UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Palisades Nuclear Plant) ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR FITZPATRICK, LLC (James A. FitzPatrick Nuclear Power Plant)	)	**MOTION FOR RECONSIDERATION** Docket Nos. 50-255-LT-2 and 72-7-LT
ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR GENERATION CO. (Pilgrim Nuclear Power Station)	)	Docket Nos. 50-333-LT-2 and 72-12-LT
ENTERGY NUCLEAR OPERATIONS, INC. & ENTERGY NUCLEAR VERMONT YANKEE LLC (Vermont Yankee Nuclear Power Station)	)	Docket No. 50-293-LT-2 Docket No. 50-271-LT-2 and 72-59-LT
ENTERGY NUCLEAR OPERATIONS, INC.; ENTERGY NUCLEAR INDIAN POINT 2, LLC; & ENTERGY NUCLEAR INDIAN POINT 3, LLC (Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)	)	Docket Nos. 50-003-LT-2, 50-247-LT-2, and 50-286-LT-2 72-51-LT
ENTERGY NUCLEAR OPERATIONS, INC. and ENTERGY NUCLEAR PALISADES, LLC (Big Rock Point)	)	Docket Nos. 50-155-LT-2 and 72-43-LT-2 (CONSOLIDATED)

PLEASE TAKE NOTICE that Petitioners Westchester's Citizen's Awareness Network, Rockland County Conservation Association, Promoting Health and Sustainable Energy, Sierra Club – North East Chapter and Assemblyman Richard Brodsky hereby submit this motion for reconsideration from the decision of the Nuclear Regulatory Commission dated August 22, 2008 finding that petitioners have not demonstrated standing and denying their petitions to intervene, request for disclosure of documents and request for a hearing.

Dated: September 4, 2008 /s/

Sarah L. Wagner
Co- Counsel for Petitioners

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

IN THE MATTER OF:

Entergy Nuclear Operations, Inc;	)	Consolidated
Entergy Nuclear Indian Point 2, LLC;	)	Docket No.
Entergy Nuclear Indian Point 3, LLC;	)	50-293-LT-2
	)	
Indian Point Nuclear Generating Unit Nos. 1, 2 and 3	)	

PETITIONERS MOTION FOR RECONSIDERATION THE COMMISSION'S DIMISSAL OF PETITIONERS PETITION TO INTERVENE

Westchester's Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association ("RCCA), Promoting Health and Sustainable Energy ("PHASE"), Sierra Club – North East Chapter ("Sierra Club") and Assemblyman Richard Brodsky ("Brodsky")(collectively referred to as "Petitioners") submit this motion for reconsideration of the Commissions decision denying the Petition to Intervene and terminating the proceeding, Additionally, Petitioners reply to the March 31, 2008, "Answer of Entergy Nuclear Operations, Inc. Opposing WestCAN, Et al., Petition for Leave to Intervene and Request for Hearing Concerning Indirect Transfer of Control Licenses" (hereinafter "Entergy's Opposition"). For the reasons stated here, as well as in pleadings filed by Petitioners in these proceedings on February 5, 2008, Petitioners appeal the dismissal of Petitioners' Petition to Intervener since (1) Petitioners have standing to intervene in these proceedings; and (2) have raised admissible contentions under 10 C.F.R. § 2.309(h)(2) that should be considered in a hearing before the Commission. This memorandum is also submitted in opposition to the motion to for a

protective order field by Entergy and for an order compelling Entergy to provide discovery to petitioners. Finally, this memorandum is submitted in support of petitioners request to amend their contentions as set forth herein.

PRELIMINARY STATEMENT

Petitioners' petition to intervene -- which is painstakingly detailed far beyond what is required by the rules of the Nuclear Regulatory Commission (hereinafter "NRC") -- unquestionably states Petitioners standing and sets forth admissible contentions that raise issues as to the propriety of Entergy Nuclear Operations, Inc.'s (hereinafter "Entergy") application to transfer its license to operate Indian Point 1, Indian Point 2 and Indian Point 3.

Entergy's Opposition, which is couched as an Answer – although its intent is to move to dismiss-- to circumvent NRC rules applicable to time limitations for the filing of motions, is untimely and therefore must be denied. Entergy filed its baseless motion to dismiss seeking to erroneously obtain a decision on the merits of the Petitioners' contentions rather to provide substantive responses setting forth the propriety of the transfer because its request of an "indirect transfer" fails to meet the NRC's requirements. Additionally, Entergy's arguments fail to address the law and ignore many of the allegations made in petitioners' motion to intervene. Petitioners' intervention petition more than adequately states petitioners standing to intervene and valid contentions and hence Entergy's "motion" should be denied and a hearing scheduled on petitioners' contentions.

Procedural History

On July 28, 2007, Entergy filed for a transfer of Indian Point 1 Facility Operating License DPR-5, Indian Point 2 Facility Operating License DPR-26 and Indian Point 3 Facility Operating License DPR-64 (collectively referred to as "Licenses") to Entergy Nuclear Operations, an indirectly related corporation which would result in substantial reorganization of Entergy's corporate structure and LLC holdings, affecting the fiscal responsibility and liabilities of Indian Point 1, Indian Point 2 and Indian Point 3.

By letter dated July 30, 2007 and supplemented on October 31, 2007 and December 5, 2007, Energy Nuclear Operations, Inc. (hereinafter ENO), on behalf of Entergy Nuclear Generation Company, Entergy Nuclear Fitzpatrick, LLC, Entergy Vermont Yankee, LLC, Entergy Nuclear Indian Point2, LLC, Entergy Nuclear Point 3, LLC, and Entergy Nuclear Palisades, LLC seek approval of the NRC for permission to indirectly transfer control of the above 3 mentioned pursuant to Section 184 of Atomic Energy Act (hereinafter "AEA"), as amended, and 10 C.F.R. § 50.80. The proposed transfer would restructure the existing control and ownership, as well as, create a complex web of holding companies and/or companies between Entergy Corporations and the "indirect transferees" that hold NRC licenses for Pilgrim, Indian Point 1, 2, & 3, FitzPatrick, Vermont Yankee, Palisades, and Big Rock Point. (See Figures 1 and 2 annexed to Entergy's application.)

On January 16, 2008, notice was published in the Federal Register that the NRC is considering the issuance of an Order, under 10 C.F.R.50.80, approving the indirect transfer of the Facility Operating License for Indian Point. On February 5, 2008, Petitioners timely filed their Petition to Intervene. On February 26, 2008, -- 16 days after Petitioner filed and served their Petition to Intervene -- Entergy filed and served the "Motion of Entergy Nuclear Operations Inc. for Expedited Approval of Protective Order and Request for Extension of

Time to File Answer To WestCAN et al. Petition to Intervene." On March 31, 2008 -– 55 days after Petitioners filed and served their Petition to Intervene—Entergy filed and served Entergy's Opposition. Despite its language seeking to contest the admissibility of the Petitioners' contentions, Entergy's Opposition sought to improperly dismiss the Petitioners' Petition to Intervene based upon the merits of their claim of lacking of standing and inadmissibility of Petitioners' contentions, instead of contesting the pleadings as insufficient.

ARGUMENT

The Commission has ruled that Petitioners do not have standing and has therefore terminated the proceeding. The Commission's ruling has in effect raised the requirements for standing to any person or environmental organization in a license transfer proceeding thereby foreclosing any non-governmental organization from participation in a license transfer proceeding.

To demonstrate standing in a license transfer proceeding, the petitioner must (1) identify an interest in the proceeding by (a) alleging a concrete and particularized injury (actual or threatened) that (b) is fairly traceable to, and may be affected by, the challenged action (here, the grant of a license transfer application), and (c) is likely to be redressed by a favorable decision, and (d) lies arguably within the "zone of interests" protected by the governing statute(s) (here, the AEA); (2) specify the facts pertaining to that interest. *In The Matter Of Pacific Gas and Electric Company (Diablo Canyon Power Plant, Units 1 and 2),* CLI-03-2 (February 14, 2003).

Any organization seeking "representational standing" (i.e., permission to represent the interests of its members) must show that at least one of its members may be affected by the Commission's approval of the transfer (such as by the member's activities

on or near the site), must identify that member, and must demonstrate that the member has (preferably by affidavit) authorized the organization to represent him or her and to request a hearing on his or her behalf. *See FitzPatrick,* CLI-00-22, 52 NRC at 293; *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000), and cited authority. The member seeking representation must qualify for standing in his or her own right; the interests that the representative organization seeks to protect must be germane to its own purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999), and CLI-98-13, 48 NRC 26, 30-31 (1998), *petition for review filed sub nom. Ohngo Gaudadeh Devia v. NRC,* No. 05-1419 (D.C. Cir. Nov. 7, 2005).

A petition seeking to intervene in a license transfer under 10 C.F.R. §50.80 must states: (i) the name, address and telephone number of the petitioner; (ii) the nature of the petitioners' right under the Act to be made party to the proceeding; (iii) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (iv) possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest. 10 C.F.R. §2.309 (d). Standing for a petition to intervene exists when there is "real-world consequences that conceivably could harm petitioners and entitle them to a hearing." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999) citing *Vermont Yankee.*

The NRC has long held that judicial concepts of standing will be applied in determining whether a petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189 of the Atomic Energy Act of 1954. *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). These concepts require a showing that (a) the action will cause "injury in fact," and (b) the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. The fact that the alleged injury has not yet occurred does not preclude a finding that Petitioner have standing, just as it did not bar a similar finding in the *Power Authority of the State of New York* case.

An organization has sufficiently demonstrated its standing to intervene if its petition is signed by a ranking official of the organization who himself has the requisite personal interest in the proceeding. *Duke Power Co.*, 9 N.R.C. 146, 1979 WL 15668 (N.R.C.) February 26, 1979.

II. PETITIONERS HAVE STANDING TO APPEAR AS PARTIES TO THIS PROCEEDING.

Entergy questions the standing of Petitioners to intervene in the captioned proceedings, notwithstanding that Petitioners, their members and their employees represent a community of individuals whose health and property are at risk because of the proposed application. As explained in Petitioners' Petition in this proceeding and amplified *infra*, the Petitioners and their members have an interest in the outcome of the captioned proceeding, and therefore meet the requirements of injury-in-fact, causation, and redressability, both on their own behalf and through their representation of their members. As discussed *infra*, while these standards have been met, the "proximity standing" presumption makes it unnecessary for the Commission to examine these factors

separately in each case. *Florida Power & Light Co.* Petitioners are concerned by the effect of NewCo's perilous financial situation on the safe operations of each of the plants, whose financial health is directly linked under the proposed restructuring, and thus on the health and safety of the Petitioners and their members. Moreover, the Petitioners have shown a "causal link" between the proposed transfer and the alleged harm.

The Petition to Intervene and the accompanying affidavits set forth a description of the Petitioners, the basis for their standings and admissible contentions. As described in greater detail in the Petition and accompanying affidavits, WestCAN is a grassroots coalition with approximately 500 members who reside and work within fifty (50) miles of Indian Point. (Petition p. 3). Significantly, WestCAN's central office is located at 2A Adrian Court, Cortlandt Manor, N.Y. which is within three miles of Indian Point and situated within the Plume, i.e., the peak fatality zone. (Petition p. 3). RCCA is a non-profit organization whose members primarily reside, work, and recreate within twenty (20) miles of Indian Point. (Petition p. 4). RCCA's central office is located in Pomona, N.Y. which is within nine miles of Indian Point and situated within the Plume of Exposure Pathway (EPZ), also referred to ask the peak fatality zone (Petition p. 4).

PHASE is a grassroots organization whose members primarily reside, work, and recreate within thirty (30) miles of Indian Point. (Petition p. 4). PHASE's central office is located at 21 Perlman Drive, Spring Valley, N.Y. 10977, which is eleven (11) miles from Indian Point and situated within the Peak Fatality Zone. (Petition p. 4). SIERRA CLUB is a not-for-profit organization whose members live, work and, recreate within two–fifty miles of Indian Point. (Petition p. 5). SIERRA CLUB's central office is located

at 353 Hamilton Street, Albany, New York 12210, and has a regional office in New York City in the peak ingestion zone. (Petition p. 5).

Assemblyman Richard Brodsky is the state assemblyman for the 92nd district representing citizens of New York who reside, work, and recreate in Towns of Greenburgh and Mount Pleasant, the Villages of Ardsley, Dobbs Ferry, Elmsford, Hastings-on-Hudson, Irvington, Pleasantville, Sleepy Hollow, Tarrytown, a portion of the Village of Briarcliff Manor, and part of the City of Yonkers. Assemblyman Brodsky's main office is located at 5 Main Street, Elmsford, New York 10523, which is 20 miles from Indian Point and within the Peak fatality zone.[1]

In the Petition the Petitioners sets forth the following admissible contentions: (1) Entergy's request for the indirect transfer of the Facility Operating License for Indian Point 2 and Indian Point 3 violates 10 C.F.R. Part 50; (2) The intended purpose of the corporate restructure is not met and is unclear; (3) The restructuring potentially violates 10 C.F.R. §50.33 (f)(2); (4) The application fails to submit sufficient information concerning decommissioning funding; and (5) The transfer violates anti-trust laws. (Petition p. 7).

A. Petitioners have Standing under the Traditional 3-Prong Test.

Contrary to the Commission's decision and Entergy's arguments (Opposition at 12), Petitioners have provided ample factual support showing that approval of the proposed reorganization will significantly increase the risk of accidents, thereby threatening substantial harm to the Petitioners and their members. As discussed *infra*, the

[1] Note that Petitioners' petition inadvertently left out a description of Assemblyman Brodsky, however, this description is found in other papers filed with this commission in response to Entergy's related application for a renewal of the Indian Point licenses.

causal chain between the proposed reorganization and the threatened harm is short and clear. Commission approval of the proposed reorganization would (1) cause (2) a non-speculative risk of serious harm to the physical safety and health of the Petitioners and their members, and Commission denial of the reorganization would (3) redress this harm (by preventing it).

The fact that the alleged injury has not yet occurred does not preclude a finding that Petitioner have standing, just as it did not bar a similar finding in the *Power Authority of the State of New York* case. The situation in the instant case is analogous to that presented in the transfer of the Indian Point to Entergy in 2000. In that proceeding, the Commission found that similarly situated member organizations had standing. *Power Auth. of N.Y.*, CLI-00-22, 52 N.R.C. 266, 294 (2000) (citations omitted). As the Commission has held, "[i]njury may be actual or threatened." *Cleveland Elec. Illuminating Co.*, CLI-93-21, 38 N.R.C. 87, 92 (1993) (citations and quotations omitted). Thus, for the same reasons that member organizations were found to have standing in the Indian Point transfer, Petitioners should be found to have standing to participate in the captioned proceedings. More specifically, and as explained in Petitioners earlier pleadings, the materials presented by Entergy suggest that approval of the proposed restructuring could lead to significant financial pressures on each of the six nuclear plants at issue, and these pressures could have deleterious impacts on the operation of the nuclear plants involved in the restructuring. In the case of the proposed financial changes, the causal nexus is, that the proposed reorganization will put the six nuclear plants in a far more risky financial situation, significantly increasing the risk that maintenance, staffing and other safety-related functions at all of the plants will receive

inadequate funding and attention. Indeed, increased financial instability is a direct, foreseeable and unavoidable effect of the reorganization as proposed. This instability goes directly to the "financial qualifications" issue, which is sufficiently tied to the safe operations of a nuclear plant that the Commission has specific requirements governing the financial qualifications of operators. 10 C.F.R. §§ 50.33(f), 50.80(b)(1)(i).

For the reasons stated here, and those presented in prior pleadings, Petitioners have alleged and demonstrated that, if the proposed reorganization is approved, they and their members will face a significant, non-conjectural risk of future injury. As such, Petitioners have satisfied the traditional, three-prong standing test.

B. Petitioners have Demonstrated that they have "Proximity Standing."

If the Commission to determines that Petitioners do not meet the traditional three-prong standing test, Petitioners have standing because they meet for the "proximity presumption" standing criterion recognized by the Commission:

> In determining whether a petitioner has met the requirements for establishing standing, the Commission has directed us to construe the petition in favor of the petitioner. To this end, in proceedings involving nuclear power reactors, the Commission has recognized a proximity presumption, whereby a petitioner is presumed to have standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within fifty miles of the nuclear power reactor.

In re Entergy Nuclear Vt. Yankee, LLC, 50-271-LR, 64 N.R.C. 131, 144 (2006) (citations and quotations omitted), *reversed in irrelevant part*, CLI-07-16, 65 N.R.C. 371 (2007). While the Commission has stated elsewhere that it sets the "proximity" radius on a case by- case basis (*see, e.g.*, *Tenn. Valley Auth.*, LBP-02-14, 56 N.R.C. 15, 24 (2002)), the members are within the proximity found in other cases. In applying the proximity presumption, the Commission has held that "the appropriate focus is upon the nature of

the proposed action and the significance of the radioactive source." *Id.* at 25 (citations and quotations omitted). The significance of the radioactive source — the cores of operating nuclear plants and associated spent fuel pools — is obvious. The "nature of the proposed action," a reorganization that weakens the owner's and operators' financial qualifications at Indian Point, is also significant.[2] Petitioners should therefore be granted standing based on the "proximity presumption."

C. Contrary to Entergy's assertions the "Proximity Standing" is applicable to Petitioners who reside within 50 miles of Indian Point in this matter because the matter involves a transfer of Indian Points operating license.

In Entergy's Opposition, Entergy argues that proximity standing should only be granted to Petitioners who live within an extremely limited proximity to "such close distances where a petition frequently engages in substantial business and related activities in the vicinity of the facility, engages in normal everyday activities in the vicinity, has regular and frequent contacts in an area near a license facility." In making this argument Entergy cites to several cases in which the NRC limited proximity standing. Those cases do not apply here because the cases do not relate to the transfer of an operating license but rather the cases are for (a) amendments of licenses; (b) a 50% transfer of a non-operating license; (c) the transfer of licenses for nuclear storage facilities, not reactors.

Here, we have a case involving 100% transfer of an operating license of a nuclear reactor. Therefore, the NRC's limitation on proximity standing does not apply here and the Petitioners have standing.

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

III. PETITIONERS HAVE RAISED ADMISSIBLE CONTENTIONS THAT SHOULD BE SET FOR HEARING IN THIS PROCEEDING.

In the Petition, and in accordance with Commission regulations, Petitioners specified contentions, explained the basis for these contentions, and asked that the Commission set these contentions for hearing. Entergy has vigorously opposed each such contention. We reply to Entergy's claims, and reiterate the bases for each proposed contention.

At the outset, Petitioners note that the Commission's regulations, 10 C.F.R. § 2.309(f)(1)(i)-(vi), state that each proposed contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact. Each of the contentions raised by the Petitioners complies with the NRC's regulations, Entergy's objections notwithstanding.

While these requirements have been characterized as "strict by design," the Commission has also made clear that they do not obligate an intervenor, at this early stage, to mount its entire case on any specific issue.[3] As explained by the Commission:

[3] *Dominion Nuclear Conn., Inc.* (*Millstone Nuclear Power Station, Units 2 and 3*), CLI-01-24, 54 N.R.C. 349, 358 (2001), *recons. denied*, CLI-02-1, 55 N.R.C. 1 (2002). In making this observation, the Commission expressed concern that it had become involved in litigating "contentions that appeared to be little more than speculation." *Id* (citations and quotations omitted). Through this and our earlier pleadings, UWUA Locals seek to assure the Commission that the contentions presented here are well-founded and not

> Determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion, however, "does not call upon the intervenor to make its case at [the contention admissibility] stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention." 54 Fed. Reg. at 33,170. A petitioner does not have to provide an exhaustive list of its experts or evidence or prove the merits of its contention at the admissibility stage. As with a summary disposition motion, the support for a contention may be viewed in a light that is favorable to the petitioner and inferences that can be drawn from evidence may be construed in favor of the petitioner. *See Palo Verde*, CLI 91-12, 34 NRC at 155; 10 C.F.R. § 2.710(c).

In re Entergy Nuclear Vt. Yankee, LLC, 50-271-LR, 64 N.R.C. 131, 150 (2006) (footnote omitted), *reversed in irrelevant part*, CLI-07-16, 65 N.R.C. 371 (2007).[4] The Commission reached much the same conclusion in its earlier decision in *GPU Nuclear, Inc.* (*Oyster Creek Nuclear Generating Station*), CLI-00-6, 51 N.R.C. 193 (2000). While stating that it will not accept filings that are "unsupported by alleged fact or expert opinion and documentary support," the Commission went on to make clear that:

> This is not to say that our threshold admissibility requirements

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purely "speculation." However, as noted *infra* and as the Commission has itself recognized, in matters involving projections of financial and technical qualifications, some "speculation" is "unavoidable." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999).

[4] The Commission has elsewhere made clear that an intervenor is not required to prove its case at the contention filing stage: "'the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion.'" Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 22 n.1 (1998), citing Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, Final Rule, to be codified at 10 C.F.R. pt. 2, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989). Rather, petitioner must make "a minimal showing that the material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." *In re Gulf States Utils. Co.*, CLI-94-10, 40 N.R.C. 43, 51 (1994), citing Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process, Final Rule, to be codified at 10 C.F.R. pt. 2, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989). *See also In re AmerGen Energy Co.*, LBP-06-07, 63 N.R.C. 188, 220 (2006) (citing Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 22 n.1 (1998)) (the contention requirement "does not require the submission of an expert opinion").

> should be turned into a ''fortress to deny intervention.'' *Cf. Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999), quoting *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The Commission regularly continues to admit for litigation and hearing issues that are material

and are adequately supported. *See, e.g., N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999); 51 N.R.C. 193, 203 (2000).

Although this proceeding involves the fate of six nuclear plants and billions of dollars in proposed transactions, Entergy's filings have not been accompanied by any expert affidavit or other testimony. In fact, the lack of supporting data for the financial projections submitted by Entergy to the Commission is perhaps the most striking feature of its submissions in this proceeding. Entergy's submittals represent an unusually sparse amount of support for such a large transaction. Such a substantial transaction would ordinarily involve considerable internal Entergy review and interaction with outside advisors (including accounting, legal and investment bankers). While these reviews must have occurred, no data concerning them have been provided. In fact, in a recent filing with the Securities and Exchange Commission (SEC) NewCo discusses an opinion it has received from its tax counsel relating to the tax consequences of this transaction and additionally attaches financial records from its accounting firm. However, no tax opinion nor an audit from the accounting firm were attached to its filings. The failure to provide such reports is telling of Entergy's lack of forthrightness with the commission.

Instead of answering Petitioners' contentions by setting forth detailed responses showing that the contentions have no merit, Entergy seeks to throw up a "fortress to

deny" petitioners their statutory right to intervene. Entergy attacks the Petitioners' contentions as "devoid of specificity, basis, factual or legal support or any explicit reference to the Application." (Opposition p.22). In doing so, Entergy completely ignores that Petitioners clear statements of their contentions, affidavits by Petitioners, expert opinions that support their position, and the fact that the Petitioners are not required to make out their case in their pleadings. *In re Entergy Nuclear Vt. Yankee, LLC*. Petitioners will address each contention in turn.

In order to be entitled to a protective order a party must demonstrate that the material seeking to be protected is a trade secret and that the need to protect it is greater than the public good in disclosing it. 10 C.F.R. 2.390. Here, Entergy has not met its burden to show that the information is a trade secret and even if it is the public interest in having access to the information outweighs the need for it to be protected.

Entergy must be compelled to provide the information Petitioners seek. A party is required to make full disclosures so that intervenors may fully litigate their contentions.

A. Petitioners contention that the transfer should not be approved because the transfer violates 10 C.F.R. Part 50 is admissible.

An application for transfer of a license shall include:

> (i) For a construction permit or operating license under this part, as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards.

10 C.F.R. 50.80 (b)(1). In addition, that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with

applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. 10 C.F.R. 80 (c).

Petitioners in their Petition to Intervene contend that Entergy's fails to meet these NRC requirements for a transfer. Significantly, Entergy fails to address this contention. Its failure is further proof of its inability to meet the transfer requirements in 10 C.F.R. §50 and is further proof of the need for a hearing on Entergy's proposed license transfer.

In order for the Commission to approve a license transfer the applicant must meet the requirements of 10 C.F.R. § 50. Significantly, Entergy does not meet those requirements.

Petitioners have provided more information then is required in order to support their contentions. To meet their requirements for an admissible contention, Petitioners must (1) provide a specific statement of the legal or factual issue sought to be raised i.e., the transfer violates 10 C.F.R. Part 50; (2) provided a brief explanation of the basis for the contention; (3) demonstrated that the issue raised is within the scope of the proceeding; (4) demonstrated that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provided a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (6) provided sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.

Petitioners do not need to make their case at the pleadings phase but only set out their contentions. Petitioners have sufficiently set forth this admissible contention. Petitioners specifically stated the legal and factual issue that this transfer violates the

requirements of 10 C.F.R. Part 50. Petitioners provided the brief explanation that these requirements are not met. As the purpose of this hearing is to determine if the transfer meets NRC requirements, this contention is within the scope of this proceeding. As this contention goes to the heart of the Applicants required proof for the approval of the transfer this contention is material. Petitioners provided a concise statement as well as attached lengthy exhibits to support its position. Petitioners have raised a genuine dispute.

The information provided by Petitioners goes beyond merely providing the basis of its contention and goes toward making its case, which is more than is required for a contention to be admissible and a hearing ordered. *In re Entergy Nuclear Vt. Yankee, LLC*, 50-271-LR, 64 N.R.C. 131, 150 (2006)

Entergy's failure to meet the requirements of 10 C.F.R §50 is an admissible contention.

B. Petitioners contention that because Entergy Nuclear Operation Inc. lacks the necessary direct relationship between the Licensee and Entergy Nuclear Operations the transfer violates 10 C.F.R. 54.35 and 54.37 is admissible.

The Indian Point licenses are up for renewal and when transferred the New Co may be the holder of a renewed license.

> During the term of a renewed license, licensees shall be subject to and shall continue to comply with all Commission regulations contained in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100, and the appendices to these parts that are applicable to holders of operating licenses or combined licenses, respectively.

10 C.F.R. 54.35. In addition, licensees are required to maintain certain books and records. Specifically,

> The licensee shall retain in an auditable and retrievable form for the term of the renewed operating license or renewed combined license all

> information and documentation required by, or otherwise necessary to document compliance with, the provisions of this part.

10 C.F.R. §54.37

Petitioners clearly set forth their admissible contention that the transfer violates theses sections. In their Petition Petitioners set forth that the basis for this contention is that "[i]n the proposed restructuring Entergy Nuclear Operations will not have direct control over the license, nor will it maintain records as required by 10 C.F.R. 54.35 and 10 C.F.R. 54.37." This contention is within the scope of the proceedings and relevant because it raises concerns about whether the transferee will be able to meet the NRC requirements for an operating license holder. The fact that Entergy in its vigorous response did not provide any additional information setting forth that it has met this requirement demonstrates that there is a genuine issue. Not to mention as set forth in *Atlantic* a reply vigorously opposing a contention can be the basis for determining that the "material dispute requirement has been met." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999).

C. Petitioners contention that the transfers intended purpose of the corporate restructure is not met and unclear is admissible.

In its application Entergy states that the purpose of its corporate restructuring is to "centralize ownership and control of the owner Applicants under a new intermediate holding company structure in the Entergy Corporation system that will be wholly owned by Entergy Nuclear…" (Application p.1) In addition, the "restructuring will enhance the financial of the Applicants, simplify the Applicants' and Entergy Corporation's corporate structure to the benefit of its customers, regulators, capital markets and shareholders, and

facilitate the financing of Holdco and its direct and indirect subsidiaries as a discrete and integrated business." (Application p. 1-2) Finally, Entergy purports that the "restructuring will create an organizational structure that is consistent with Entergy Corporation's characterization and management of the wholesale, non-utility nuclear business as one of its primary business segments. (Application p.2).

Petitioners contend this is not the case here and contend that the transfers intended purpose of the corporate restructure is not met and unclear is admissible. This contention is set forth in greater detail than is required. The petition states the specific factual issue that the purpose of the corporate restructure is not met and unclear. Entergy fails to explain how the proposed corporate restructuring would enhance the ability of analysts, regulators, capital markets and shareholders [sic]" to evaluate and understand the business. (Petition p. 7) Petitioners provided a detailed expert report (Exhibit A) that demonstrated how such a transfer puts the public at risk and how it's within the scope of this proceeding. The proposed corporate structure of the transferee is material to the determination of whether the transferee is a viable license holder. The expert report attached as Exhibit A is a concise statement and raises material question as to whether the corporate restructuring serves the purpose described by Entergy.

In its Opposition, instead of stating that this petition is inadmissible Entergy seeks to contest the merits of this contention by stating that the contention is untrue and its past corporate behavior is not a measuring stick to determine what its future behavior. It is not for the NRC to determine the merits at this time, but rather the NRC merely determines whether Petitioners have set forth an admissible contention. *Sierra Club.*

Although this point goes to the merits of Petitioners contentions rather than the contentions admissibility, contrary to Entergy's claims it was not just the past in the aftermath of Hurricane Katrina, the U.S.'s most financially devastating natural disaster, that Entergy has used corporate structure wrangling to protect its assets from its liabilities. In fact, the current restructuring that Entergy sets forth in this application is also an attempt to relieve Entergy of its liability. As the company is currently structured, it is a party to a revenue sharing deal with the state of New York. Entergy claims the change in ownership would void a $432 million revenue-sharing deal with New York State reached in 2000 when the company bought the nuclear plants from the New York Power Authority. See attached article from Entergy spin-off clears a government hurdle. Tuesday, July 29, 2008, Staff The Post-Standard. In fact, Entergy touts this to its shareholders as a major benefit of the corporate restructuring. See annual report attached as follows. Significantly, there is no mention of this in its application.

Clearly, the fact that Entergy seeks to remove itself from its liabilities raises a genuine issue of material fact as to the true purpose of this corporate restructuring and what the effects of this corporate restructuring have on the public health and safety. Petitioners have raised an admissible contention relating to Entergy's true or unclear explanations that purportedly support its decision to restructure its company and transfer the license.

D. Petitioners contention that the restructuring potentially violates 10 C.F.R. §50.33(f)(2) is admissible.

A license holder must have the financial ability to operate the nuclear facility it is licensed to hold. An application for a transfer of "an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable

assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license." 10 C.F.R. § 50.33(f)(2).

Whether a transferee will have adequate funds to meet the operating expenses to operate a nuclear reactor is an extremely important question in determining whether a transfer can be approved by the NRC and is an admissible contention. *In the Matter of north Atlantic Energy Service Corp. Docket 50-443-LT, March 5, 1999.* This importance of this question and degree to which the funding needs to be examined must be heightened here because Entergy seeks to transfer the operation of six nuclear reactors to one newly created company that will immediately incur $4.5 billion in debt.[5] Such a transaction raises immediate red flags as to the overall financial well being of NewCo. .

Petitioners contend that NewCo does not meet the financial requirements under 10 C.F.R. §50.33(f)(2). In its petition, Petitioners clearly state that they "question whether Entergy's parent company will have the necessary level of financial qualifications to run the nuclear power plants"; that the "application does not provide reasonable assurance that it has the funds necessary to operate the nuclear plants safely"; and that they "challenge Entergy's costs and revenue projections." In addition, Petitioners explain that their lack of access to information that Entergy determined is confidential and are precluded from providing a more detailed statement. However, Petitioners are not required to submit a more detailed statement. The statements are more than required

[5] In May of 2008 New Co filed form 10K with the SEC providing its public disclosures. In that statement it confirms that it will incur up to $4.5 billion of debt and it expects to transfer to Entergy up to approximately $4.0 billion in the form of either cash proceeds from the issuance of debt securities or a portion of such debt securities, or both, in partial consideration for Entergy's transfer to us of the non-utility nuclear business. SEC form 10 filing at P. 7.

under CFR 2309. In *North Atlantic*, the NRC provides that "[a]lways in question under section 50.33(f)(2) is whether the applicant's cost and revenue estimates are reasonable. The adequacy of those estimates is challengeable (as here) by a petition for intervention under 10 C.F.R. § 2.3106…." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999). Because this question is "[a]lways in question" it is within the scope of this proceeding.

In the petition, Petitioners clearly set forth enough facts for this contention to be admissible. The petition states the specific factual issue that the purpose.

E. Petitioners contention that the application fails to submits sufficient information concerning decommissioning funding is admissible.

For a transfer to be approved the transferee must be "qualified to be the holder of the license." 10 C.F.R. § 50.80 (c)(1). For an application for an operating license or combined license for a production or utilization facility, information in the form of a report, as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility. 10 C.F.R. § 50.33(k). The transferee must have sufficient decommissioning funding. 10 C.F.R. § 50.75(b). Entergy does not have sufficient decommissioning funding.

In their petition, Petitioners concisely state that they claim that the decommissioning funding as described by petitioners is inadequate. In fact, Petitioners provide a detailed account Entergy's lack of decommissioning funding.

> The decommissioning reports for Indian Point 2 from 2002 to 2006 indicate that the Urban Inflation rate has been 2.9% (two and nine-tenth percent) per year, yet the adjustment of the decommissioning funds for Indian Point 2 has only been 1% (one percent) per year. However, the decommissioning reports falsely state the escalation rate is 3.0% (three percent). The decommissioning

> funds for Indian Point have a substantial shortfall because they do not even keep up with the rate of inflation as evidenced in the March 29, 2005 Report BVY-05-033/NL-05-039/JNP-05-005/Entergy Nuclear Operations Ltr.2.05.023 and the March 29, 2007 Report Entergy Nuclear Operations C-07-00007. Consequently, the proposed corporate restructuring does not address the increased costs of decommissioning, and therefore, the NRC should not approve such restructuring without guarantees that the decommissioning funds are adequate.

(Petition p. 12).

This contention is admissible as it meets the requirements set forth in 10 C.F.R. 2.309(f)(1)(i)-(vi). Petitioners have clearly set out facts upon which the contention is based. In addition, Petitioners have included documentary support in the form of Exhibit A. (Entergy's opposition completely ignores the 46 page expert report attached to Petitioner's petition. The expert report contains a significant discussion of how the corporate restructuring proposed by Entergy creates questions as to the adequacy of the decommissioning funding. Additionally, this matter is relevant in that a licensee must have an appropriate level of decommission funding available to qualify as a license holder and the question of whether NewCo is qualified to be a licensee is a major issue in this proceeding. Finally, the fact that Entergy devoted four pages to vigorously defending its position on this contention is evidence that there is a genuine issue on this point. *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999).

Realizing that this is an admissible contention Entergy inappropriately attacks the merits of this contention and not its admissibility. However, as set forth above, it is not the merits of the contention that is at issue at this juncture of the proceedings but rather the sole question is whether this contention is admissible.

Finally, although Entergy's attack on Petitioners' reference to its credit rating goes to the merits of Petitioners' contention, Petitioners' note that this commission has held that credit rating are a factor in determining whether an applicant for a license has the appropriate financial qualifications to become a licensee. *N. Atlantic supra.*

The NRC has stated "we require parties to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them." *N. Atl. Energy Serv. Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 N.R.C. 201, 219-220, *dismissed due to settlement*, CLI-99-16, 49 N.R.C. 370 (1999). In North Atlantic, the NRC determined that a contention focused on the applicants' failure to meet operating expenses was admissible. In so finding the panel relied in large part on the applicants own "vigorous response" to determine that a genuine dispute exists regarding the issue. Here, Entergy has vigorously responded to the contentions raised by Petitioners thereby providing the evidence that a genuine dispute does exist.

F. Petitioners contention that the application violates anti-trust laws is admissible.

> The Commission will approve an application for the transfer of a license if the Commission determines:
>
> > (1) That the proposed transferee is qualified to be the holder of the license; and
> > (2) That the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

10 C.F.R. 50.80

As part of its review the Commission must determine whether a proposed license transfer violates United States anti-trust laws. See Alabama Power Company v. NRC,

Nos. 81-7547, 81-7580 and 81-7846, 692 F.2d 1362, 692 F.2d 1362, 1983-1 Trade Cases P 65,376 692 F.2d 1362 (11th Cir. Dec. 6 1982).

> By amending this Act in 1970, Congress gave the Nuclear Regulatory Commission (NRC) added duties in connection with the licensing of nuclear power plants. Specifically, the NRC was charged with considering the antitrust ramifications of its licensing actions. Section 105(c) directs the NRC to review applications for permits to construct commercial nuclear power facilities to determine if the activities sought to be licensed would "create or maintain a situation inconsistent with the antitrust laws." 15 U.S.C. § 2135(c). The antitrust laws incorporated in Section 105(c)(5) are the Sherman Act, 15 U.S.C. §§ 1-7; the Wilson Tariff Act, 15 U.S.C. §§ 8-11; the Clayton Act, 15 U.S.C. §§ 12-27; and the Federal Trade Commission Act, 15 U.S.C. §§ 41-49. Under Section 105(c)(6) of the Atomic Energy Act, the NRC may rescind or refuse to issue a license if this result would follow.

Id. at 1365.

Here, Petitioners set forth the specific contention that the proposed reorganization will take 11 licenses placing them into one holding company. In addition, Petitioners not only discuss the facts underlying the contention but additionally raise the legal argument that the proposed license transfer is an anti-trust violation subject to anti-trust review.

VI. ENTERGY'S MOTION MUST BE DENIED AS UNTIMELY.

This proceeding is governed by the 10 C.F.R. §§ 2 and 50. A motion must be made no later than ten (10) days after the occurrence of circumstance from which the motion arises. 10 C.F.R. § 2.323.

Entergy's motion couched as an Answer is untimely and must be ignored. Under the rules of the NRC Entergy had 25 days after the service of the request for a hearing to answer. 10 C.F.R. 50 § 2.309. "The applicant/licensee, the NRC staff, and any other party to a proceeding may file an answer to a request for a hearing, a petition to intervene

and/or proffered contentions within twenty-five (25) days after service of the request for hearing, petition and/or contentions." 10 C.F.R. 50 § 2.309(h)(1). Entergy did not file its answer until 55 days after the service of Petitioners' Petition to Intervene.

Entergy failed to file its motion to dismiss within in ten (10) days. The rules of the NRC require that all motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises.[6] 10 C.F.R. §2.323 (a). Petitioners filed and served their Petition to Intervene on February 5, 2008. Any motions in response to this Petition must have been made within ten (10) days of that date. Entergy filed and served its motion on March 31, 2008, 55 days after the occurrence or circumstance from which the motion arises.

Entergy is likely to argue in response that the date was moved back because the occurrence or circumstance arose at the time that if filed its Motion for a Protective Order because of the purported dispute relating its overbroad and inhibiting confidentiality agreement. Assuming *arguendo*, that this likely preposterous argument is accepted Entergy's Opposition is still untimely because the motion for a protective order was filed and served on February 26, 2008. Ten days from this date was March 7, 2008. Again, Entergy did not file this motion until March 31, 2008 and it is therefore equally untimely.

Entergy must be deemed to have admitted that Petitioners' contentions are admissible because Entergy failed to file a timely answer. The rules of the NRC require that all answers to petitions to intervene must be filed within twenty-five (25) days.

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[6] If the commission is inclined to entertain this motion despite the ten day rules, the Commission must equally entertain this response, should it be argued that this response is untimely.

Entergy filed and served its answer on March 31, 2008, 55 days after Petitioners' filed their contentions. Entergy's Opposition must be denied as untimely filed.

V. ENTERGY'S MOTION FOR A PROTECTIVE ORDER MUST BE DENIED.

A. Entergy's Motion for a Protective Order Must be Dismissed as untimely.

Entergy failed to file its motion to dismiss within in ten (10) days. The rules of the NRC require that all motions must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises.[7] 10 C.F.R. §2.323 (a). Petitioners filed and served their Petition to Intervene on February 5, 2008. Any motions in response to this Petition must have been made within ten (10) days of that date. Entergy filed and served its motion on February 26, 2008, 16 days after the occurrence or circumstance from which the motion arises.

B. Entergy's Motion for a Protective Order Must be Dismissed because the information is not confidential and Petitioners interest in reviewing the documents outweighs Entergy's need to protect them.

Entergy's motion for a protective order should be denied because the information is not confidential or proprietary business information. More importantly, if it was the protective order is overly broad and would hinder the ability of the Petitioners and their counsel to litigate the Contentions the Petitioners raise.

10 C.F.R. § 2.390 provides that for information to be considered protected as confidential:

> The Commission shall determine whether information sought to be withheld from public disclosure under this paragraph:

[7] If the commission is inclined to entertain this motion despite the ten day rules, the Commission must equally entertain this response, should it be argued that this response is untimely.

> (i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be withheld from public disclosure.
>
> (4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:
>
> (i) Whether the information has been held in confidence by its owner;
>
> (ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefore;
>
> (iii) Whether the information was transmitted to and received by the Commission in confidence;
>
> (iv) Whether the information is available in public sources;
>
> (v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

The information that Entergy seeks to protect is information that it is required to disclose as a public company and therefore cannot be confidential. In fact, the SEC requires that Entergy disclose some of the information that it seeks to protect. The information it seeks to protect is financial information that discusses such matters as its long term contractual obligations. Such information has already been provided for public disclosure in its form 10K filed on May 2008 at p 63. After disclosing such information Entergy cannot now seek to hide the information upon which that publicly disclosed information was based.

The protective order is broader than is required to serve Entergy's purposes. In its motion Entergy alleges that the protective order they seek to compel is largely based on

the protective order required by ordered by the NRC. "Largely based" does not mean the same protective order. Significantly, in its motion Entergy does not provide a description of the differences between its proposed protective order and the protective order ordered by the NRC. There are major differences between the protective orders in those cases and the differences hinder counsel's ability to zealously advocate on behalf of their clients. More importantly, the protective order hinders the Petitioners' ability to support their contentions at the time of a hearing.

VI. THE COMMISSION MUST COMPEL ENTERGY TO PRODUCE DOCUMENTS REQUESTED BY PETITIONERS.

In their Petition Petitioners requested documents needed to more fully assess Entergy's application and the transfer's effect on heath and safety of the Petitioners. Petitioners respectfully request that the NRC issue an order compelling Entergy to provide those documents to the Petitioners.

VII. PETITIONERS SHOULD BE GRANTED LEAVE TO AMEND THEIR PETITON TO INTERVENE.

Under NRC procedures a party may amend contentions based upon newly discovered information. The rules provide:

> Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that
>
> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
>
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. 2.309 (f)(2).

On May 28, 2008, Enexus (referred to as NewCo in the Petition) filed a form 10K with the SEC. Petitioners seek to amend their contentions to include the form 10K as evidence to support their contentions. The form 10K provides further information about the transferee that is material and relevant to this proceeding. This information was not available when Petitioners filed their petition. This information is materially different then information previously released because it is the first publicly available information from Enexus and contains copies of agreements between Enexus and EquaGen. This information has not been publicly available in prior filings. This amendment is solely to advise the commission and Entergy of new information that Petitioners plan to rely upon at a hearing on the merits.

The commission should grant Petitioners motion to amend its contentions to add the 10-K filing dated May 28, 2008 to the petition and fully incorporate its contents in the petition as if stated fully therein.

CONCLUSION

For the foregoing reasons, Petitioner's appeal should be granted. Entergy's Application should be denied. Alternatively, a hearing should be granted on the Petitioners' contentions. In addition, Entergy's motion for a protective order should be denied. Finally, Petitioners' motion to compel discovery and to amend their contentions should be granted.

Dated: September 4, 2008

Respectfully Submitted,
/s/

____
Sarah L. Wagner

Ross Gould, Esq.
Co- Counsel for Petitioners WestCAN Et. al.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Reconsideration have been served upon the following persons by the NRC Electronic Information Exchange.

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