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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Consolidated Edison Company	)	
of New York, Inc.,	)	Docket Nos. 50-003-LT
Entergy Nuclear Indian Point 2, LLC,	)	50-247-LT
and Entergy Nuclear Operations, Inc.	)	
	)	
(Indian Point Nuclear Generating	)	
Units 1 and 2)	)	

APPLICANTS' ANSWER TO
SUBMISSION OF ISSUES BY TOWN OF CORTLANDT,
NEW YORK AND HENDRICK HUDSON SCHOOL DISTRICT

I. INTRODUCTION

Pursuant to 10 CFR § 2.1307(a) and the Commission's Memorandum and Order, CLI-01-08, 53 NRC __ (March 6, 2001), Consolidated Edison Company of New York, Inc. ("Con Edison"), Entergy Nuclear Indian Point 2, LLC ("ENIP2") and Entergy Nuclear Operations, Inc. ("ENO") (collectively, "Applicants")[1] submit this answer to the "Submission of Issues by Town of Cortlandt, New York and Hendrick Hudson School District" ("Cortlandt Supplemental Filing") filed on April 12, 2001 by Petitioners Town of Cortlandt, New York and Hendrick Hudson School District (collectively "Cortlandt").[2] As further discussed below, Cortlandt has

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[1] ENIP2 and ENO will be collectively be referred to herein as the "Entergy Companies."

[2] Cortlandt's April 12, 2001 filing consists of two documents, the "Supplemental Filing" and a "Submission of Redacted Issues by Town of Cortlandt, New York and Hendrick Hudson School District" ("Supplemental Proprietary Filing") that discusses proprietary information of the Entergy Companies provided to Cortlandt under a confidentiality agreement. In order to preserve the

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failed to raise any admissible issues in this Subpart M proceeding. Thus, its petition to intervene must be denied.

II. BACKGROUND

A. PROCEDURAL HISTORY

On December 12, 2000, Applicants filed a request for NRC approval ("Application") of the direct transfer of the Indian Point Nuclear Generating Station Unit 1 ("Unit 1 or "IP1") Facility Operating License DPR-5, and the Indian Point Nuclear Generating Station Unit 2 ("Unit 2" or "IP2") Facility Operating License DPR-26, both currently held by Con Edison as owner of Unit 1 and owner and operator of Unit 2. Following approval of the proposed transfer, ENIP2 would assume title to both facilities. ENO would become responsible for the maintenance of Unit 1 and the operation and maintenance of Unit 2. As discussed in the Application, the proposed transfer will have no effect on plant equipment or operating procedures. No physical alterations to either Unit 1 or Unit 2 are being proposed as a part of the license transfer process, and virtually all of the operating personnel at the stations will be transferred to the new licensees.

On January 29, 2001, the Commission issued a "Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing" concerning the Application.[3] On February 20, 2001, Cortlandt filed a petition for leave to intervene in the license transfer proceeding, seeking to oppose the NRC granting its consent to

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confidentiality of this information, the Entergy Companies are responding separately to that document in a Proprietary Annex to this filing.

[3] 66 Fed. Reg. 8,122 (2001).

the license transfers.[4] Cortlandt's Petition proposed several issues for litigation, although it did not provide any factual support for its allegations. In addition, Cortlandt requested that it be given more time to "modify or augment [its] proposed issues for hearing" after consideration of information being developed in other proceedings, and also that it be given access to proprietary materials filed by the Entergy Companies with the Application in order to be able to "formulate *de novo* issues for hearing after receipt of the redacted information." Cortlandt's Petition at 3, 7.

In its March 6, 2001 Memorandum and Order, the Commission directed that the Entergy Companies make available to Cortlandt and to Citizens Awareness Network, Inc. ("CAN"), pursuant to suitable confidentiality agreements, the Entergy Companies' financial data contained in the proprietary versions of the Application.[5] Both CAN and Cortlandt were authorized to file, within 20 days of the parties' entering into confidentiality agreements, new or revised issues "challenging the Entergy companies' financial or technical qualifications to own and/or operate the Indian Point 1 and 2 facilities." CLI-01-08, supra, slip op. at 7.

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[4] "Petition for Leave to Intervene and Request for Hearing in the Consideration of Approval of the Proposed License Amendment and Transfer of Indian Point 2 Nuclear Operating License and Indian Point 1 Provisional Operating License to Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. and Request for Additional Time," dated February 20, 2001 ("Cortlandt's Petition"). As noted in Applicants' response to Cortlandt's Petition, Applicants do not contest that Cortlandt has standing to participate in this proceeding.

[5] On February 20, 2001, CAN had filed a "Request for Hearing and Petition to Intervene," seeking to participate in this proceeding in opposition to the transfer of the Indian Point 1 and 2 licenses from Con Edison to the Entergy Companies.

The Entergy Companies and Cortlandt entered into such an agreement on March 23, 2001 and the confidential information was supplied to Cortlandt.[6] Cortlandt's Supplemental Filing was submitted on April 12, 2001.

B. SUMMARY OF ISSUES RAISED IN CORTLANDT'S FILINGS

As noted above, in its Memorandum and Order the Commission authorized Cortlandt to file "new or revised issues." In its Supplemental Filing, Cortlandt has enlarged one of the issues, the financial qualifications issue. Compare Cortlandt's Petition at 13- 21 with Supplemental Filing at 5-11.[7] Cortlandt has also restated its on-site spent fuel storage capacity issue, compare Cortlandt's Petition at 24-25 with Supplemental Filing at 11-14, although Cortlandt has failed to specify which of the two versions of that issue should be considered by the Commission. Cortland also makes no reference in its Supplemental Filing as to the status of several other issues raised in Cortlandt's Petition but not discussed in the Supplemental Filing.

In the discussion that follows, Applicants will assume that Cortlandt is still seeking to litigate the issues raised in Cortlandt's Petition with the financial qualifications issue being expanded so that it now comprises a total of eight sub-issues, raised in either Cortlandt's Petition or Cortlandt's Supplemental Filing, plus five additional sub-issues discussed in its Supplemental Proprietary Filing.

Following is a list of the issues raised by Cortlandt in its filings:

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[6] A similar confidentiality agreement was executed with CAN on March 15, 2001, and CAN filed proposed issues on April 9, 2001. Applicants have responded separately to CAN's submittal.

[7] Five additional financial qualifications issues are raised in Cortlandt's Supplemental Proprietary Filing.

Issue 1: The Application is deficient because it fails to provide the information required by 10 CFR §50.33(f) to demonstrate the Entergy Companies' financial ability to operate IP2. Supplemental Filing at 2-3. This proposed issue is comprised of eight sub-issues (plus five others discussed in the Proprietary Annex to this Answer):

(a) Whether IP2 can achieve, as stated in the Application, an average annual capacity factor of 85% during the 2001-2005 period. Supplemental Filing at 5-6.

(b) Whether Entergy Corporation's experience in the operation of other nuclear facilities is relevant to its projected ability to maintain an average 85% capacity factor at IP2. Id. at 6-7.

(c) Whether, in seeking to achieve an average 85% capacity factor, the Entergy Companies will incur additional, and unaccounted for, costs. Id. at 7-8.

(d) Whether the IP2 operating costs estimated by the Entergy Companies are reasonable in light of the plant's previous operating history. Id. at 8-9.

(e) Whether the power purchase agreement ("PPA") between ENIP2 and Con Edison should be revised to ensure IP2 has adequate financial resources. Id. at 9-10.

(f) Whether the Application fails to comply with the requirements of 10 CFR § 50.33(f)(2) in that: (i) the Entergy Applicants have failed to provide information on the operating costs for the entire period of the license, until it expires in 2013; (ii) no detailed estimates of capital improvement costs have been provided for the first five years after the license transfer; and (iii) information is provided only for part of the first year after the license transfer. Id. at 10-11; see also, Cortlandt's Petition at 19-20.

(g) Whether the lines of credit available to the Entergy Companies from EGI and EIL are sufficient and reliable. Cortlandt's Petition at 17-19.

(h) Whether the expiration of the collective bargaining agreement with the Indian Point employees in 2004 will result in costs beyond those accounted for in the Entergy Companies' cost projections. Id. at 20.

Issue 2: The Application is deficient in that it fails to demonstrate the capacity of IP2 to handle the costs of providing on-site spent nuclear fuel storage after 2004. Supplemental Filing at 11-14; see also, Cortlandt's Petition at 24-25.

Issue 3: The Application is deficient in that it fails to ensure that there are sufficient funds available for the decommissioning of the IP1 and IP2 facilities. Cortlandt's Petition at 21-24.

Issue 4: The Application is deficient in that it fails to demonstrate that there will be funds available to pay for the environmental remediation that will be required at the Indian Point site. Id. at 26-27.

Issue 5: The Application is deficient because it fails to provide a radiological and emergency response plan that accounts for the increased population and development in the immediate vicinity of the Indian Point site. Id. at 27-28.

Issue 6: The proposed transfer should not be allowed, since it is not in the public interest. Id. at 28-29.

Although Cortlandt has generated a long list of proposed issues, in reality only Issue 1 raises concerns that had the potential, had they been properly presented and supported (which

they are not), to be the subject of a Subpart M hearing. The rest of Cortlandt's allegations are both without basis and out of scope, as Applicants have already demonstrated in their March 2, 2001 response to Cortlandt's Petition. See Answer of Consolidated Edison Company of New York, Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. to Petitions for Leave to Intervene and Requests for Hearing dated March 2, 2001 ("Applicants' Answer to Cortlandt's Petition") at 15-25. As will be seen, the financial qualifications issue, i.e., Issue 1, should also be rejected because it is impermissibly vague and unsupported by facts or expert opinion.

III. PROCEDURAL ISSUES RAISED BY CORTLANDT'S FILINGS

A. PETITION FOR A WAIVER OF REGULATORY REQUIREMENTS PURSUANT TO 10 CFR § 2.1329

In a document entitled "Town of Cortlandt and Hendrick Hudson Central School District's Reply to Applicants' Answer Opposing Hearing and Intervention Request, and Petition for a Waiver of Regulatory Requirement Pursuant to 10 CFR 2.1329" ("Cortlandt's Reply") filed on March 7, 2001, Cortlandt, among other things, has petitioned the Commission pursuant to 10 CFR § 2.1329 for a waiver of its regulation relating to decommissioning funding. In particular, Cortlandt wishes to challenge 10 CFR § 50.75(e)(1)(i) in this proceeding. That regulation provides that prepayment of the decommissioning fund level determined in accordance with 10 C.F.R. § 50.75(c)(1)(i) is sufficient to provide reasonable assurance of a licensee's ability to

decommission a facility. See North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n. 8 (1999) (hereinafter "Seabrook").[8]

As grounds for this request Cortlandt alleges the existence of "a set of facts which are apparently unprecedented" in that the $430 million to be placed into the trust in accordance with regulatory requirements, and which is estimated to grow to $558 million at the assumed 2% real rate of return, will be insufficient to defray the costs of decommissioning IP1 and IP2, since a study performed for Con Edison by a consultant estimated the IP1 and IP2 decommissioning cost as $578 million, $20 million more than the amount computed using the regulation's formulation. Cortlandt's Reply at 4-5.

Because Cortlandt's petition for waiver fails to meet the requirements of 10 C.F.R. § 2.1329 in either form or substance, it should be denied.

> Section 2.1329 provides, in pertinent part,
>
> (a) A participant may petition that a Commission rule or regulation be waived with respect to the license transfer application under consideration.
>
> (b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.
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> (c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted and shall be supported by affidavits to the extent applicable.

[8] Cortlandt's petition implicitly concedes that, absent a waiver of the NRC's regulatory position, it is barred from challenging the adequacy of a decommissioning funding approach that complies with the requirements of 10 CFR § 50.75.

First, Cortlandt's petition for waiver does not even attempt to comply with the procedural requirements of section 2.1329. Section 2.1329(c) requires that a petitioner for waiver be supported by affidavits "to the extent applicable." Cortlandt relies on a consultant's study prepared for Con Edison. However, Cortlandt files no affidavit as required by the rule. Absent an affidavit, Cortlandt's unsupported assertions in its petition fail to demonstrate that the circumstances in this proceeding are such that the application of Section 50.75(e)(1)(i) would not serve the purposes for which that rule was adopted. See Florida Power & Light Co. (Turkey Point, Units 3 & 4), LBP-01-06, 2001 WL 261863, at *10.

In addition to its procedural deficiencies,, the petition must also fail because Cortlandt fails to make a prima facie showing regarding the existence of "special circumstances." Commission precedents require three showings a petitioner must make to establish a prima facie case: First, the petitioner must show that "the circumstances alleged must be unique to the particular facility at issue." Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 238 (1998) ("PFS"); see Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72-74 (1981). Speculation about future events is not a sufficient basis to establish "special circumstances." PFS, LBP-98-7, 47 NRC at 239. Second, as reflected in the regulation, the petitioner must show that application of the rule will not serve the purposes for which it was adopted. Id. at 239; see Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 235 (1989) ("Seabrook"). Third, the petitioner must show that the circumstances involved are "'unusual and compelling' such that it is evident from the petition and other allowed papers that a waiver is necessary to address the merits of a 'significant safety problem' relative to

the rule at issue. PFS, LBP-98-7, 47 NRC at 239; see Seabrook, CLI-89-20, 30 NRC at 235. Stated another way, the petitioner must establish that the issue raised is a significant safety problem. Id.

Cortlandt asserts that the existence of the study constitutes a "special circumstance" warranting the waiver under 10 CFR § 2.1329 of the position in 10 CFR §50.75(e)(1) that compliance with the minimum prepayment amount is sufficient to satisfy the proposed licensee's responsibilities for decommissioning. Id. However, such a challenge fails to address any of the factors which would demonstrate a "special circumstance." Moreover, the Commission sought to avoid such a challenge in permitting the use of a generic cost formulation in Section 50.75(e)(1). As the Commission noted in Seabrook:

> [N]o one would be free to argue in a license transfer case that site-specific conditions at a particular nuclear power reactor render unusable the generic projected costs calculated under our rule's cost formula.

Seabrook, CLI-99-6, 49 NRC at 217 n.8, citation omitted.[9]

By definition, estimates of the costs of decommissioning activities, to take place decades into the future, cannot be precise. The purpose of the NRC's decommissioning funding rules is to establish a level of funding that provides reasonable assurance that sufficient money will be available to decommission the site. Satisfaction of the Section 50.75 requirements establishes,

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[9] See Final Rule, General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24,018, 24,030 (1988) ("The amount listed as the prescribed amount does not represent the actual cost of decommissioning for specific reactors but rather is a reference level established to assure that licensees demonstrate adequate financial responsibility that the bulk of the funds necessary for a safe decommissioning are being considered and planned for early in facility life, thus providing adequate assurance at that time that the facility would not become a risk to public health and safety when it is decommissioned.")

by definition, sufficient funding to provide that assurance. The Commission sought to avoid a situation, like the one cited by Cortlandt, that would require a change in funding every time a new study predicted that the costs will be somewhat higher than estimated.[10]

Imprecision with respect to future decommissioning costs is no reason for concern.[11] The regulations at 10 CFR § 50.75(f)(2) require that the licensee, five years prior to the expected end of operations, submit both a cost estimate for decommissioning based on an up-to-date assessment of the actions necessary for decommissioning, and plans for adjusting levels of funds for decommissioning, if necessary. 53 Fed. Reg. 24,018, 24,030. NRC's rules, therefore, allow for fine tuning closer to the time when decommissioning is to start. Litigation far ahead of the actual start of decommissioning to address how much funding is enough would defeat the purpose of the § 50.75 regulation, which is to establish no more or less than a "general level of adequate financial responsibility for decommissioning early in life." Id.[12]

For these reasons and those discussed in Applicants' Answer to Cortlandt Petition at 19-20, no "special circumstances" exist that should cause the Commission to set aside the standards in 10 CFR § 50.75 and allow litigation over the sufficiency of the decommissioning funding to

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[10] The generic formula is not static, but periodically must be reapplied to account for escalation factors, e.g., for labor and energy and also for changes in waste burial charges.

[11] In this particular case, the difference between the cost estimate allegedly provided by a consultant and the accumulated amount computed using the generic formulation is $20 million, a sufficiently small percentage (less than 4%) of the total estimated costs that it could be accommodated, by example, if the actual real rate of return on the trust funds were slightly higher than the 2% allowed by the regulations. Experience with decommissioning may also decrease costs for future decommissioning.

[12] Cortlandt agrees that this is the purpose of the regulation, since it starts by recognizing that 10 CFR § 50.75 "contemplates that compliance with any of the criteria set forth in §50.75(e)(1) will be deemed to be sufficient to provide such an assurance, to avoid disputes as to whether such an amount of money is or is not actually adequate." Cortlandt Reply at 5.

be provided by the Entergy Companies. Cortlandt's petition to waive the regulatory standard must be denied.

B. REQUEST FOR ADDITIONAL TIME TO FILE ISSUES WITH REGARD TO RESPONSES TO STAFF'S ADDITIONAL INFORMATION REQUEST

On March 1, 2001, the NRC Staff, as part of its review of the Application, issued a letter to Con Edison containing six requests for additional information ("RAIs").[13] The information sought by the Staff was due 45 days from the date of the letter, i.e., on April 16, 2001.[14]

Cortlandt notes that as of April 10, 2001, Applicants had not responded to the Staff's RAIs. Supplemental Filing at 14. Cortlandt then states: "Cortlandt requests twenty days after receipt of the additional information responses to provide further comments and/or to propound additional issues for hearing." Id.

It is well settled that the NRC Staff's mere posing of questions does not suggest that the application was incomplete, or that the filing of a response to those questions should in itself provide the basis for third parties to raise contentions, and Cortlandt has cited no language in the RAIs to suggest otherwise. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349 (1998). RAIs are a standard and ongoing part of NRC licensing reviews. NRC regulations state that "[d]uring review of an application by the Staff, an applicant may be required to submit additional information." 10 CFR § 2.102(a).

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[13] See Letter dated March 1, 2001 from Patrick D. Milano, Division of Licensing Project Management, NRC Office of Nuclear Reactor Regulation to Alan Blind, Con Edison's Vice President, Nuclear Power.

[14] Applicants did provide the responses to the last of the RAIs on the responses' due date, April 16, 2001, by letter from M. Kansler to the NRC. A copy of those responses is included as an exhibit to the Proprietary Annex to this filing.

It is the license application, not the NRC Staff review, that is at issue in NRC adjudication. Calvert Cliffs, CLI-98-25, 48 NRC at 350. The NRC Staff will consider and resolve all safety questions whether or not a hearing is held. Id. Cortlandt must come forward with timely and concrete concerns of its own. Id.; see also Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 336-39 (1999); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993).

Moreover, there is no "twenty day period" provision in the Commission regulations for Cortlandt to review Applicants' responses to the RAIs and file new proposed issues. Cortlandt merely seeks to use the Staff's requests for additional information as a discovery device, even though discovery is not available in Subpart M proceedings.

Should Cortlandt choose to raise any additional proposed issues once it receives Applicants' responses to the Staff's RAIs, it will need to satisfy the Commission's rules on the admissibility of late filed issues, under which "[u]ntimely hearing requests ... may be denied unless good cause for failure to file on time is established." 10 CFR § 2.1308(b). Any issues proffered by Cortlandt will need to satisfy the "good cause" requirements and must be weighed against the factors set in Section 1308(b) for deciding whether a late filed issue should be admitted.[15] In addition, of course, any proposed issue must meet the admissibility standards in 10 CFR § 2.1308(a)(4).[16]

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[15] 10 CFR § 2.1308(b) states:

> (b) Untimely hearing requests or intervention petitions may be denied unless good cause for failure to file on time is established. In reviewing untimely requests or petitions, the Commission will also consider:
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> (1) The availability of other means by which the requestor's or petitioner's interest will be protected or represented by other participants in a hearing; and

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C. INCORPORATION BY REFERENCE OF CAN'S PROPOSED ISSUES

At the end of its Supplemental Filing, Cortlandt indicates that it "supports and incorporates by reference as if set forth fully herein the issues presented by CAN in its supplemental filing of April 9, 2001." Supplemental Filing at 14. Such incorporation by reference, however, is legally ineffective to secure Cortlandt access to this proceeding. While the Commission's regulations allow parties admitted into a proceeding to provide testimony and examination on issues raised by other parties, each party must independently meet the threshold requirements for participation, including a demonstration of standing and submittal of at least one admissible issue. See, e.g., GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000) (hereinafter "Oyster Creek"); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423 (1982). Thus, to the extent that Cortlandt is seeking to be admitted into this proceeding by "incorporating by reference" CAN's proposed issues, such a course of action is unavailing. Cortlandt's petition to intervene must rise or fall on its own, regardless of what action the Commission takes on CAN's proposed issues.

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(2) The extent to which the issues will be broadened or final action on the application delayed.

[16] When addressing the admissibility of issues in a Subpart M proceeding, the Commission must consider whether the issues sought to be litigated are:

(i) Within the scope of the proceeding;

(ii) Relevant to the findings the Commission must make to act on the application for license transfer;

(iii) Appropriate for litigation in the proceeding; and

(iv) Adequately supported by the statements, allegations, and documentation required by 10 CFR § 2.1306(b)(2)(iii) and (iv).

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IV. CORTLANDT'S FILINGS FAIL TO RAISE ADMISSIBLE ISSUES

None of the issues propounded by Cortlandt satisfies the requirements for the formulation of issues in Subpart M proceedings.[17] Cortlandt's statement of its proposed issues typically consists of a stream of broad, unsupported assertions not tied to specific facts or expert opinions.[18] For that reason alone, Cortlandt's Petition and Supplemental Filing should be dismissed. See, e.g., Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Units 1,

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10 CFR § 2.1308(a)(4).

[17] Under 10 CFR § 2.1306(b)(2), a petitioner must:

(2) Set forth the issues sought to be raised and

(i) Demonstrate that such issues are within the scope of the proceeding on the license transfer application,

(ii) Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,

(iii) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and

(iv) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

See Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant; Indian Point Unit 3), CLI-00-22, 52 NRC 266, 295 (2000) (hereinafter "Indian Point 3"); GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 203 (2000) (hereinafter "Oyster Creek.")

[18] Cortlandt's Petition was accompanied by a letter dated February 20, 2001 from Cortlandt's consultant George E. Sansoucy, P. E. Mr. Sansoucy expressed certain general concerns based on his review of the redacted version of the Application. He indicated that "[u]pon review of the unredacted information identified above we will provide you with specific comments regarding the application." However, no comments from Mr. Sansoucy or anyone else were provided by Cortlandt in support of its Supplemental Filing or its Supplemental Proprietary Filing. The sum total of the "factual support" for Cortlandt's expanded set of financial qualification issues is a copy of a table already provided with Mr. Sansoucy's February 20, 2001 letter, which purports to tabulate IP2's "operational data."

2, and 3), CLI-00-18, 52 NRC 129, 131-32 (2000); Indian Point 3, CLI-00-22, 52 NRC at 295; see also Seabrook, CLI-99-6, 49 NRC at 219. In addition, each of the six issues that Cortlandt raises is fatally flawed by being outside the scope of this Subpart M proceeding, being inadequately articulated and supported, or both.

A. CORTLANDT'S PROPOSED FINANCIAL QUALIFICATIONS ISSUES ARE NOT ADMISSIBLE

1. Sub-Issue 1(a), on the achievability of the assumed 85% average capacity factor for IP2, is inadmissible.

In Sub-Issue 1(a), Cortlandt attacks the 85% average annual capacity factor assumed by the Entergy Companies in their financial analyses for the 2001-2005 period. Cortlandt terms the 85% capacity factor assumption "outlandish" and "facially unreasonable." Supplemental Filing at 6. However, Cortlandt offers no substantive basis for its attacks, other than quoting the average capacity factor performance of IP2 for the years 1994-99. Id. at 5.

Cortlandt fails to provide any analysis of what factors led to the low capacity factors at IP2 in the 1994-99 era, or to assert a logical connection between those factors and what could be inferred from them as to the plant's anticipated performance after the license transfer. Cortlandt overlooks, for example, the fact that IP2 was out operation for eleven months in 1997-98 due to unique, non-recurring circuit breaker design issues and for much of 2000 due to the need to replace its steam generators – both unique events that cannot be viewed as helpful or relevant to predictions of future performance. Cortlandt also does not discuss or give credit to the fact that recent outages at IP2 have resulted in the implementation of a large number of capital investments that should result in improved performance in the future. Finally, in equating past and future, Cortlandt refuses to acknowledge one of the main factors cited by the Entergy

Companies in support of their anticipated forecast, i.e., Entergy's favorable performance record at other plants it operates.

In short, Cortlandt's challenge to the 85% capacity factor assumption is neither reasoned nor supported. Sub-Issue 1(a) does not raise matters that require adjudication in a Subpart M hearing.

2. Sub-Issue 1(b), on the relevance of Entergy Corporation's experience in the operation of other nuclear facilities to its projected ability to maintain an average 85% capacity factor at IP2, is inadmissible

Sub-Issue 1(b) is related to 1(a) in that Cortlandt dismisses the Entergy Companies' reference to the operating experience of other Entergy facilities as irrelevant, likening it to "a car enthusiast saying that he intends to purchase a 1960's Volkswagen Beetle, and based upon his operation of high performance cars, expects to use it to compete in stock car races." Supplemental Filing at 6-7. The analogy, however, is neither apt nor supported. It cannot form the basis for an admissible issue.

Cortlandt does not controvert the Entergy Companies' assertion that the projected 85% capacity factor is supportable because of the capacity factors registered at Entergy's other nuclear power plants, which is indicative of Entergy's ability to manage nuclear power plant operations effectively. Cortlandt, without support, asserts that evidence sustained high plant performance by Entergy Companies must be excluded. Subpart M requires a petitioner to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact." 10 CFR § 2.1306(b)(2)(iv). An issue that does not *directly* controvert a position taken in the application is subject to dismissal. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998); see also Texas Utilities Electric Co.

(Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Accordingly, Cortlandt's challenge to the bases for 85% capacity factor assumption raises no litigable issues and must be dismissed.

3. Sub-Issue 1(c), on the potential additional costs incurred by the Entergy Companies in attempting to achieve an 85% capacity factor, is inadmissible

It is somewhat unclear what Cortlandt seeks to litigate in proposed Sub-Issue 1(c). If anything, the past capital expenditures for non-recurring items at IP2 indicate that such magnitude of capital expenditures will not be necessary in the next five years. The caption of the issue would suggest that Cortlandt believes that the plant will need to incur extraordinary expenses and costs in attempting to maintain an 85% capacity factor. However, the very brief explanation of this proposed sub-issue offered by Cortlandt does not refer at all to increased variable expenses, but questions the Entergy Companies' ability to pay for its operations during years in which the plant experiences a "low capacity factor." See Supplemental Filing at 8. However, Cortlandt provides no basis for its assumption, which is also not explained or quantified, that there will be years in the 2001-2005 period in which the capacity factor of IP2 will be "low."[19]

The Application provides the following explanation of how costs would be defrayed during low capacity periods: "In the event of an extended shutdown, fixed operating expenses would be paid from retained earnings, as available, or by the funds described above [$20 million in a line of credit from EGI and up to $35 million in a line of credit from EIL]." Application at

[19] As is well known, every nuclear power plant undergoes periodic refueling outages. IP2 is expected to undergo two such outages between 2001 and 2005. In refueling outage years, the average capacity

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9. Cortlandt provides no facts to substantially dispute this assertion, and in fact fails to address it at all. To the extent that the issue is in reality a challenge to the assumed capacity factor, it is redundant to sub-issue 1(a) and is addressed above.

Since Cortlandt provides no basis, explanation or support for this claim, Sub-Issue 1(c) is pure speculation and must be dismissed.

4. Sub-Issue 1(d), on the reasonableness of the IP2 operating cost estimates, is inadmissible

Sub-Issue 1(d) is intended (at least according to its title) to raise an issue with respect to the operating cost assumptions made in the Application. In reality, this sub-issue is entirely based on a table prepared in February 2001 by Cortlandt's consultant Mr. Sansoucy and filed with Cortlandt's Petition.[20] Without entering into a detailed discussion, Table 1 purportedly shows (on lines 1 through 26) historical performance data for Indian Point 2 for the period 1995-1999. The lines that follow in the table are projected entries intended to reflect the annual capital requirements associated with the Entergy Companies' acquisition of the plant (line 27), the same capital requirements in dollars/Mwh (line 28), the "total cost" in dollars/Mwh (apparently obtained by adding historical costs by Con Edison during 1995-1999 and estimated capital requirements for the Entergy Companies) (line 29), projected revenue in dollars/Mwh (entered as $39.00, the average price of power to be sold to Con Edison by ENIP2 under the PPA) (line 30),

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factor is usually lower than in other years. This does not mean that the anticipated capacity factor during those years will be significantly lower than 85%.

[20] The table is labeled "Table 1 – Operational Data Indian Point 2 Facility." In the Supplemental Filing, the table has been modified to increase the estimated capital requirements in line 27 from $74,270,000 a year to $90,101,768. Compare Table 1 attached to Mr. Sansoucy's February 20, 2001

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the "projected revenue shortfall or surplus" (obtained by subtracting line 29 from line 30) (line 31), and the "% difference (line 31 divided by line 29)" (line 32).

Ignoring methodological questions, it is obvious that Table 1 does not contain any useful information which could support admission of this issue and appears intended only to convey the following concept: *If*, in the five years following the transfer, the Entergy Companies were to operate IP2 *exactly as* Con Edison did in the 1995-1999 period, they would stand to sustain a significant revenue shortfall.[21] As such, the table – and Sub-Issue 1(d) – do not raise any litigable issues in this proceeding, because Cortlandt is not contesting the validity of the plant operating cost estimates by the Entergy Companies, but is merely reiterating its challenge of the capacity factor assumptions. For the reasons discussed above with respect to Sub-Issues 1(a) and 1(b), such a challenge is untenable and this sub-issue must be rejected.

5. Sub-Issue 1(e), on whether the PPA between ENIP2 and Con Edison should be revised to ensure IP2 has adequate financial resources, is inadmissible

In Sub-Issue 1(e), Cortlandt decries the terms of the PPA, which it describes as committing the Entergy Companies to supply power to Con Edison at "below market rates" and thus "unnecessarily jeopardizing the financial capability of ENIP2 to operate the facility." Supplemental Filing at 10. It is unclear, however, what relief Cortlandt is asking the

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letter with Table 1 attached to the Supplemental Filing. No basis is cited for the increase in estimated capital requirements.

[21] Cortlandt explains it this way: "Table 1 shows that if the facility continues to perform at its 1995 to 1999 levels, the facility's total cost of operation may exceed revenues under the PPA by as much as 20% or more (line 32)." Supplemental Filing at 9.

Commission to provide.[22] The caption of the sub-issue seems to indicate that Cortlandt would have the Commission "revise" the PPA "to ensure that Entergy Nuclear IP2 has adequate financial resources to cover the total costs to operate the facility in compliance with NRC requirements." However, the NRC does not have the power to "revise" an agreement negotiated between private parties, nor to impose terms of its choosing for the sale of power generated at IP2.[23] The scope of the Commission's action in a Subpart M proceeding is to approve or disapprove the license transfer application. See 10 CFR § 2.1300. Therefore, this sub-issue must be dismissed since the remedy it seeks lies outside the scope of this proceeding. To the extent Cortlandt intends to challenge the cost and revenue projections, this sub-issue provides no basis for a challenge. The value of the PPA is simply a data point; it would be incumbent upon Cortlandt to show how the revenue is insufficient, and Cortlandt has failed to do so.

6. Sub-Issue 1(f), on the Applications' alleged failure to comply with the information requirements of 10 CFR § 50.33(f)(2), is inadmissible

Sub-Issue 1(f) asserts that the Application is deficient for three reasons: (a) the Entergy Applicants have failed to provide information on the operating costs for the entire period of the license, until it expires in 2013; (b) no detailed estimates of capital improvement costs have been provided for the first five years after the license transfer; and (c) information is provided only for part of the first year after the license transfer. Supplemental Filing at 10-11; see also, Cortlandt's

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[22] The Entergy Companies have utilized the revenues derived from implementation of the PPA to demonstrate compliance with the Commission's financial assurance regulations, which is at the heart of the Commission's review. Such revenue projections are the result of contract and thus not subject to the variability of the market during the term of the agreement.

[23] Even assuming, arguendo, that the Commission could bring about a change in the PPA terms, that would most likely trigger corresponding changes in the rest of the agreement between the parties

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Petition at 19-20. None of the alleged failings in the Application, however, constitutes a deficiency warranting a hearing.

a. There is no requirement to provide financial data to the end of the facility operating license

With respect to the first sub-issue, there is no requirement in NRC regulations or case law that a license transfer applicant provide financial information for the entire period of the license. The Commission regulations specifically identify the information required to demonstrate the applicant's financial qualifications for the transfer of a nuclear power plant's operating license. Those requirements are set forth in 10 CFR § 50.33(f)(2):

> If the application is for 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. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.

In applying this regulation, the Commission has consistently read the first two sentences cited above together, for it has found that "a license transfer applicant satisfies our financial qualifications rule if it provides a cost-and-revenue projection for the first 5 years of operation that predicts sufficient revenue to cover operating costs."[24] Similarly, in its Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding

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(including the purchase price), hence it is unclear that the relief sought by Cortlandt, even if feasible, would as a practical matter achieve the results Cortlandt desires.

[24] Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 176 (2000) ("Vermont Yankee"); Oyster Creek, CLI-00-06, 51 NRC at 206-07.

Assurance,[25] the NRC Staff makes it clear that a five year projection period is sufficient to demonstrate that the applicant is financially qualified to operate the plant for the period of the license.[26]

The only reason the Commission will look outside the five year cost and revenue projections supplied under 10 CFR §50.33(f)(2) is if there are "plausible and adequately supported claims" that those projections "are inaccurate or otherwise do not provide adequate assurance of financial qualifications."[27] Absent such "adequately supported claims," the five year projections suffice to meet the financial qualification requirements for license transfers.

This sub-issue is, in effect, a request for a remedy without the requisite basis. There is no basis for reading into the financial qualification requirements of 10 CFR § 50.33(f)(2) an obligation that applicants go beyond providing what the rule specifically requires, i.e., five years

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[25] NUREG-1577, Rev. 1 ("Standard Review Plan" or "SRP").

[26] The SRP directs that the Staff reviewer "will confirm that non-electric utility [operating license] applicants have submitted estimates for total annual operating costs for each of the first 5 years of operation of their facilities, and have also indicated the source(s) of funds to cover operating costs." SRP at 10. The SRP further states that information on the source of funds should include items such as market price projections, long-term contracts that the applicant has for the plant, corporate revenues from other sources that may be used at the plant, and any other information relevant to the source of revenues. Id. The reviewer must evaluate this information for reasonableness and, if applicable, will use information from bond rating organizations. Id. Pursuant to the SRP, if a license applicant has an investment grade rating or equivalent from at least two bond rating organizations, or has demonstrated that it has met the supply and demand test, "the reviewer will find such applicant[ ] financially qualified." Id.

The SRP thus provides a provides a detailed discussion of the information that, in the Staff's opinion, will enable the Commission to determine whether a license transfer applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. It is significant, therefore, that nowhere in the SRP's discussion of Operating License Reviews does the Staff refer to any circumstances under which an applicant would be required to submit estimates for receipts and operating costs beyond the specified five-year period.

[27] Oyster Creek, CLI-00-06, 51 NRC at 207, citing Seabrook, CLI-99-6, 49 NRC at 219-21.

worth of adequately supported cost and revenue projections. This portion of Sub-Issue 1(f) fails as a matter of law.

b. The NRC regulations do not require providing detailed estimates of the costs of capital improvements during the first five years of operations after the license transfer

This portion of Sub-Issue 1(f) appears as a one sentence claim, without explanation, in the text of the sub-issue. See Cortlandt Supplemental Filing at 11. Since Cortlandt does not describe the reason for this claim, its basis, its significance, or any facts that support it, the allegation does not set forth a valid issue and must be rejected.

At any rate, the financial qualifications documentation requirements are set forth, as discussed above, in 10 CFR § 50.33(f)(2). They read, in applicable part:

> The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.

There is no mention in 10 CFR § 50.33(f)(2) of providing detailed information on capital improvement costs, and Applicants know of no proceeding in which submission of such costs has been required. Again, this portion of Sub-Issue 1(f) is without legal basis.

c. The provision of only a partial year's worth of cost and revenue estimates for the year 2001 does not provide the basis for an issue in this proceeding

Cortlandt claims that the Application is defective because the cost and revenue estimates it contains are only for a "partial year." See Supplemental Filing at 11; Cortlandt's Petition at 20. However, Applicants have requested that the Commission review its application on a schedule that will permit closing to occur by May 11, 2001. See Application, cover letter at 3. The

projections provided by the Entergy Companies cover the intended period of operations after the transfer in 2001 and therefore meet regulatory requirements.

Also, Cortlandt does not allege that the Entergy Companies' projections are substantively insufficient to provide reasonable assurance of financial qualifications just because they are five months too short. In the absence of any such claims, Cortlandt's challenge to the length of the five-year cost and revenue projections do not raise a genuine dispute on a material issue of fact or law and should be rejected. 10 CFR § 2.1306(b)(2)(iv).

7. Sub-Issue 1(g), on the adequacy of the financial credit lines available to the Entergy Companies, does not raise a litigable issue

In Cortlandt's Petition, Cortlandt broadly asserts that the Entergy Companies rely on credit lines as a way to meet the minimum financial assurance requirements, hence the reliability of the commitments made under those lines are an appropriate subject for inquiry in this proceeding. Cortlandt's Petition at 17-19. However, the Commission has held that a challenge to the sufficiency of credit lines available to license transfer applicants does not constitute grounds for a hearing. See Indian Point 3, CLI-00-22, 52 NRC at 299-300.[28] The exception that Cortlandt would attempt to carve out of this rule is unavailing, because contrary to Cortlandt's reading of the Application, the Entergy Companies are not relying on the credit lines to meet the financial assurance requirements called for in the NRC regulations, but only to cover extraordinary costs such as "nuclear property damage insurance and any retrospective premium pursuant to 10 CFR 140.21" or "fixed operating expenses" incurred "in the event of an extended

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[28] Cortlandt acknowledges that its challenge to the lines of credit is improper: "The Petitioners are mindful of the Commission's numerous statements about the appropriateness of assailing the use of

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shutdown." Application at 9. Therefore, Cortlandt's challenge to the lines of credit is barred by well-settled Commission case law.

8. Sub-Issue 1(h), on the potential cost impact of the expiration of the collective bargaining agreement with the Indian Point employees in 2004, is inadmissible

In Cortlandt's Petition, Cortlandt refers to the expiration of the collective bargaining agreement with the IP2 plant staff in 2004 and its commitment to provide equivalent compensation and benefits to continuing non-union management for three years as "call[ing] into question the reasonableness of the redacted cost projects, the 85% plant capacity factor, and the ability of IP2/ENO to safely operate and maintain the IP1 and IP2 plants. See Sansoucy Letter."[29] On its face, Cortlandt's assertion is impermissibly vague; hence this proposed issue must be rejected.

Labor issues, "if closely tied to specific health-and safety-concerns or to potential violations of NRC rules, can be admitted for a hearing" under Subpart M. Indian Point 3, CLI-00-22, 52 NRC at 315.[30] On the other hand, general allegations relating to plant staffing, such as those asserted by Cortlandt here, are beyond the scope of a license transfer proceeding. Id. at 316. The adequacy of staffing is an ongoing operational issue which should be addressed via a Section 2.206 Cortlandt's Petition. See 10 C.F.R. § 50.54(m); Oyster Creek, CLI-00-06, 51 NRC

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credit lines as a hearing issue when they are in addition to a showing that the Applicants have met the minimum financial requirements." Petition at 17.

[29] M. Sansoucy's letter of February 20, 2001 contains no reference to labor costs.

[30] Cortlandt, however, points to no evidence suggesting that the Entergy Nuclear IP2 and ENO will reduce the staff of Units 1 and 2 below NRC requirements as a result of the license transfer, or that the existing three-year contract or its expiration will cause the facilities' projected expenses to exceed projected revenues.

at 209 ("If a licensee's staff reductions or other cost-cutting decisions result in its being out of compliance with NRC regulations, then . . . the agency can and will take the necessary enforcement action to ensure the public health and safety.")

In sum, Cortlandt's vague assertions in the area of employment do not present a litigable issue, and should be rejected.

B. CORTLANDT'S PROPOSED ISSUE ON ONSITE STORAGE OF SPENT NUCLEAR FUEL IS OUTSIDE THE SCOPE OF THIS PROCEEDING

Both in Cortlandt's Petition (at 24-25) and in Cortlandt's Supplemental Filing (at 11-14) Cortlandt seeks to raise the issue whether the Application is deficient because it fails to demonstrate that the Entergy Companies will have the financial capacity to provide on-site storage of spent nuclear fuel after 2004, when the IP2 spent fuel pool reaches capacity. In its filings, Cortlandt argues that one alternative being examined by Con Edison and the Entergy Companies, which is to send the IP2 spent fuel offsite to an above-ground temporary storage facility until a permanent repository has been developed by the U.S. Department of Energy, is unacceptable. Cortlandt asserts that the temporary storage facility selected for the IP2 fuel, which is being developed at the Skull Valley Indian Reservation, "is very controversial," "will encounter serious obstacles and objections," and "it is quite likely that it will never be constructed." Supplemental Filing at 13. Needless to say, the dire predictions by Cortlandt are pure speculation. The option of shipping IP2's waste offsite to a temporary storage facility remains a viable one and appropriate for basing funding estimates. The Commission should not allow this license transfer proceeding to become another forum for ventilating objections to the Skull Valley project.

Having thus sought to dismiss the offsite storage option, Cortlandt discusses storing the spent fuel at an onsite facility, which Cortlandt alleges will cost between $147 million and $362 million.[31] Supplemental Filing at 12. Cortlandt alleges that the Application is defective because it does not address funding of this potential expense. Id.

This series of unsupported allegations does not amount to an issue cognizable in a Subpart M license transfer proceeding. Cortlandt rejects on a speculative basis one disposal alternative being examined by Applicants. Second, it assumes – again with no factual basis – that the Entergy Companies will be unable or unwilling to find a way to manage spent nuclear fuel at IP2 in accordance with NRC regulations. Finally, Cortlandt takes the Entergy Companies to task for not having included in its financial analyses the costs of an alternative that they may not pursue.

In addition to its allegations being speculative, the issue that Cortlandt seeks to litigate deals with one of the plant's safety-related programs, and as such is an operational issue that will need to be addressed whether or not the license is transferred. See Oyster Creek, CLI-00-06, 51 NRC at 213-14 (where the Commission declined to admit an issue relating to how the licensee should conduct spent fuel management). The appropriate venue for litigating the safety aspects of such an issue is in response to any specific proposed license amendment if the licensee seeks approval of measures to address the capacity of its spent fuel pool. Id. at 214.[32] The issue

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[31] The onsite spent fuel costs cited by Cortlandt are in any event inapplicable. The costs quoted in the Scientech NES study are those incurred between unit shutdown and complete restoration of the site, not those of interim spent fuel storage. The assumptions used in the derivation of the post-shutdown spent fuel storage costs are different from those used in determining the spent fuel costs while the unit is running. As such, they are not supportive of this contention. Such post-operation costs are dealt with by the NRC in accordance with 10 CFR § 50.54(bb).

[32] If Cortlandt wishes to pursue NRC Staff enforcement action relating to spent fuel management, the appropriate vehicle is a petition pursuant to 10 CFR § 2.206.

should not be admitted in this proceeding under the guise of a "financial qualifications" issue. It is clearly not the Commission's intent to open the door in Subpart M proceedings to potential spent fuel storage issues.

C. CORTLANDT'S PROPOSED ISSUE ON DECOMMISSIONING FUNDING IS PRECLUDED AS A CHALLENGE TO THE COMMISSION'S REGULATIONS

Cortlandt's proposed Issue 3, set forth in its Cortlandt's Petition at 21-24, asserts that the Application does not contain sufficient information to demonstrate that there will be adequate funds to decommission the IP1 and IP2 reactors. Cortlandt, however, does not challenge the adequacy of the method of decommissioning funding provided by the Entergy Companies, or the sufficiency of the amounts in the funds to comply with NRC decommissioning funding requirements. Instead, Cortlandt alleges that compliance with the "NRC minimum amount" may not be enough, since it would result in a fund accumulation that is less than the amount that can be expected to be necessary to fund the decommissioning of the two facilities. Cortlandt's Petition at 22.

This issue was discussed at length above in connection with Cortlandt's request that the Commission, pursuant to 10 CFR § 2.1329, waive its regulatory position that prepayment of the minimum decommission fund level calculated pursuant to 10 CFR § 50.75(c) is sufficient to provide reasonable assurance of a licensee's ability to decommission a facility. See Section III.A, supra. For the reasons discussed there, this issue is inadmissible as constituting an attack on the Commission regulations. Issue 3 must, therefore, be dismissed.

D. CORTLANDT'S PROPOSED ISSUE ON ENVIRONMENTAL REMEDIATION IS OUTSIDE THE SCOPE OF THIS PROCEEDING

Cortlandt's proposed Issue 4 alleges that "the operator of IP1 and IP2, whether it is the current owner, Con Edison, or the proposed transferee, ENIP2, is likely to incur significant

environmental expenses." Cortlandt's Petition at 26. The very statement of the issue by Cortlandt demonstrates that it is outside the scope of this license transfer proceeding. Issues concerning environmental remediation are ongoing operational concerns that will affect any operator of the plant, regardless of whether a license transfer takes place. As noted earlier, a license transfer proceeding is an improper forum in which to conduct an inquiry involving current plant operations. Oyster Creek, CLI-00-06, 51 NRC at 213-14; Vermont Yankee, CLI-00-20, 52 NRC at 169. In addition, environmental remediation at Indian Point is not a matter within the jurisdiction of the NRC, and has no place in this proceeding.[33]

Moreover, Cortlandt's assertions relative to remediation costs are vague and are pure speculation. Cortlandt merely contends that "[i]f, as Petitioners respectfully believe, that [environmental] remediation costs in tens of millions of dollars, the ability of Entergy to adequately fund operation costs could be severely impacted." Cortlandt's Petition at 26. Thus, Cortlandt has provided no facts, expert opinions, references or even specific allegations supporting the proposition that the Entergy Companies will be unable or unwilling to manage or pay for any environmental remediation that may be required in the future.

For all the above reasons, proposed Issue 4 should be rejected.

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[33] Cortlandt also tries to introduce issues associated with the State Pollutant Discharge Elimination System water discharge permit for Unit 2. Petition at 26. Cortlandt asserts that these costs must be addressed to determine whether Entergy Nuclear IP2 will have adequate financial resources to operate Unit 2. These matters, which are or may be pending before other administrative agencies, are simply inappropriate for consideration in NRC license transfer proceedings.

E. CORTLANDT'S RADIOLOGICAL EMERGENCY PLANNING ISSUE SHOULD BE REJECTED AS BEYOND THE SCOPE OF THIS PROCEEDING

In proposed Issue 5, Cortlandt asserts that the license transfer application is deficient because it fails to provide a radiological emergency response plan, in accordance with 10 C.F.R. § 50.33(g), that accounts for the increased population and development in the "immediate vicinity" of the facilities. Cortlandt's Petition at 27. In addition, Cortlandt asserts that the Application is deficient because it does not consider the probability that a new evacuation plan may have to be developed, and "it is possible that this evacuation plan will require significant additional expenses, possibly including the construction of new and improved highways to facilitate the rapid transportation of residents away from a nuclear accident." Id. at 28. Finally, Cortlandt asserts that the Application is deficient because it fails to state how such a new plan will be funded. Id.

In the absence of any emergency planning issue associated with the proposed license transfer, this issue is clearly out of bounds for a proceeding under Subpart M. This proposed issue is not appropriate for litigation in this proceeding because the license transfer Application does not propose any change, other than the change in the responsible licensee, to emergency preparedness or response plans. In the absence of any such proposed change, an issue with respect to emergency planning does not exist, since the new licensees will be required to conform to all of the emergency planning and preparedness requirements of 10 C.F.R. § 50.47 and Appendix E to 10 C.F.R. Part 50 and the existing plans that have been approved by the Staff. On that basis, the Commission specifically rejected an almost identical claim by Cortlandt in Indian Point 3, where it held that unless it is alleged (and supported) that the transferee is likely to violate emergency planning rules, there is no emergency planning issue that can be addressed

in a license transfer proceeding. Indian Point 3, CLI-00-22, 52 NRC at 317. In this case, the Application reiterates Applicants' commitment to compliance with the NRC's emergency planning requirements, and discusses the steps the Entergy Companies will take to ensure compliance. Application, Encl. 1 at 9-10.

Cortlandt has provided no facts, expert opinions, or references to specific documents supporting a position that the Entergy Companies will fail to observe NRC regulations governing emergency planning and preparedness.[34] Cortlandt's Issue 5 should be rejected.

F. CORTLANDT'S CHALLENGE TO THE PROPOSED TRANSFER ON THE GROUNDS THAT IT "IS NOT IN THE PUBLIC INTEREST" IS NOT COGNIZABLE IN AN NRC LICENSE TRANSFER PROCEEDING

Cortlandt's proposed Issue 6 asserts that the proposed license transfer "is plainly not in the public interest" because "the assets transferred have serious potential liabilities, both in terms of potential radiological exposure, and undisclosed environmental hazards, and the proposed transferee does not appear to have adequate financial resources to cover either ongoing expenses or decommissioning." Cortlandt's Petition at 28-29. Cortlandt provides no facts or evidence to support its conclusory statements that the assets transferred have "serious potential liabilities" in terms of "potential radiological exposure" and "undisclosed environmental hazards." To the extent, however, that the statement refers to the matters addressed in proposed Issues 4 and 5, it

[34] Cortlandt alleges that the Application is deficient in its failure to consider the probability that a new evacuation plan will have to be designed, without providing any facts or allegations as to the adequacy of the existing evacuation plan. Then, Cortlandt raises "the possibility" that if such a new evacuation plan has to be developed, it "will require significant additional expenses," which Cortlandt neither defines nor quantifies. Finally, Cortlandt assigns fault to the Application for its failure to state how such an evacuation plan will be funded. A proposed issue based on the compounding of so much speculation is unworthy of consideration in this proceeding.

does not raise a litigable dispute, for the reasons discussed in connection with those proposed issues.

Likewise, Cortlandt does not explain what it means by its broad assertion that the proposed transferee "does not appear to have adequate financial resources to cover either ongoing expenses or decommissioning." If Cortlandt's allegation is a shorthand reference to the matters discussed in proposed Issues 1 through 3, it also does not raise a litigable dispute.

Thus, proposed Issue 6 does not present any litigable issues, either because it is impermissible vague and absolutely lacking in support, or because it is a restatement of other proposed issues, which in themselves are inadmissible.

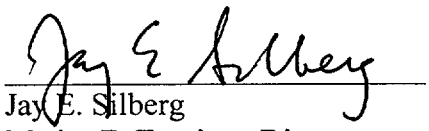
In addition, a determination whether a proposed license transfer is "in the public interest" is not a finding that the Commission must make in order to approve a proposed license transfer. Those findings are, according to 10 CFR § 50.80(c), that the proposed transferee is qualified to be the holder of the license and that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. On the other hand, Applicants must obtain approval of this transfer, including a finding that the transfer is in the public interest, from both the Federal Energy Regulatory Commission and the New York Public Service Commission. See, e.g., Federal Power Act § 203, 16 U.S.C. § 824b; N.Y. Public Service Law § 70 (McKinney 2000). Because this issue will be fully addressed in other forums, it need not be considered here. Thus, Issue 6 must be disregarded.

V. CONCLUSION

For the reasons set forth above, Cortlandt's Petition and Supplemental Filing fail to raise litigable issues. Accordingly, Cortlandt's request for a hearing and its petition for leave to intervene should be denied.

April 23, 2001

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Consolidated Edison Company	)	
of New York, Inc.,	)	Docket Nos. 50-003-LT
Entergy Nuclear Indian Point 2, LLC,	)	50-247-LT
and Entergy Nuclear Operations, Inc.	)	
	)	
(Indian Point Nuclear Generating	)	
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANTS' ANSWER TOSUBMISSION OF ISSUES BY TOWN OF CORTLANDT, NEW YORK AND HENDRICK HUDSON SCHOOL DISTRICT" in the above captioned proceeding have been served as shown below by electronic mail, the 23rd day of April 2001. Additional service by deposit in the United States mail, first class, has also been made this same day as shown below.

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Washington, DC 20555-0001

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
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Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
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Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
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Attn: Rulemakings and Adjudications Staff
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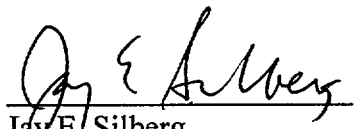

Jay E. Silberg