

RAS E-168

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

September 17 2008 (8:30am)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	Docket Nos. 50-247-LR and
ENERGY NUCLEAR OPERATIONS, INC.)	50-286-LR
(Indian Point Nuclear Generating Units 2 and 3))	September 16, 2008

**ENERGY NUCLEAR OPERATIONS, INC. ANSWER OPPOSING
WESTCAN ET AL. MOTION TO STRIKE**

I. INTRODUCTION

On September 3, 2008, Westchester Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association, Inc. ("RCCA"), Public Health and Sustainable Energy ("PHASE"), Sierra Club – Atlantic Chapter, and New York State Assemblyman Richard L. Brodsky (collectively, "WestCAN" or "Petitioners") filed "Petitioners' Motion and Reply to Entergy's Opposition to Petitioners' Appeal to the Commission" ("Motion and Reply").¹ While not discussed in the body of the Motion, WestCAN, in the "Conclusion" section, states that it seeks an Order from the Commission to "strike Entergy's Answer to Petitioners' appeal."² Therefore, to the extent that WestCAN's filing may be construed as a Motion to Strike, Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), hereby files this Answer opposing WestCAN's Motion, pursuant to 10 C.F.R. §§ 2.1204 and 2.323.³ As discussed further below,

¹ According to the Certificate of Service, on September 3, 2008, WestCAN filed its Motion and Reply only by first-class mail, thereby adding 3 calendar days to the prescribed period for responding, which makes the due date for this Answer September 16, 2008. See 10 C.F.R. § 2.306(b)(1). Note that WestCAN's Motion and Reply were not received by Entergy's counsel until September 10, 2008.

² Motion and Reply at 9 (unnumbered).

³ Entergy is responding only to WestCAN's Motion to Strike, and not to its Reply.

TEMPLATE = SECY-035

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the Commission should deny WestCAN's Motion to Strike because it is procedurally flawed and substantively deficient.

II. DISCUSSION

By Order dated July 31, 2008, the Board struck WestCAN's Request for Hearing in this license renewal proceeding.⁴ Citing primarily WestCAN's lack of credibility and candor surrounding its February 15 Reply, the Board found that it "cannot conduct a fair, orderly, and efficient proceeding if [it] can not rely on the integrity of the parties, and WestCAN has repeatedly demonstrated that [the Board] can not rely on their attorneys to be credible in their dealings with the Board and the parties."⁵ On August 8, 2008, WestCAN filed its Appeal of the Board Order,⁶ and on August 18, 2008, Entergy filed its Answer Opposing WestCAN's Appeal.⁷ Subsequently, WestCAN filed its Motion and Reply, in which, on the last page of the pleading, WestCAN indicates that it seeks an Order from the Commission to, *inter alia*, "strike Energy's Answer to Petitioners' appeal."⁸

Initially, WestCAN describes its pleading, in part, as a "Motion."⁹ Nowhere in its filing, however, does WestCAN describe how it complies with the applicable regulatory requirements in 10 C.F.R. § 2.323. Specifically, 10 C.F.R. § 2.323(b) indicates that a motion must be rejected

⁴ See Licensing Board Order (Striking WestCAN's Request for Hearing) (July 31, 2008) (unpublished) ("Board Order").

⁵ *Id.* at 12.

⁶ See WestCAN's Notice of Appeal and accompanying Memorandum of Law (August 8, 2008) ("WestCAN's Appeal").

⁷ Entergy Nuclear Operations, Inc. Answer Opposing WestCAN et al. Notice of Appeal (August 18, 2008) ("Entergy's Answer"). As discussed in Entergy's Answer, WestCAN filed its Appeal under both 10 C.F.R. §§ 2.341(b) and 2.311, contrary to the Board's Order, which indicated that any appeal should be filed under 10 C.F.R. § 2.314(c)(3). Thus, Entergy filed an Answer pursuant to 10 C.F.R. §§ 2.341(b)(3) and 2.311(b). To the extent that WestCAN's filing could be construed as an appeal under 10 C.F.R. § 2.314, Entergy sought leave to reply.

⁸ Motion and Reply at 9 (unnumbered).

⁹ *Id.* at 1.

“if it does not include a certification by the attorney . . . that the movant has made a sincere effort to contact the other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant’s efforts to resolve the issue(s) have been unsuccessful.” At no time did WestCAN’s counsel contact counsel for Entergy to discuss this Motion, nor does WestCAN make any certification regarding its efforts to resolve the issues in the Motion. Based on these procedural deficiencies alone, the Commission should deny WestCAN’s Motion to Strike Entergy’s Answer.

Moreover, WestCAN’s Motion is substantively deficient because it fails to provide any justification for striking Entergy’s Answer. A motion to strike is normally used to strike “redundant, immaterial, impertinent, or scandalous matter” contained in a pleading.¹⁰ It is not a mechanism for Petitioners to have the last word or if Petitioners simply do not agree with Entergy’s arguments regarding its Appeal.

In addition, 10 C.F.R. § 2.323 indicates that a motion must “state with particularity *the grounds* and the relief sought.”¹¹ In its Motion, however, WestCAN does nothing more than baldly assert that the Commission should strike Entergy’s Answer to its Appeal.¹² As indicated above, however, Entergy, in compliance with the applicable regulations, filed its Answer to WestCAN’s Appeal pursuant to 10 C.F.R. §§ 2.341(b)(3) and 2.311(b), and sought leave to rely under 10 C.F.R. § 2.314, as applicable. Because WestCAN fails to provide any grounds or reason why Entergy’s Answer should be stricken, the Commission should deny WestCAN’s Motion.

¹⁰ Fed. R. Civ. P. 12(f).

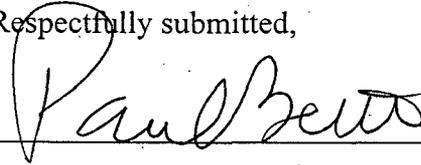
¹¹ 10 C.F.R. § 2.323(b) (emphasis added).

¹² Motion and Reply at 9 (unnumbered).

III. CONCLUSION

For the foregoing reasons, the Commission should deny WestCAN's Motion to Strike Entergy's Answer.

Respectfully submitted,



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Dated at Washington, DC
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	ASLBP No. 07-858-03-LR-BD01
(Indian Point Nuclear Generating Units 2 and 3))	
)	September 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of "Entergy Nuclear Operations, Inc. Answer Opposing WestCAN et al. Motion to Strike," dated September 16, 2008, were served this 16th day of September, 2008 upon the persons listed below, by first class mail and e-mail as shown below.

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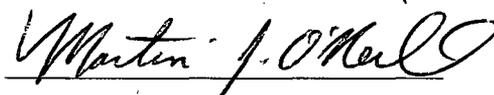
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