secretary and "a courtesy paper copy has been sent to the Staff."⁷

(. . .continued)

(see "Notice of Appearance" transmitted by letter from Susan H. Shapiro to the Office of the Secretary, dated September 28, 2007). On February 1, 2008, the Licensing Board struck various exhibits submitted by WestCAN in support of its December 10, 2007 petition, finding that "many" of the exhibits "appear to have been served in an inconsistent manner, and some . . . do not appear to have been served on the Licensing Board in any way." "Order (Concerning Certain Exhibits Submitted by WestCAN and Associated Petitioners)," dated February 1, 2008, at 1. The Licensing Board cautioned WestCAN and other petitioners to make proper service of their pleadings in the future, finding that "[i]nconsistent, incomplete, and confusing filings . . . place an enormous burden on the Board, other litigants, and even on members of the Petitioners' organizations . . ." *Id.* at 2.

⁵ "Answer of Entergy Nuclear Operations, Inc. Opposing WestCAN, et al. Petition for Leave to Intervene and Request for Hearing," dated January 22, 2008 ("Applicant's Answer"); "NRC Staff's Response to Petitions for Leave to Intervene Filed By (1) Westchester Citizen's Awareness Network, and (2) Friends United for Sustainable Energy, USA," dated January 22, 2008 ("Staff's Response").

⁶ "Reply of Petitioners Westchester Citizen's Awareness Network (WestCAN), [et al.]," dated February 15, 2008 ("WestCAN's Reply"), as amended by Errata filed on February 27, 2008.

⁷ In a letter to the Secretary dated February 19, 2008 but served on February 20, 2008 (see Attachment 2 to WestCAN's appeal), WestCAN Counsel Sarah Wagner transmitted a CD Rom disc containing its Reply and exhibits; Ms. Wagner stated that the CD Rom version was "an exact copy" of its February 15 transmittal, and that the PDF files contained on the disc "are electronic versions of the hard copy documents sent February 15, 2008 by courier, as well as the Petitioners' Reply sent by email last Friday." The CD Rom disc, in fact, may have contained a different version of WestCAN's Reply – as WestCAN, itself, appears to concede in its appeal. See Memorandum at 7 n.4 (stating, "the differences" between the CD Rom and the previous version are "inconsequential").

The Licensing Board's Order provides a detailed recitation of numerous inaccurate statements made in the COS attached to WestCAN's Reply and in WestCAN's subsequent attempts to explain when and how it had served the Reply (and various versions thereof). WestCAN Order, at 4-12. The Board's discussion need not be recited at length herein. In brief, the Board found that despite the representations contained in WestCAN's COS of February 15, WestCAN did not serve its Reply on the date stated in its certificate (*i.e.*, February 15, the date it was required to file and serve its Reply), nor did it effectuate service in the manner stated in its COS. Rather, the Board found that WestCAN made electronic service of its Reply, on some of the recipients listed on its COS on February 16 at 12:53 AM (not including, *inter alia*, the Licensing Board members, the Board's law clerk, or Staff Counsel). See WestCAN Order at 4 and n.8. Further, the Board found that WestCAN failed to serve the paper copy of its Reply in the manner or on the date stated in its COS. *Id.* at 4-12. On March 7, 2008, after learning that WestCAN may not have served its Reply in the manner and on the date stated in its original COS, the Licensing Board issued an order requiring further information from WestCAN and the Staff as to the manner and date on which WestCAN had served its Reply.⁸ See *id.* at 5. Subsequently, the Board issued further Orders requiring clarification and documentation from WestCAN concerning its service of the February 15 Reply, and information from the other participants in the proceeding as to when and how they received service of documents from WestCAN.⁹ See *id.* at 5-8.

⁸ See "Order (Relating to the Service and Content of WestCAN's Reply," dated February 15, 2008), at 1.

⁹ See (1) "Order (Second Order Relating to the Service and Content of WestCAN's Reply Dated Feb. 15, 2008)," dated March 24, 2008; Relating to the Service and Content of WestCAN's Reply," dated February 15, 2008), (2) "Order (Third Order Relating to the Service and Content of WestCAN's Reply Dated Feb. 15, 2008)," dated April 1, 2008; and (3) "Order (Revised Third Order . . .)", dated April 2, 2008.

On July 31, 2008, the Licensing Board issued three decisions in this proceeding, regarding the petitions to intervene and requests for hearing which had been filed concerning Entergy's license renewal application. In particular, as pertinent here, the Licensing Board struck WestCAN's request for hearing under the provisions of 10 C.F.R. § 2.314(c). See WestCAN Order, at 13. Citing numerous defects in WestCAN's certificates of service and various conflicting, "discrepan[t]," "inaccurate," "false," "implausible," "[dis]honest," and non-"credible" "misrepresentations" made in WestCAN's filings concerning this matter (*id.* at 4, 5, 7, 8, 9, n.31, 11, and 12), the Board found that "WestCAN has repeatedly misrepresented facts in pleadings filed with [the] Board," and that "WestCAN's appalling lack of candor" rendered it "impossible for the Board to meet its responsibilities under 10 C.F.R. § 2.319 to conduct a fair, orderly, and efficient adjudicative hearing with WestCAN as a participant." *Id.* at 1. On or about August 8, 2008, WestCAN filed its appeal from the Licensing Board's Order.

DISCUSSION

The Licensing Board, in its Order (Striking WestCAN's Request for Hearing), set out a painstakingly detailed account of the numerous conflicting and inaccurate representations made by WestCAN in its COS dated February 15 and its subsequent filings before the Board. These facts, standing alone, would have justified the issuance of an Order striking the February 15 Reply – an action which WestCAN urges would have been "proportionate" and adequate to rectify the improper service of that document "even if the [Board's] "unsubstantiated accusations are true." WestCAN Memorandum, at 4.¹⁰ WestCAN argues that it was "a blatant

¹⁰ WestCAN appears to assert it experienced difficulties in serving its Reply due to problems presented by the NRC's E-mail system. See WestCAN's Memorandum at 2 n.1, and 9 n.6. There is no basis for such a claim. Only WestCAN's attorneys have experienced such problems. Moreover, as WestCAN concedes, it had been informed, prior to filing its February 15 Reply, that the NRC's E-mail system would not accept filings larger than 10 megabytes. See Memorandum at 9 n.6, E-mail message from Sherwin Turk to Sarah Wagner, sent at 3:38 PM, February 15, 2008 (Attachment 1 hereto); E-mail message from Sherwin Turk to Sarah Wagner, sent at 8:00 PM, February 14, 2008 (Attachment 2 hereto).

abuse of discretion” for the Board to strike its request for hearing and to bar WestCAN from this license renewal proceeding, “based on a minor, inadvertent error on a Certificate of Service of a Reply.” *Id.* at 10.

Significantly, WestCAN fails to recognize that the Licensing Board did not strike its request for hearing because of an error in WestCAN's certificate of service; rather, the Board explicitly based its decision on WestCAN's subsequent misrepresentations of the facts involving the service of that Reply. In this regard, the Board stated as follows:

Since the editing was not completed until February 16, 2008, the edited version could not have been deposited with DHL on February 15, 2008. However, it is not the initial inaccuracy in WestCAN's certificate of service that is the basis for the action we take today. Rather, it is the lack of candor and integrity WestCAN demonstrated by submitting false and misleading information in response to the Board's three orders which attempted unsuccessfully to get a clear, honest explanation of how WestCAN's February 15th Reply was served.

The repeated certification by WestCAN that this pleading was submitted on the date that it was due, February 15, 2008, was false. The explanation of how the February 15th Reply had been served that was offered by WestCAN in its April 7th Reply was false. To allow the continuation of such mendacity would be inimical to the conduct of a fair, orderly, and efficient proceeding.

WestCAN Order, at 12.

Moreover, WestCAN altogether fails to address the Board's detailed examination of WestCAN's conflicting statements concerning the service of its February 15 Reply, and it altogether fails to show any error by the Board in its finding of numerous conflicting representations which WestCAN made in attempting to explain when and how it served that Reply. See WestCAN Order at 4-5, 7-9, and 11-12. Rather, WestCAN simply argues that the Board erred in its “assumptions” and its interpretation of WestCAN's “intent” or “intentions,” (Memorandum at 1, 3, 4, 5). WestCAN further asserts that it has “consistently maintained” that the “Reply Brief was properly served and [WestCAN has] not submitted intentionally false

information or misrepresented the truth.” Memorandum at 5. Similarly, WestCAN asserts that its Reply “was properly and timely filed,” *id.* at 8, and that the Licensing Board’s “accusations” are “false.” *Id.* at 9. Despite these protestations, however, WestCAN altogether fails to address the Licensing Board’s comparison of WestCAN’s numerous conflicting representations, and it fails to show any reason to believe that the Board erred in its comparative assessment of those representations. In sum, WestCAN has failed to show any reason to believe that the Board erred in its finding of material misstatements in WestCAN’s filings before the Board.¹¹

Finally, WestCAN provides no showing that the Licensing Board abused its discretion in its determination to strike WestCAN’s request for hearing. In this regard, the Licensing Board concluded as follows:

The matters presented in this proceeding are too important to have the time and attention of the Board and the parties wasted by WestCAN’s unwillingness to consistently deal in a forthright manner. We cannot conduct a fair, orderly, and efficient proceeding if we can not rely on the integrity of the parties, and WestCAN has repeatedly demonstrated that we can not rely on their attorneys to be credible in their dealings with the Board and the parties. Accordingly, in the interest of conducting a fair, orderly and efficient proceeding, we strike WestCAN’s Request for Hearing.³⁶

³⁶ See 10 C.F.R. § 2.319(g) and (q).

The Licensing Board’s determination to strike WestCAN’s request for hearing, thereby barring it from further participation in the proceeding, constitutes an appropriate action under the Board’s

¹¹ WestCAN appears to assert that the Board’s ruling was issued without prior warning, and that the Board had previously indicated only that “invalidly submitted documents will be struck.” Memorandum at 9. In fact, the Licensing Board had previously cautioned the participants in this proceeding that “service must be properly made and Certificates of Service must be accurate and complete, including the identity of the person served, the address to which it was sent, the method of service, and the signature . . . of the person who has certified that service has been made exactly as specified in the Certificate of Service.” Memorandum and Order (Administrative Matters and Directing Parties Attention to Requirements for Proper Service), dated October 29, 2007, at 2. Further, the Board warned that “failure to comply with the Rules can well result in a litigant being dismissed from the proceeding.” *Id.* at 3.

authority to “regulate the course of the hearing and the conduct of participants” herein. See 10 C.F.R. § 2.319(g).¹²

In this regard, 10 C.F.R. § 2.314(c) provides as follows:

- (c) Reprimand, censure or suspension from the proceeding.
- (1) A presiding officer, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who refuses to comply with its directions, or who is disorderly, disruptive, or engages in contemptuous conduct.

Here, the Licensing Board determined that WestCAN had repeatedly made inconsistent, conflicting, and “false” representations in its filings before the Board – in the face of repeated requests by the Board for an “honest explanation” of the facts concerning its service of the February 15 Reply.¹³ In light of these repeated misrepresentations, the Board properly found that “WestCAN has repeatedly demonstrated that we can not rely on their attorneys to be credible in their dealings with the Board and parties.” WestCAN Order, at 12.

It is beyond dispute that litigants and their attorneys must be depended upon to be truthful in their representations to the Commission and its adjudicatory boards, and must comply with the directives of the Commission and the Board. Where such truthfulness and compliance is lacking, the participant may properly be dismissed from the proceeding. See, e.g., *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-89-02, 29 NRC

¹² Incredibly, WestCAN omits from its Memorandum any mention of the authority provided by 10 C.F.R. § 2.319 for the Board to regulate “the conduct of participants” in the proceeding, stating instead, that § 2.319 provides authority for the Board to “conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to maintain order.” Memorandum at 9 (internal quotations in original; emphasis added).

¹³ See WestCAN Order at 4, 8-9, and 12.

211, 229, 230-31 (1989).¹⁴ Dismissal of a party in federal court proceedings has similarly been upheld as not constituting an abuse of discretion, where the party submitted false information and/or repeatedly failed to comply with the court's orders.¹⁵

In sum, the Licensing Board's determination to strike WestCAN's request for hearing in this proceeding, in light of the numerous conflicting representations in WestCAN's responses to the Board's repeated Orders requesting an "honest explanation" as to when and how WestCAN had served its February 15 Reply, was fully within the Board's discretion under 10 C.F.R. § 2.319. WestCAN has failed to show any abuse of discretion in the Board's determination to strike WestCAN's request for hearing.

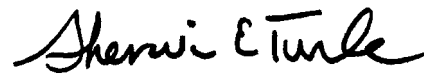
¹⁴ In *Shoreham*, the Licensing Board had dismissed the government Intervenor due to their refusal to comply with the Board's discovery orders. The Commission considered the harm caused by the Intervenor's conduct to other parties and the adjudicatory process, and upheld the Intervenor's dismissal finding that they had "willfully disobey[ed]" the Board's discovery orders, and "disable[d] the fact-finding process and prevent[ed] the truth from being ascertained." 29 NRC at 214-15. In addition, the Commission found that the Board's rulings "placed [the Intervenor] under no compulsion other than to provide truthful information. This obligation, which rests on every participant in an administrative or judicial proceeding, they were unwilling to meet." *Id.* at 229; emphasis added.

¹⁵ See, e.g., *Jimenez v. Madison Area Technical College*, 321 F.3d 652, 656-57 (7th Cir. 2003) (the lower court's dismissal of a plaintiff's discrimination suit did not constitute an abuse of discretion, where the plaintiff had submitted falsified e-mails to the court in support of her claims; dismissal was appropriate under Fed. R. Civ. P., Rule 11(b) (requiring attorney certifications that the representations made in pleadings, motions, or other papers, are warranted under existing law and have evidentiary support)); *John's Insulation, Inc. v. L. Addison and Associates, Inc.*, 156 F.3d 101, 109-110 (1st Cir. 1998) (no abuse of discretion was found in a district court's dismissal of plaintiff's claims as a sanction for "protracted delay and repeated violation of court orders"; such dismissal may be warranted by "protracted inaction, disobedience of court orders, ignorance of warnings, contumacious conduct . . . or some other aggravating circumstances such as . . . the wasteful expenditure of a significant amount of the [court's] time," particularly where the litigant was "suitably forewarned of the consequences of continued intransigence"); *Young v. Gordon*, 330 F.3d 76, 81, 83 (1st Cir. 2003) (finding no abuse of discretion was presented by the court's dismissal of a party under Fed. R. Civ. P. Rule 37(b); the "disobedience of court orders is inimical to the orderly administration of justice and, in and of itself, can constitute extreme misconduct" sufficient to warrant dismissal" under the rule).

CONCLUSION

For the reasons set forth above, WestCAN has failed to show that the Licensing Board's Order striking WestCAN's request for hearing was clearly erroneous or that it constitutes an abuse of discretion. Accordingly, the Staff respectfully submits that the Licensing Board's Order should be affirmed.

Respectfully submitted,

A handwritten signature in black ink that reads "Sherwin E. Turk". The signature is written in a cursive style with a large, prominent 'S' and 'T'.

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25th day of August 2008

Sherwin Turk

NRC Staff Response, Attachment 1

From: Sherwin Turk
Sent: Friday, February 15, 2008 3:38 PM
To: 'Palisadesart@aol.com'; Richard Brodsky; 'Sarah Wagner'
Cc: pbessette@morganlewis.com; martin.o'neill@morganlewis.com; ksutton@morganlewis.com
Subject: RE: WestCAN et al. Answer served 2.11.08

Ms. Wagner -

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

Also, I received Mr. O'Neill's response to your E-mail message of yesterday afternoon, regarding your interest in an extension of time for filing your reply to Entergy's (and the Staff's) 1/22/08 responses to your petition to intervene. Based on his responses, it appears that the documents listed in your E-mail were either cited in your petition or are publicly available; also, you've already been granted a one-week extension of time to file your replies, and you don't provide any reason to support an extension of time to reply to the staff's response of 1/22/08. I would therefore oppose an extension of time for the filing of your replies.

Sincerely,
Sherwin Turk

From: Palisadesart@aol.com [mailto:Palisadesart@aol.com]
Sent: Friday, February 15, 2008 12:32 PM
To: Sherwin Turk; Sherwin Turk; Christopher Chandler; Beth Mizuno; Bo Pham; Brian Newell; David Roth; Kimberly Sexton; Lloyd Subin; pbessette@morganlewis.com; NancyBurtonCT@aol.com; curran@harmoncurran.com; mdelaney@nycedc.com; wdennis@entergy.com; mannaajo@clearwater.org; Hearing Docket; Kaye Lathrop; kremer@areaalliance.org; ajkremer@rmfpc.com; Lawrence McDade; fuse_usa@yahoo.com; jlmatthe@gw.dec.state.ny.us; phillip@riverkeeper.org; vob@bestweb.net; martin.oneill@morganlewis.com; jdp3@westchestergov.com; Richard Wardwell; driesel@sprlaw.com; John.Sipos@oag.state.ny.us; jsteinberg@sprlaw.com; ksutton@morganlewis.com; vtafur@riverkeeper.org; Zachary Kahn; ezoli@goodwinprocter.com; janice.dean@oag.state.ny.us; Palisadesart@aol.com; OCAAMAIL Resource; richardbrodsky@msn.com; ulrich@ulrichwitte.com; sarahwagneresq@gmail.com
Subject: Fwd: WestCAN et al. Answer served 2.11.08

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

Sherwin Turk

From: Sherwin Turk
Sent: Thursday, February 14, 2008 8:00 PM
To: 'Sarah Wagner'; ksutton@morganlewis.com; martin.o'neill@morganlewis.com; pbessette@morganlewis.com
Cc: Palisadesart@aol.com; Ulrich Witte; Richard Brodsky; 'Beth Mizuno'; 'Christopher Chandler'; 'David Roth'; 'Kimberly Sexton'; 'Lloyd Subin'; 'Newell, Brian'
Subject: RE: Indian Point Exhibits Request 2.14.08

Ms. Wagner:

I have received your E-mail message of 5:14 PM this afternoon, in which you state that you "are emailing [Counsel for the NRC Staff and for Entergy] a list of exhibits that we [WestCAN, et al.] believe were not submitted [by Entergy]. . . ." There was no attachment to your message, nor have we received a further E-mail from you. I will therefore assume that the list of exhibits is included in the text of your message. If this is incorrect, please advise me as soon as possible. Absent any further information, I will respond to your E-mail message tomorrow.

Also, please be advised that neither I nor the other NRC Staff attorneys ever received your E-mail message to the Licensing Board, which you transmitted at 7:22 PM on February 11, 2008. I only learned of that transmittal this afternoon, in a conversation with Entergy Counsel Mr. O'Neill, who then forwarded your message to me with three separate transmittals of your attachments.

In reading your message of February 11, I noticed that my name and the names of other Staff counsel are shown as recipients, however, we never received the transmittal from you. It is possible that the combination of attachments to your message was too large to be accepted by the Staff's server, but I cannot be sure of that. Please check your E-mail records, including any responses from the Staff's server, to determine why your February 11 transmittal was not received by the Staff. This problem needs to be corrected, to assure that we receive E-mail messages from you and your co-counsel in the future, upon transmittal. If we do not receive future transmittals in a timely manner, we will be obliged to seek appropriate relief from the Licensing Board.

Thank you very much. I'll be in touch with you tomorrow to discuss your request for an extension of time.
Sincerely,
Sherwin Turk

From: Sarah Wagner [mailto:sarahwagneresq@gmail.com]
Sent: Thursday, February 14, 2008 5:14 PM
To: ksutton@morganlewis.com; martin.o'neill@morganlewis.com; Sherwin Turk; pbessette@morganlewis.com; Sherwin Turk
Cc: Palisadesart@aol.com; Ulrich Witte; Richard Brodsky
Subject: Indian Point Exhibits Request 2.14.08

Following our conversation earlier this afternoon, as you requested, we are emailing you a list of exhibits that we believe were not submitted. Several issues have arisen which we will describe in detail below that support our request. These issues came to light in the past few days, given that we were working intensely to served our response on February 10, 2008.

The issues fall into two exhibits are fall into two groups. First, new precedence dated only days ago regarding other renewal proceedings. These include the exhibits in footnote 148, 204, LIC 100 rev OA and rev 1, NEI 95-10, GSI-168, footnote 419 new, and 444. These documents we simply cannot find in any public forum. Second, the following are a list exhibits cited in the following in footnotes that we believe we did not receive: 195, 204, 369, 372, 272, 374, 396, and 419. We would appreciate if you could please provide us with these documents by tomorrow morning.

We intend to move for an extension requesting extra time to file our replies to due February 15, 2008. However, given that our replies will be filed within a few days after February 15, 2008, as stated in the Order dated February 1, 2008, we hope that you both will be agreeable to a short extension to allow us to review the above exhibits.

Thank you for your cooperation.

Sincerely,

Sarah L. Wagner

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE


I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO APPEAL OF WESTCHESTER CITIZEN'S AWARENESS NETWORK, ET AL., FROM THE LICENSING BOARD'S ORDER (STRIKING WESTCAN'S REQUEST FOR HEARING", dated August 25, 2008, have been served upon the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with copies by electronic mail this 25th day of August, 2008:

Lawrence G. McDade, Chair* Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001 E-mail: LGM1@nrc.gov	Office of Commission Appellate Adjudication* U.S. Nuclear Regulatory Commission Mail Stop: O-16G4 Washington, DC 20555-0001 E-mail: OCAAMAIL@nrc.gov
Dr. Richard E. Wardwell* Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001 E-mail: REW@nrc.gov	Office of the Secretary* Attn: Rulemaking and Adjudications Staff Mail Stop: O-16G4 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov
Dr. Kaye D. Lathrop* Atomic Safety and Licensing Board Panel 190 Cedar Lane E. Ridgway, CO 81432 E-mail: KDL2@nrc.gov	Zachary S. Kahn* Atomic Safety and Licensing Board Panel Mail Stop – T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: ZXK1@nrc.gov

<p>Atomic Safety and Licensing Board Panel* U.S. Nuclear Regulatory Commission Mail Stop: T-3 F23 Washington, DC 20555-0001 (Via Internal Mail Only)</p>	<p>Marcia Carpentier* Law Clerk Atomic Safety and Licensing Board Mail Stop: T-3 E2B U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: Marcia.Carpentier@nrc.gov)</p>
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