RAS E-153

DOCKETED USNRC

August 25, 2008 (8:30am)

OFFICE OF SECRETARY RULEMAKINGS AND ADJUDICATIONS STAFF Susan H. Shapiro 21 Perlman Drive Spring Valley, New York 10977

August 14, 2008

Lawrence G. McDade, Chair

Atomic Safety and Licensing Board Mail Stop—T-3 F23 Two White Flint North 11545 Rockville Pike Rockville, MD 20852-2738 Dr. Kaye Lathrop
Administrative Judge
Atomic Safety and Licensing Board
190 Cedar Lane E.
Ridgway, CO 81432

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

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

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

Dear Administrative Judges:

The enclosed appeal by Petitioners Westchester Citizen's Awareness Network (WestCAN), Rockland County Conservation Association, Inc. (RCCA), Public Health and Sustainable Energy (PHASE), Sierra Club - Atlantic Chapter (Sierra Club), and New York State Assemblyman Richard L. Brodsky (hereinafter "Petitioners") was sent by email by myself, palisadesart@aol.com. Since the appeal, even when sent in multiple emails was not received by members at the Nuclear Regulatory Commission, Petitioners now enclose an identical copies to all parties listed on the enclosed Supplemental Certificate of Service.

On Friday, August 8, 2008, co-counsel for Petitioners emailed our appeal of the Atomic Safety Licensing Board decision of July 31, 2008. Petitioners' Appeal consisted of the Notice of Appeal, the Appeal, and Attachments one through four. Petitioners then sent hard copies to certain parties on the same day.

Petitioners' cannot ascertain if the parties in this proceeding received the electronic submission on August 8, 2008. I did receive notification that the email containing the entire appeal was not deliverable to certain addressee's at the NRC. I then sent the entire appeal in four separate emails on August 8, 2008.

TEMPLATE = SECY-043

On Tuesday, August 12, 2008, I then sent an email to all the parties requesting that if any party did not receive or could not open any document to please contact me. By email sent to all the parties, NRC Staff Attorney, Sherwin Turk, first informed Petitioners on Tuesday, August 12, 2008 that he had not received the hard copy of the appeal documents and that he had not received attachments two and three. Attorney Turk falsely accuses Petitioners of not sending him the entire appeal by email at 4:41 p.m. on August 8, 2008. At approximately 4:32 p.m. on August 8, 2008, Petitioners emailed the entire appeal to the parties, including Sherwin.turk@nrc.gov. (see attached email).

The NRC has been aware of its inability to receive emails with attachments of a certain size when it notified Petitioners on or about February 15, 2008. The NRC has failed to correct this problem, and yet continue to accuse Petitioners of not emailing them documents. As a result Petitioners will not send any further documents to the NRC by email.

Due to the fact that Petitioners cannot determine if the parties received our appeal email submission and if the parties were able to open all the attachments, we are now sending hard copies to the parties listed on the Supplemental Certificate of Service. The Supplemental Certificate of Service does not replace the original Certificate of Service, but states the additional service of Petitioners' appeal documents.

Respectfully submitted.

Susan Shapiro

cc: service list of Supplemental Cert. of Svc.

From: palisadesart@aol.com

To: LGM1@nrc.gov; REW@nrc.gov; KLD2@nrc.gov; OCAAMAIL@nrc.gov; HEARINGDOCKET@nrc.gov; ZXK1@nrc.gov; wdennis@entergy.com; Mannajo@clearwater.org; jdp3@westchestergov.com; ksutton@morganlewis.com; pbessette@morganlewis.com; martin.o'neill@morganlewis.com; mdelaney@nycedc.com; usa@yahoo.com; ajkremer@rmfp.com; vob@bestweb.net; john.sipos@oag.state.ny.us; jkmatthe@gw.dec.state.ny.us; kremer@area-alliance.org; dcurran@haromncurran.com; robert.snook@po.state.ct.us; driesel@sprlaw.com; jsteinberg@sprlaw.com; nancyburtonct@aol.com; phillip@riverkeeper.org; vtafur@riverkeeper.org; Sherwin.turk@nrc.gov; maric.simon@nrc.gov; beth.mizuno@nrc.gov; david.roth@nrc.gov; jessica.bielecki@nrc.gov; ezoli@goodwinprocter.com; janice.dean@oag.state.ny.us; mylan.denerstein@oag.state.ny.us; ilparker@gov.dec.state.ny.us; marica.carpentier@nrc.gov

Subject: Westcan, RCCA, Phase, Sierra Club, Brodsky Petitioner's Appeal to Commission

Date: Fri, 8 Aug 2008 4:32 pm

_notice.pdf (40K), _Final_8.8_Appeal.pdf (120K), _TOC_and_Att_1__WestCAN_Appeal_8.8.08.pdf (1127K), Attachments: Att_2_ALL_REC__WestCAN_Appeal_8.8.08.pdf (5805K), Att_3_WestCAN_Appeal_8.8.08.pdf (847K),

Att 4 WestCAn Appeal 8.8.08.pdf (915K)

Please find attached Petitioners appeal of the ASLB Order issued on July 31, 2008, striking Petitioners "Petition for Leave to Intervene with Contentions. If you cannot open the attachments please contact me.

Susan Shapiro 21 Perlman Drive Spring Valley, NY 10977 (845) 371-2100

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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges: Lawrence G. McDade, Chairman

Dr. Kaye D. Lathrop Dr. Richard E. Wardwell

)	NOTICE OF APPEAL
In the Matter of)	
)	Docket Nos.
ENTERGY NUCLEAR OPERATIONS, INC)	50-247 and 59-286
)	
•)	ASLB No. 07-858-03
(Indian Point Nuclear Generating Units 2 and 3))	LR-BD01
·		

PLEASE TAKE NOTICE THAT upon the accompanying support Memorandum of Law, Petitioners New York State Assemblyman Richard L. Brodsky, for the 92nd District, Westchester County of the State of New York, Westchester Citizens Awareness Network, Sierra Club Atlantic Chapter, the Rockland County Conservation Association, and Public Health and Sustainable Energy move the Nuclear Regulatory Commission for review of the Order of the United States Nuclear Regulatory Commission Atomic Safety and Licensing Board Order dated July 31, 2008 in the above referenced matter denying Petitioners' Petition to Intervene and Request for a Hearing for an Order to remand the proceeding to the Atomic Safety and Licensing Board for review of the Petition on the merits and to strike any reference by the Atomic Safety and Licensing Board to impute Petitioners' attorney's integrity.

Dated: August 8,2008 Spring Valley, New York Respectfully Submitted,

Attorney for Petitioners

21 Perlman Drive

Spring Valley, N.Y. 10977-5281

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:	
Lawrence G. McDade, Chairman	
Dr. Kaye D. Lathrop	
Dr. Richard E. Wardwell	

)	MEMORANDUM IN SUPPORT OF
	PETITIONERS' APPEAL TO THE
In the Matter of)	COMMISSION
)	
	Docket Nos.
ENTERGY NUCLEAR OPERATIONS, INC)	50-247 and 59-286 LR
, , ,	
)	ASLB No. 07-858-03
(Indian Point Nuclear Generating Units 2 and 3))	LR-BD01
, , , , , , , , , , , , , , , , , , , ,	

PRELIMINARY STATEMENT

Petitioners Westchester Citizen's Awareness Network (WestCAN), Rockland County Conservation Association, Inc. (RCCA), Public Health and Sustainable Energy (PHASE), Sierra Club - Atlantic Chapter (Sierra Club), and New York State Assemblyman Richard L. Brodsky (hereinafter "Petitioners") hereby appeal an Atomic Safety and Licensing Board (hereinafter "ASLB" or "Board") Order issued on July 31, 2008 denying Petitioners' "Petition For Leave To Intervene With Contentions And, Request For Hearing" (hereinafter "Petition") because The complete removal of Petitioners from the proceeding, even if all the ASLB's unsubstantiated accusations about intent are true, is disproportionate, unfair, an unwarranted violation of due process and an abuse of discretion.

PROCEDURAL HISTORY

On April 23, 2007, and supplemented on May 3, 2007 and June 21, 2007, Entergy Nuclear Operations, Inc. (hereinafter "Entergy" or "licensee") filed an application to renew its operating license for an additional twenty year period for Indian Point Nuclear Generating Units.

On December 10, 2007, Petitioners electronically served a Petition for Leave to Intervene with Contentions and a Request for a Hearing.

By Order dated November 27, 2007, Entergy and the NRC staff filed Answers to the Petition on January 22, 2008. The NRC Staff served its Answer multiple times by email and mailed a copy. Entergy served an Answer to the Petition electronically, without the referenced exhibits. Entergy mailed its exhibits, without a table of contents, which was received on January 28, 2008.

On Friday, February 15, 2008, Petitioners perfected service by mailing hard copies of their Reply Brief through DHL to the NRC Office of the Secretary, Entergy's counsel, and the NRC Staff Attorney Sherwin Turk. Petitioners, then sent courtesy copies electronically submitted their Reply Brief at approximately 12:53 a.m. on February 16, 2008 to numerous parties and CD-ROMs all the parties on February 20, 2008. Petitioners' served a revised Certificate of Service dated March 6, 2008 for service of the Reply Brief. Attached hereto and made a part hereof as Attachment 4.

On February 22, 2008, Entergy electronically served a Motion to Strike Petitioners Reply Brief. The NRC Staff, without prior notice, served an Answer to Entergy's Motion to Strike on March 3, 2008, supplemented on March 6, 2008. In three ASLB Orders dated March 7, 2008, March 24, 2008 and April 1, 2008 revised on April 2, 2008, Petitioners were ordered to demonstrate proper service of their Reply Brief. Petitioners filed a response to the March 7th Order on March 21, 2008. Petitioners responded to the March 24th Order on March 25, 2008. Petitioners responded to the April 1st and 2nd Orders on April 7, 2008. On April 7, 2008 parties submitted responses concerning Petitioners' March 21, 2008 electronic submission. On June 16, 2008-the-ASLB-notified parties that it was granting itself an extension to rule on the admissibility of submitted contentions. On July 31, 2008, the ASLB stuck Petitioners' Petition.

¹ The same response was sent to the NRC again on Monday, March 24, 2008 because the electronic submission was undeliverable to NRC email addresses.

Petitioners seek reversal of the Board's July 31, 2008 Order reinstating the Petition for consideration of the admissibility of the contentions on the merits and striking any attempt imputing Petitioners' attorney credibility and candor.

ARGUMENT

Pursuant to 10 C.F.R. § 2.341(b)(1) the Commission has the authority to review any final Board decision. If there is a clear procedural error, the Commission may also review the Board's decision. 10 C.F.R. §2.341(b)(4); see also, Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units Nos. 2 and 3), CLI-07-28, 66 NRC 275 (2007); Consolidated Edison Co. of New York (Indian Point, Unit 2), CLI-82-5, 16 NRC 27, 37 (1982).

Pursuant to 10 C.F.R. § 2.311 the Commission has the authority to review the Board denials of the Petition to Intervene and Request for a Hearing. Specifically, § 2.311(a) "An order of the presiding officer... may be appealed to the Commission with respect to: (1)a request for hearing; (2) a petition to intervene..." Under § 2.311(c) "[a]n order denying a petition to intervene ... is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted. "Despite the substantial deference accorded presiding officers' procedural decision, such decisions are reviewable on appeal for abuse of discretion"; see Int'l Uranium (USA) Corp., CLI-02-13, 55 NRC 269 (2002).

Petitioners' actions were not the basis for dismissal of the entire petition, they were not, in fact lacking in candor and misleading. Whatever defects exist in Petitioners' Reply Brief, they were not the result of duplicity or other behaviors which the ASLB finds morally repugnant.

Accepting, arguendo, the ASLB's description of events, there is no evidentiary basis for a finding of unacceptable behavior. The heart of the ASLB's reasoning is an assertion about Petitioners intentions, made by adopting a set of unfavorable and insulting assumptions about

Petitioners personal intentions. Certainly, any such allegation by the ASLB should be subject to some adversarial proceeding where the due process rights of Petitioners can be exercised.

Notably in other cases when the ASLB had made a "death-penalty" ruling, the objective insulting and disruptive behavior of those Petitioners were a matter of public record, something that clearly doesn't appear here. The exchange of emails alone should indicate that Petitioners sought to clarify and remedy any actual or perceived inadequacies in the Reply Brief, in a manner characterized by speed, responsiveness, and politeness.

The complete removal of Petitioners from the proceeding, even if all the ASLB's unsubstantiated accusations are true, is disproportionate, unfair, a violation of due process and unwarranted. The ASLB makes no complaint about the service, content, or tone of Petitioners original Petition, which contain the Contentions Petitioners seek to litigate. It is "patently unfair for presiding officer(s) to reject the filing in its entirety" *see Int'l Uranium (USA) Corp.*, CLI-02-13, 55 NRC 269 (2002). A proportionate remedy would be to have rejected the Reply Brief about which the ASLB has complaints, and judge the sufficiency of the Contentions based on the remaining Record. The governing ASLB order says that invalidly submitted documents will be struck. To go beyond that is a violation of the governing Order, the rules of the Commission, and is an abuse of discretion.

I. THE PETITION AND REPLY BRIEF SHOULD NOT BE STRUCK BECAUSE OF ANY MINOR ERROR IN THE CERTIFICATE OF SERVICE.

The July 31, 2008 ASLB Order struck the Petition alleging that Petitioners "lack of candor and integrity by WestCAN [Petitioners] 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" was grounds for dismissal of the Petition. ASLB Order dated July 31, 2008 at p. 12.

Petitioners maintain that service was properly made and any errors were inadvertent, minor, and similar to errors on the Certificate of Service by the ASLB. Even if the ASLB allegation were true it does not warrant striking the Petition. Petitioners have been proper and acted with courtesy, responding to every motion, request, etc. as quickly as possible only to be treat unequally with the other intervenors. 10 C.F.R. § 2.314.

Petitioners have consistently maintained that their Reply Brief was properly served and have not submitted intentionally false information or misrepresented the truth. Petitioners have repeatedly answered the ASLB and provided tracking documents to demonstrate proper service.

Under § 2.302(a)² documents must be filed with the Commission either by: (1) First class mail addressed (2) Courier, express mail, and expedited delivery services; (3) E-mail; (4) By facsimile transmission. Filing by mail, electronic mail, or facsimile is considered complete as of the time of deposit in the mail or upon electric mail or facsimile transmission. § 2.302(c). All documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorney's of record as required by law or by rule or order of the Commission. § 2.302(b).

Additionally the ASLB in this proceeding addressed the issue of service in its Order. On October 29, 2007 the ASLB stated that service must be made on the Commission, attorney of record, and that amended pleadings must be clearly labeled and dated. Then on November 27, 2007 the ASLB again stated that amended pleadings must be clearly labeled and dated. On February 1, 2008, the ASLB imposed further service requirements on the parties. The February

² The rules of service that apply are 10 C.F.R. PART 2 Rules of Practice For Domestic Licensing Proceedings and Issuance of Orders in affect as of August 1, 2007, as articulated under the revised 10 CFR Part 2 Rules of Practice became effective on August 28, 2007, begins with the following note: "Electronic filing and service of documents in proceedings for which notices of opportunity for hearing were published in the Federal Register or on the NRC website before October 15, 2007, are governed by the Part 2 rules in effect prior to the NRC E-Filing Rule (72 Fed. Reg. 49139 (Aug. 28, 2007)). Therefore, Petitioners citations are to the Part 2 in effect in 2007 and not the current Part 2 rules currently in effect that have been amended.

1, 2008 ASLB Order, at page 3, point 1, required that: In general, documents may be served on the Board and the parties in hard copy, on CD-ROM <u>or</u> as files attached to e-mail messages." (emphasis added).

As required by 10 C.F.R. Part 2 and the ASLB Orders, Petitioners perfected filing of their Reply Brief on the ASLB, by serving the SECY, and by serving hard copies on the licensee and NRC Staff. Within 2 business days of original filing Petitioners sent courtesy CD-ROM copies of the Reply Brief by overnight delivery, to the mailing address for all parties and those individuals listed on the Certificate of Service dated March 6, 2008.

Petitioners repeatedly stated and maintain that the Reply Brief was properly served on the required parties by depositing the Reply Brief in a DHL box on February 15, 2008, admittedly near midnight. As required the Reply Brief was mailed to the NRC Office of the Secretary, the licensee's attorneys, and a NRC Staff Attorney, which were received the next business day.

Attached hereto and made a part hereof see Attachment 1, tracking documents from DHL.

Petitioners made a good faith effort to email the Reply Brief to all parties³ at approximately 11:30 pm on February 15, 2008.⁴ Due to computer difficulties, Petitioners were not able to email the Reply brief until approximately 12:53 a.m. on February 16, 2008.

Petitioners' reply brief sent by email was identical to the reply brief mailed in hard copy and the

³ On the morning of 15th day of February 2008, Petitioners were made informed by NRC Staff that the NRC was unable to receive documents over 10 megabits. (See Petitioners March 21, 2008 Response to the ASLB Order of March 7, 2008, Exhibit I, Email from Sherwin Turk, Esq. on February 15, 2008). Based on this information, a copy of Petitioners' reply brief of February 15, 2008 was not emailed the NRC Staff Counsel's office.

⁴ Petitioners did send an email at approximately 12:01 a.m. on the 16th day of February to some parties. email sent at approximately 12:00-a.m.-on-February-16,-2008-sent to: set@nrc.gov, Hearing Docket@nrc.gov, and Sherwin Turk@nrc.gov. There was no text in the email and no cover letter. The emails subject was "Att." A Microsoft WORD version, entitled "WestCAN_Reply_Brief_Final_2.15.08..doc, was attached to the 12:00 a.m. email.

The cover letter attached to the CD-ROM's on February 19, 2008 informed parties that the WORD document was not Petitioners' reply brief. The letter stated that "We transmitted the document as a word file, but are concerned it may be corrupted, if it arrived at all... Therefore please delete the first transmittal, the "word document", and consider the Adobe PDF file the Reply." (Petitioners' March 21, 2008 Response to the ASLB

reply brief contained on the CD-ROM's. A copy of the Reply Brief in adobe was sent by email to several parties and numerous NRC staff, as a courtesy although not required.

Two (2) days are added to the prescribed period when a document is served by express mail or expedited delivery service that is not a Saturday, Sunday or legal holiday. 10 C.F.R. § 2.306. Accordingly, Petitioners then mailed by FedEx overnight delivery CD-ROM's with the Reply Brief and exhibits to the Office of the Secretary, ASLB members, an NRC law clerk, and other parties. Attached hereto and made a part hereof see Attachment 2, tracking documents from FedEx.

The Reply Brief sent to the Chairman Lawrence McDade was received on February 21, 2008 at 9:45 a.m. and signed for by J. Hillard. See Attachment 2. No signature was required, according to FedEx, for the package sent to ASLB member Dr. Kaye Lathrop, but tracking documents from FedEx state that the package was delivered on February 21, 2008 at 2:41 p.m. See Attachment 2. "Under (NRC) rules it is the "service copy" that counts for the purpose of calculating deadlines." see Int'l Uranium (USA) Corp., CLI-02-13, 55 NRC 269 (2002). gfThe Certificate of Service dated March 6, 2008 (hereinafter "COS March 6, 2008"), admittedly the third sent by Petitioners, states who the Reply Brief was sent to whether by DHL, email, or FedEx. Attached hereto and made a part hereof as Attachment 4.

The ASLB mistakenly concludes that the COS of March 6, 2008 was a misrepresentation and/or false submission of information. The ASLB incorrectly states that the ASLB board and Wardwell did not receive the Reply Brief. Petitioners sent one package addressed to ASLB Chairman Lawrence McDade with envelopes individually addressed to Dr. Richard Wardwell and the NRC law clerk included inside the package, since the addresses for these individuals are

Order of March 7, 2008, Exhibit D). The differences between the word version and adobe were inconsequential. The adobe version re-lettered Exhibits and included one additional paragraph.

the same. Each envelope contained a CD-ROM with the Reply Brief. This is evidenced by the fact that the weight of that package to Chairman McDade is twice that of the packages sent to the Office of the Secretary and Dr. Kaye Lathrop. Attachment 2. The FedEx was received and signed for by J. Hillard on February 21, 2008. Attachment 2. What happened to the FedEx containing the Reply Brief is not known by Petitioners, but it was delivered to the NRC.

Moreover, the COS March 6, 2008 was submitted by email prior to any ASLB Order questioning service. Attached hereto and made a part hereof see Attachment 3, email from Sarah Wagner, Esq. to parties sent at 1:48 pm on March 7, 2008 and email from Maria Carpentier to parties sent at 2:45 pm on March 7, 2008.

Upon close examination in preparation for this appeal, Petitioners concede that their last COS submitted on March 7, 2008 contained an error. Although the COS of March 7th states that the CD's were mailed on the 15th of February, 2008 by DHL⁵, Petitioners provided the ASLB copies of receipts from FedEx dated February 20th. Petitioners' have repeatedly stated in their responses to the ASLB that the CD-ROM's were sent on February 20, 2008. Petitioners were forthcoming with the FedEx receipts that were dated February 20, 2008.

Therefore, Petitioners have demonstrated that their Reply Brief was properly and timely filed and any reference to Petitioners lack of candor or integrity should be struck from the record.

II. EVEN IF THE ASLB'S ACCUSATIONS ARE TRUE, THE REMEDY IS NOT TO STRIKE THE PETITION.

This error is no different than omissions in the COS's attached to ASLB Orders and other errors made by the ASLB. The ASLB's COS's are inaccurate because they fail to state that Orders were emailed to the parties and does not contain email addresses that the Order was sent to. The ASLB mistakenly stated in its July 31, 2008 Order that Petitioners' Reply Brief was due on or before February 1, 2008. The Reply Brief was initially actually due February 8, 2008, but Petitioners were granted a seven day extension to file on or before February 15, 2008. In the ASLB Order dated March 7, 2008, in which the ASLB Scheduled Petitioners' oral argument for April 1, 2008 in Maryland, the ASLB stated that "Susan Wagner, Esq." was available for argument on March 13, 2008. There is no attorney of record for Petitioners named Susan Wagner. Hence the ASLB is not immune from errors.

Under 10 C.F.R. § 2.319 it is the Board's responsibility 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." The Board exceeded its responsibility by dismissing the Petition. The ASLB never questioned the service, content, or tone of Petitioners original Petition, which contain the Contentions Petitioners seek to litigate. It is complete and sufficient of itself to be part of the re-license litigation. If the ASLB accusations are true, and Petitioners maintain they are false, the remedy would be to have struck the Reply Brief and judge the sufficiency of the Contentions based on the remaining Petition and its exhibits. The ASLB's prior Orders state that invalidly submitted documents will be struck. To go beyond that is a violation of the governing Order, the rules of the NRC, and the law governing these proceedings, and an abuse of discretion.

By striking the Petitioners Petition the NRC has unfairly and unjustly barred consideration of many significant issues on the merits and forestalled public participation.⁶

III. PETITIONERS HAVE RAISED SUBSTANTIVE ISSUES WITH MERIT THAT THE ASLB IGNORED. THE PETITION TO INTERVENE STANDS ON ITS OWN AND MEET NRC CRITERIA FOR ADMISSIBLE CONTENTIONS.

Under section 2.309(f) Petitioners have set forth with particularity the contentions sought to be raised and satisfy the six criteria under section 2.309(f). The NRC cannot deny a petition to intervene and request for a hearing if Petitioners demonstrate at least one admissible contention.

⁶ The ASLB's prejudicial treatment of the Petitioners is clearly disproportionate. The board cancelled Petitioner's oral arguments on admissibility, after they had been scheduled and allowed all other Petitioner's oral arguments. The ASLB refused to reasonably acknowledge Petitioner's good faith efforts including courtesy copies, CD-ROM's and failed to acknowledge the NRC's electronic limited capacities as confirmed by members of NRC staff on February 15, 2008. Petitioners responded to any and all questions and Orders by the board and by parties. Then the ASLB ignored Petitioners request in late March to take notice of exhibits publicly available.

In the Staff's Response they acknowledged that Petitioners have raised at least one contention within scope regarding the omission in the LRA by the Licensee refurbishment of the reactor vessel heads. Further the ASLB has accepted at least nine contentions by other Petitioners for hearing that are similar to those asserted by Petitioner, thereby denying Petitioners right to due process and a hearing.

The ASLB's prejudicial refusal to consider Petitioners' Petition which raises at least twelve unique contentions, all of which meet the requirements of 2.309(f), violates the governing Order, the rules of the Commission and the laws governing these proceedings and fails to provide reasonable assurance of adequate protection of the public. It is a blatant abuse of discretion to bar Petitioners who have raised at least nine similar Contentions accepted for hearing by the ASLB, to be prevented from participating in a hearing on the merits based on a minor, inadvertent error on a Certificate of Service of a Reply.

CONCLUSION

Based on the foregoing, Petitioners respectfully request that: (1) the July 31, 2008 ASLB Order striking Petitioners Petition should be reversed; (2) an Order that the Petition and Reply have been properly served and that the ASLB should consider the merits of the contentions raised by the Petitioners; and (3) any reference to Petitioners lack of candor or integrity should be struck from the record.

Respectfully submitted,

Sarah L. Wagner, Esq.

Co-counsel for Petitioner WestCAN et. al

Susan Shapiro, Esq.

Co-counsel for Petitioner WestCAN et. al

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petitioners' WestCAN et. al Appeal of the ASLB Order dated July 31, 2008, has been served upon the following by electronically as shown to the email address below, this 8th day of August, 2008. Hard copies have only been sent to the Office of the Secretary, as required by the February 1, 2008 ASLB Order, the licensee's attorney's, and NRC Staff Attorney Sherwin Turk.

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SUSAN SHAPIRO Æ 84.

* Original and two copies

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Mail Stop: T-3 E2B
U.S. Nuclear Regulatory Com.
Washington, D.C. 20555-0001
Marcia.Carpentier@anrc.gov

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Attachment 1- DHL tracking documents.

Attachment 2 FedEx tracking documents.

Attachment 3- Finail from Sarah Wagner, Esq. to parties with a revised certificate of service and Email from Maria Carpentier to parties.

Attachment 4- Petitioners' Second Revised Certificate of Service.

Attachment 1



Delivery Signature Detail

Print this page

Signature details for 53769120845

RECEIVED IN COOR ORDER EXCEPT AS NOTE

Summary details

Current Status

✓ Shipment Delivered

Delivered on

2/19/08 9:44 am

Delivered to

Shipping Dock

Signed for by

R PEARSON

Receiver Information

OFFICE OF THE SECRETARY Rockville, MD 20852 United States

Tracking detail provided by DHL: 4/7/2008 7:07:04 AM

You are authorized to use DHL tracking systems solely to track shipments tendered by or for you to DHL. Any other use of DHL tracking systems and information is strictly prohibited.

•				
Sender Account Number M. CHAPING	Preprint Format No.	Sender will be blied unless marked otherwise 5376	1208/5	· •
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Street Address	Price.	Not available for all senances and localions. Lab Pack Service	mBy by destination, visit Www.dhi-usa.com	
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DHL.

Delivery Signature Detail

Print this page

Signature details for 53769120646

RECEIVED IN GOOD GROER EXCEPT AS NOTED

Summary details

Current Status

✓ Shipment Delivered

Delivered on

2/19/08 9:44 am

Delivered to

Shipping Dock

Signed for by

R PEARSON

Receiver Information

OFFICE OF THE SECRETARY Rockville, MD 20852 United States

Tracking detail provided by DHL: 4/7/2006 7:09:04 AM

You are authorized to use DHL tracking systems solely to track shipments tendered by or for you to DHL. Any other use of DHL tracking systems and information is strictly prohibited.

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http://sigpod.dhl-usa.com/printbysig.asp

4/7/2008



Delivery Signature Detail

Print this page

Signature details for 53769120941

RECEIVED IN COOD ORDER EXCEPT AS NOTED

Summary details

Current Status

✓ Shipment Delivered

Delivered on

2/19/08 9:44 am

Delivered to

Shipping Dock

Signed for by

R PEARSON

Receiver Information

OFFICE OF RES SECRETARY Rockville, MD 20852 United States

Tracking detail provided by DHL: 4/7/2008 6:19:37 AM

You are authorized to use DHL tracking systems solely to track shipments tendered by or for you to DHL. Any other use of DHL tracking systems and information is strictly prohibited.

•		Sonder will be billed unless marked otherwise 5376	1150477
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TO (COMPANY), PLEASE PRINT NEATLY	ecretam	Special instructions Seturday Delivery Edita charge Hold at DHL	Service 5000
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Delivery Signature Detail

Print this page

Signature details for 53769121442

M. S.

RECEIVED IN GOOD ORDER EXCEPT AS NOTED

Summary details

Current Status

✓ Shipment Delivered

Delivered on

2/19/08 10:28 am

Delivered to

Receptionist

Signed for by

A JONES

Receiver Information

K SUTTON/P BESSETTE/ Washington, DC 20004 United States

Tracking detail provided by DHL: 4/7/2008 6:21:23 AM

You are authorized to use DHL tracking systems solely to track chipments tendered by or for you to DHL. Any other use of DHL tracking systems and information is strictly prohibited.

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FOR	DGCUVACS Sendada Signature Date/ DHL	Signature Date	No TypeMC	Expires 5/68	SYPRED' DHL Worldwide Express Inc.	
-	2/15/68	SENDER	Auth		1200 South Pine Island Road, Plantation, FL 33324 1 800 Cell-DHL	· ^ ·

DHL

Delivery Signature Detail

Print this page

Signature details for 61491770841

RECEIVED IN GOOD ORDER EXCEPT AS NOTED

Summary details

Current Status

✓ Shipment Delivered

Delivered on

2/19/08 9:44 am

Delivered to

Shipping Dock

Signed for by

R PEARSON

Receiver Information

SHERWIN TURK Washington, DC 20555 United States

Tracking detail provided by DHL: 4/7/2008 7:11:59 AM

You are authorized to use DHL tracking systems solely to track shipments tendered by or for you to DHL. Any other use of DHL tracking systems and information is strictly prohibited.

FROM (Company) - O ONA . Ch 10 O	Preprint Format No.	Sender will be balled unless marked otherwise Bull to:	11778842
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http:,/sigpod.dhl-usa.com/pr	intbysig.asp	ENDER'S COPY	1 800 Call-DHL 4/7/200



FedEx Express Customer Support Trace 3875 Airways Boulevard Module H, 4th Floor Memphis, TN 38116

U.S. Mail: PO Box 727 Memphis, TN 38194-4643

Telephone: 901-369-3600

August 6,2008

Dear Customer:

Attachment 2

The following is the proof-of-delivery for tracking number 860847428571.

Delivery Information:

Status:

Delivered

Delivery date:

Feb 21, 2008 09:45

Signed for by: Service type: J.HILLARD

Priority Overnight



Shipping Information:

Tracking number:

860847428571

Ship date:

Feb 20, 2008

Recipient:

WASHINGTON, DC US

Shipper:

NEW HAVEN, CT US

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service 1.800.GoFedEx 1.800.463.3339



FedEx Express Customer Support Trace 3875 Airways Boulevard Module H, 4th Floor Memphis, TN 38116 U.S. Mail: PO Box 727 Memphis, TN 38194-4643

Telephone: 901-369-3600

August 6,2008

Dear Customer:

The following is the proof-of-delivery for tracking number 860847428550.

Delivery Information:

Status:

Delivered

Delivery date:

Feb 21, 2008 09:45

Signed for by:

J.HILLARD

Service type: Priority Overnight



Shipping Information:

Tracking number:

860847428550

Ship date:

Feb 20, 2008

Recipient:

WASHINGTON, DC US

Shipper:

NEW HAVEN, CT US

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service 1.800.GoFedEx 1.800.463.3339



FedEx Services | eCOSMOS | EDR Imaging | Data Viewer

Searching database instance new1 for Airbill # 860847428550 with a ship date of 02/20/2008 and a range of +/- days.

5135301794

PACKAGE DETAILS:

Tracking No:	860847428550	Ship Date:	02/20/2008
Shipper:	UNICH WITTE NORTHEM LIGHTS ENGIS L L C 71 EDALWOOD WAY NEW HAVEN, CT 06515	Recipient:	LAWRENCE MCDOLE ATTOMIC SAFETY AND LICENSING B MAILSTOP T-3 F23 WS NUCLEAR RE WASHINGTON, DC 20555 US

DELIVERY INFORMATION/SPOD Letter:

Signed For By:	burshibhus
Delivered to:	11555 ROCKVILLE PIKE
Delivery Date:	02/21/2008
Delivery Time:	

1 airbill(s) matched your query.



Invoice Number 2-566-75522

Invoice Date Mar 03, 2008 Account Number

Page 4 of 5

FedEx Express Shipment Detail By Payor Type (Original)

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englanden vortagraderen Germanden.

♦ Distance Based Pricing, Zone 3

Automation Tracking ID

860847428550

FedEx Priority Overnight

Service Type Package Type

Zone

FedEx Pak 03

Rated Weight Delivered

Packages

2.0 lbs, 0.9 kgs Feb 21, 2008 09:45

Svc Area Signed by FedEx Use

J.HILLARD 005104825/0001508/ Sender UNICH WITTE

NORTHEM LIGHTS ENGIS L L C 71 EDALWOOD WAY NEW HAVEN CT 06515 US

Transportation Charge

Courier Pickup Charge

Fuel Surcharge

Total Charge

Recipient

LAWRENCE MCDOLE

ATTOMIC SAFETY AND LICENSING B MAILSTOP T-3 F23 WS NUCLEAR RE WASHINGTON DC 20555 US

> 26.20 5.59

> > 4.00 USD \$35.79

> > > 9.90

4.00

2.57

\$16.47

Fuel Surchar						
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- Business Closed or Adult Recipient Unavailable Delivery Not Completed.
- Distance Based Pricing, Zone 2
- 1st attempt Feb 22, 2008 at 11:42 AM.

Automation Tracking ID Service Type Package Type

USAB 860847428685 FedEx 2Day FedEx Pak

Zone **Packages**

Rated Weight 1.0 lbs, 0.5 kgs Delivered Feb 27, 2008 12:31

Svc Area Signed by FedEx Use

M.KWIATEK 005204865/0005980/

02

Sender ULRICH NITTE

NORTHERN LIGHTS ENGRG 71 EDGEWOOD WAY NEW HAVEN CT 06515 US

Transportation Charge Courier Pickup Charge

Fuel Surcharge **Total Charge**

Recipient

AUTHER KREMER CHERMAN NEW YORK ATTORABLE RED

USD

347 FIFTH AVE STE 500

NEW YORK CITY NY 10016 US

Hokodupstabe452000 to 57,354 costend tiotherediatestineon/Applot silicitis. Toyote Unidiatest
--

Gust Hat NOTE EERENGE INFORWATION.

- Fuel Surcharge FedEx has applied a fuel surcharge of 18.50% to this shipment.
- Distance Based Pricing, Zone 2 1st attempt Feb 25, 2008 at 08:46 AM.
- USAR Automation

Tracking ID Service Type Package Type

Zone **Packages** Rated Weight

Delivered

860847428696 FedEx 2Day FedEx Pak 02

1.0 lbs, 0.5 kgs Feb 25, 2008 08:50

Svc Area A2 Signed by M.SEKA FedEx Use 005204865/0005980/ <u>Sender</u>

UIRIAN WITTE NORTHER LIGHTS ENERGY LLC 71 EDGEWOOD WAY

NEW HAVEN CT 06515 US

Transportation Charge Courier Pickup Charge Fuel Surcharge

Recipient .

MENNO JO GREENE **CLEAR WATERS INC** 112 LITTLE MARKET ST POUGHKEEPSIE NY 12601 US

> 9.90 4.00 2.57 \$16.47

Fuel Surcharge - FedEx has applied a fuel surcharge of 18.50% to this shipment.

Distance Based Pricing, Zone 2

Automation Tracking ID Service Type Package Type

Zone **Packages** USAB 860847428711 FedEx 2Day FedEx Pak 02

<u>Sender</u> **ULRICH WITTE NORTHENN LIGHTS ENGRG** 71 EDGEWOOD WAY

Total Charge

Recipient **DANIEL O NEIL**

MAYOR & JAMES SERMARCO VILLAGE OF BUCHAN MUNCH OF BLD

WOODBRIDGE CT 06525 US **BUCHANAN NY 10511 US**

Continued on next page



Invoice Number 2-566-75522

Invoice Date Mar 03, 2008 Account Number

USD

Page

9.90

9.90

1.83

9.90

2.26

2.30

\$11.73

Tracking ID: 860847428711 continued

Rated Weight Delivered

1.0 lbs, 0.5 kgs Feb 25, 2008 11:47

Svc Area Signed by

FedEx Use

A3

C.KEMPTER 005204865/0005980/ Transportation Charge

Courier Pickup Charge Fuel Surcharge

Total Charge

4.00 2.57

\$16.47

Fue! Surcharge - FedEx has applied a fuel surcharge of 18.50% to this shipment.

◆ Distance Based Pricing, Zone 2

Automation Tracking ID

860847428755

1.0 lbs, 0.5 kgs Feb 25, 2008 08:33

Service Type FedEx 2Day Package Type FedEx Pak Zone

02

Packages Rated Weight

Delivered

Svc Area Signed by A1

L.PETROLINO FedEx Use 005207599/0005980/_ **ULRICH WITTE**

NORTHERN LIGHTS ENGRG 71 EDGEWOOD WAY

NEW HAVEN CT 06515 US

Transportation Charge

Fuel Surcharge

Total Charge

Recipient

DANIEL RIESEL THOMAS WOOD JESS

USD

SRE DGET & RIESEL 460 PARK AVE

NEW YORK CITY NY 10022 US

	•
upppeniofficals 24,2008 - Cost Reiknüds Geställige Zyon jalickienty Raus	GENTORIA AND AND AND AND AND AND AND AND AND AN

• Fuel Surcharge - FedEx has applied a fuel surcharge of 18.50% to this shipment.

The delivery commitment for FedEx 2Day to residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, A4, A5, A6, AM, PM, and RM service areas.

Distance Based Pricing, Zone 2

Package Delivered to Recipient Address - Release Authorized

USAB

Automation Tracking ID Service Type

862448876583 FedEx 2Day Package Type FedEx Pak 02

Zone

Packages Rated Weight

1.0 lbs, 0.5 kgs Feb 25, 2008 10:15 Delivered

Svc Area Signed by FedEx Use AΑ 999999999999

005207599/0005980/02

ULRICH WITTE **NORTH HYNTS ENGRG** 71 EDGEWOOD WAY

NEW HAVEN CT 06515 US

Transportation Charge Fuel Surcharge

Residential Delivery **Total Charge**

Recipient **NANCY BURTON** 147 CROES HWY

REDDING RIDGE CT 06876 US

\$14.46 Third Party Subtotal USD \$111.39 Total FedEx Express USD \$111.39

USD



FedEx Express Customer Support Trace 3875 Airways Boulevard Module H, 4th Floor Memphis, TN 38116

U.S. Mail: PO Box 727 Memphis, TN 38194-4643

Telephone: 901-369-3600

August 6,2008

.Dear Customer:

The following is the proof-of-delivery for tracking number 860847428560.

Delivery Information:

Status:

Delivered

Delivery date:

Feb 21, 2008 14:41

Signed for by:

99999999999

Service type:

Priority Overnight

NO SIGNATURE REQUIRED Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Shipping Information:

Tracking number:

860847428560

Ship date:

Feb 20, 2008

Recipient:

RIDGWAY, CO US

Shipper:

NEW HAVEN, CT US

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service 1.800.GoFedEx 1.800.463.3339

	FecEx. US Airbill Express US Airbill Tracking 8624 4887 662	
1	Prom Please pirit and press hand Date May 20 Sender's FedEx Account Number	48
	Sender's Witte Phone ()	_ []
•	Address 71 Edgewood Way	4b
	City Westville State CT ZIP 06515	<u> </u>
2	Your Internal Billing Reference BIR 17 House BIR 1994 Control BIR 1994 Con	
3	Recipients Sarah Wagner Phone () Assemblyman Richard Bradday	
	Recipient's Room 422, Legislative Office Bledge	
-	We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Poor/Suite/Roof Address To request a package be held at a specific FedEx location, print FedEx address bare.	FedEz Credit
	City Albiny State NY ZIP 12248	

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1	10	Find	trop-off	locations	et fedex.	com	
1		Simplify	your shippin	g. Manage you	r account. Acce	sa eli the took	you need.

ETARIÓ MAGNICA	Sender's Copy
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FedEx Priority Overnight Next business morning "Friday white Staffward on Monday unless Staffward on Monday unless Staffward before y is subscied.	FedEx First Overnight Earliest next business morning defivery to salect locations.* Saturday Defivery NOT available.
FedEx 2Day Second business day.* Thursday stigments will be desired on Monday unless SATURDAY Defency is selected. FedEx Express Saver Third business day.* FedEx Express Saver Third business day.* FedEx Express Saver FedEx Express Save	*To most begatiens.
4b Express Freight Service	Packages over 150 lbs.
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Call for Confirmation:	** To meet incertions.
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6 Special Handling Include Foffix address	
SATURDAY Delivery NOT Available for Feds: Sandard Overnight, Feds First Devenight, Feds Forst Sany Feds Sany Feds Sany Feds Sany Feds Feds Sany Feds Feds Feds Feds First Overnight.	HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overright and FedEx 20 are to select locations.
Does this shipment contain dangerous goods? One box must be checked.	· · · · · · · · · · · · · · · · · · ·
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7 Payment Bill to:	
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Total Packages Total Weight Total Declar	
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**Dur facility is finited to \$100 unless you declare a higher value. See back for details. By using this	s Airbill you agree to the
service conditions on the beck of this Ashall and in the current Faditic Service Guide, including terms 8 Residential Delivery Signature Options Tyou never	inst trat our babbly. sire e signature, check Direct or Indirect.
No Signature Required Regulared Regu	ISS. SOMEONE

FECEX. US Airbill Freder 8608 4742 8608	Sender's Copy
FTGITI Please print and press hard.	4a Express Package Service Packages up to 150 lbs.
Date Feh 20/28 Sender's FedEx Account Number	FedEx Priority Overnight Next business morring.* Friday shipmens will be delivered on Monday unless SAMPAN Delivery is selected. FedEx Standard Overnight Next business alternoon.* Seturday/Delivery NOT evisible. FedEx First Overnight Existent next business morring definery is selected. Sautratey/Delivery NOT evisible.
Sender's Which Witte Phone!	FedEx 2D ay Second business day.* Thursday stipments will be delivered on Monday unless SATURDAY Delivery is selected. Selected Federal Control and April 2015 Selected Select
company Northern Lights Eugely LLC.	Feder Envelope rate not eveletive. Minimum charge: One-pound rate. 4b Express Freight Service Packages over 150 lbs.
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Attachment 3



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Petitioners WestCAN et al. submission: Second Revised COS for 2.15.08 service

1 message

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March 7, 2008

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

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

Dear Parties:

Petitioners Westchester Citizen's Awareness Network (WestCAN), Rockland County Conservation Association, Inc. (RCCA), Public Health and Sustainable Energy (PHASE), Sierra Club - Atlantic Chapter (Sierra Club), and New York State Assemblyman Richard L. Brodsky (hereinafter "Petitioners") hereby submit this Second Revised Certificate of Service.

Respectfully submitted,

Sarah L. Wagner

cc: service list

Sarah L. Wagner Legal Counsel for Assemblyman Richard L. Brodsky L.O.B. Room 422 Albany, N.Y. 12248 518-455-5753

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Licensing Board Orders - Indian Point License Renewal Proceeding Inbox

from Marcia Carpentier < Marcia. Carpentier @nrc.gov> Inde details Mar 7

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Phillip Musegaas <phillip@riverkeeper.org>,

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Ashley Prange <Ashley.Prange@nrc.gov>,

"klathrop@independence.net" <klathrop@independence.net>

Mar 7, 2008 2:45 PM date

Licensing Board Orders - Indian Point License Renewal Proceeding subject

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Marcia Carpentier

Law Clerk

Thank you.

Atomic Safety and Licensing Board Panel

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Washington, DC 20555-0001

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Fri, Mar 7, 2008 at 2:45 PM



Marcia Carpentier < Marcia. Carpentier@nrc.gov>

Sarah Wagner <sarahwagneresq@gmail.com>

Licensing Board Orders - Indian Point License Renewal Proceeding

1 message

To: Zachary Kahn <Zachary Kahn@nrc.gov>, Beth Mizuno <Beth.Mizuno@nrc.gov>, Christopher Chandler <Christopher.Chandler@nrc.gov>, Daniel Riesel <driesel@sprlaw.com>, David Roth <David.Roth@nrc.gov>, Dianne Curran dcurran@harmoncurran.com, "Janice A. Dean" <Janice.Dean@oag.state.ny.us>, Jessica Steinberg <jsteinberg@sprlaw.com>, "Joan Leary Matthews (jlmatthe@gw.dec.state.ny.us)" <jlmatthe@gw.dec.state.ny.us>, "John J. Sipos" <john.sipos@oag.state.ny.us>, John Louis Parker <ilparker@gw.dec.state.ny.us>, "Justin D. Pruyne" <jdp3@westchestergov.com>, "Kathryn M. Sutton" <ksutton@morganlewis.com>, Kimberly Sexton <Kimberly.Sexton@nrc.gov>, Lloyd Subin <Lloyd.Subin@nrc.gov>, Manna Jo Greene <mannajo@clearwater.org>, "Martin J. O'Neill" <martin.o'neill@morganlewis.com>, Nancy Burton <NancyBurtonCT@aol.com>, "Paul M. Bessette"

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Attached are two Licensing Board Orders issued today in the Indian Point license renewal proceeding. Please let me know if you have any problems in the transmission or receipt of the attached documents.

Thank you.

Marcia Carpentier

Law Clerk

Atomic Safety and Licensing Board Panel

Mail Stop: T-3F23

U.S. Nuclear Regulatory Commission

Washington, DC 20555-0001

(E-mail: mxc7@nrc.gov)

2 attachments

Indian Point 03072008or.pdf 197K

Indian Point 03072008or2.pdf 201K

Attachment 4

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	•)		
ENTERGY NUCLEA	R OPERATIONS, I	NC.)	Docket Nos.	50-247/286-LR
(Indian Point Nuclea	r Generating))	• • •	• •
Units 2 and 3)		· · ·)		

SECOND REVISED CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply of WestCAN et al. dated February 15, 2008, have been served upon the Office of the Secretary, U.S. Nuclear Regulatory, Sixteenth Floor, One Flint North, 11555 Rockville Pike Rockville, Maryland 20852, and a courtesy paper copy has been sent to Staff and Entergy's attorney's. I further certify that CD copies of the foregoing Reply of WestCAN et al. dated February 15, 2008, have been served upon the following addresses provided below, this 15th day of February, 2008 by DHL courier service. Additionally, I hereby certify that copies of the foregoing Reply Brief of WestCAN et al. dated February 15, 2008, have been electronically served only upon the email addresses provided below, on the 16th day of February, 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

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Washington, D.C. 20555-0001
Email: OCAAMAIL@nrc.gov

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U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
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Dated: March 6, 2008

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Washington, D.C. 20555

/s/

Sarah L. Wagner, Esq.

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Second Revised Certificate of Service for service of Petitioners WestCAN et al. reply brief served February 15, 2008, have been served upon the following by electronically and by first class mail as shown below, this 7th day of March, 2008:

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E-mail:

/s/

Sarah L. Wagner, Esq.

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

NUCLEAR REGULATORY COMMISSION

UNITED STATES OF AMERICA

In the Matter of	
ENTERGY NUCLEAR OPERATIONS, INC.))Docket-Nos50-247/286-LR
	ASLBP No. 07-853-03-LR-BD01
(Indian Point Nuclear Generating)	·
Units 2 and 3)	
)

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petitioners' WestCAN et. al Appeal of the ASLB Order dated July 31, 2008, that was sent electronically on Friday, August 8, 2008, is now being sent to the following by U.S. first class mail as shown below, this 14th 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

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

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