UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 2, 2012

ENTERGY'S ANSWER TO NEW YORK STATE, RIVERKEEPER, AND CLEARWATER'S JOINT CONTENTION NYS-39/RK-EC 9/CW-EC-10 CONCERNING ON-SITE STORAGE OF NUCLEAR WASTE AT INDIAN POINT

William B. Glew, Jr., Esq.
William C. Dennis, Esq.
ENTERGY NUCLEAR OPERATIONS, INC.
440 Hamilton Avenue
White Plains, NY 10601
Phone: (914) 272-3202
Fax: (914) 272-3205
E-mail: wglew@entergy.com
E-mail: wdennis@entergy.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Jonathan M. Rund, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: jrund@morganlewis.com

COUNSEL FOR ENTERGY NUCLEAR OPERATIONS, INC.

TABLE OF CONTENTS

Page

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 2, 2012

ENTERGY'S ANSWER TO NEW YORK STATE, RIVERKEEPER, AND CLEARWATER'S JOINT CONTENTION NYS-39/RK-EC 9/CW-EC-10 CONCERNING ON-SITE STORAGE OF NUCLEAR WASTE AT INDIAN POINT

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), and in accordance with the Atomic Safety and Licensing Board's ("Board") Scheduling Order of July 1, 2010 ("Scheduling Order"), Entergy Nuclear Operations, Inc. ("Entergy") submits this Answer opposing the New York State ("NYS"), Riverkeeper, Inc. ("Riverkeeper"), and Hudson River Sloop Clearwater ("Clearwater") (collectively, "Intervenors") Joint Motion for Leave to File New Contention NYS-39/RK-EC-9/CW-EC-10 concerning onsite spent fuel storage at Indian Point Nuclear Generating Units 2 and 3 (collectively, "Indian Point"), filed on July 8, 2012 ("New Contention" or "NYS-39/RK-EC-9/CW-EC-10").[1]

Based on the recent D.C. Circuit *New York v. NRC* decision vacating and remanding the NRC's Waste Confidence Decision ("WCD") and Temporary Storage Rule ("TSR") update,[2] the New Contention claims that the Indian Point Final Supplemental Environmental Impact

[1] State of New York, Riverkeeper, and Clearwater's Joint Motion for Leave to File a New Contention Concerning the On-Site Storage of Nuclear Waste at Indian Point (July 8, 2012) ("Joint Motion") *available at* ADAMS Accession No. ML12190A003; State of New York, Riverkeeper, Inc., and Hudson River Sloop Clearwater's Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning the On-Site Storage of Nuclear Waste at Indian Point (July 8, 2012) ("New Contention"), *available at* ADAMS Accession No. ML12190A002.

[2] *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

Statement ("FSEIS") omits a discussion of "the environmental impacts caused by the storage of nuclear waste at Indian Point following the end of the requested operating licenses" and "an analysis of alternatives to proposed storage of spent fuel at Indian Point for an indefinite period of time in spent fuel pools."[3] Other groups filed similar contentions the next day in numerous other licensing proceedings.[4]

Intervenors' New Contention should be denied in its entirety. First, the New Contention fails to satisfy the Commission's 10 C.F.R. § 2.309(f)(2) and (c)(1) timeliness requirements. The D.C. Circuit has not issued a mandate in *New York* and therefore, that decision has not yet taken effect to actually vacate the WCD and TSR and it remains possible that such a vacatur of those rules will never occur. Accordingly, Intervenors have not demonstrated material new information upon which to base the New Contention, nor have Intervenors demonstrated that the balance of factors used to assess whether a non-timely submission should be allowed weigh in favor of permitting the New Contention.

Second, the New Contention should be rejected because Intervenors fail to satisfy the Commission's 10 C.F.R. § 2.309(f)(1) contention admissibility requirements. Specifically, because the D.C. Circuit has not issued a mandate in *New York*, the New Contention lacks a legal basis and constitutes an impermissible challenge to the TSR, contrary to 10 C.F.R. §§ 2.309(f)(1)(ii) to (iii) and 2.335(a). Additionally, even if the D.C. Circuit's mandate issues, the New Contention should be rejected because Commission precedent holds that 10 C.F.R. § 2.309(f)(1)(iii) precludes the admission of a contention that concerns an issue that is, or is about to become, the subject of a rulemaking. The Commission's longstanding practice is to

---

[3] New Contention at 2.

[4] *See, e.g.*, *Union Elec. Co.* (Callaway Plant, Unit 1), LBP-12-15, 76 NRC __, slip op. at 28 n.15 (July 17, 2012) (listing several motions to admit new contentions based on the *New York* decision that were filed in various other licensing proceedings).

address long-term waste storage issues generically through rulemaking and the D.C. Circuit expressly declined to require that the NRC examine each site individually. Moreover, the New Contention's demand for a site-specific evaluation and consideration of offsite land use property value impacts, decommissioning issues, mitigation alternatives, and certain unspecified "other issues" all lack the legal basis required by 10 C.F.R. § 2.309(f)(1)(ii). Finally, to the extent any uncertainty exists on these issues, the Board should certify an appropriate question to the Commission, pursuant to 10 C.F.R. § 2.319(l), rather than admit the New Contention or hold it in abeyance.

II. BACKGROUND

A. Background on the Waste Confidence Decision, Temporary Storage Rule, and the Recent D.C. Circuit Decision

In response to several prior proposed contentions and related documents in this proceeding, both the Board and Commission have recited the WCD's general history.[5] Most importantly, in 1984, in response to the D.C. Circuit's *Minnesota v. NRC* decision,[6] the Commission issued its initial WCD and TSR.[7] Since that time, the TSR has made clear that spent fuel storage environmental impacts following the cessation of operations need not be addressed in reactor licensing proceeding environmental reports or impact statements.[8] The Commission has thus clearly and consistently chosen to generically address waste storage

---

5 *See*, *e.g.*, Licensing Board Memorandum and Order (Certification to the Commission of a Question Relating to the Continued Viability of 10 C.F.R. § 51.23(b) Arising From Clearwater's Motion for Leave to Admit New Contentions) at 18-22 (Feb. 12, 2010); *see also* Applicant's Answer to Hudson River Sloop Clearwater, Inc. and Riverkeeper, Inc.'s New Contention Concerning the Waste Confidence Rule at 3-6 (Feb. 18, 2011).

6 *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979).

7 *See Rulemaking on the Storage and Disposal of Nuclear Waste* (Waste Confidence Rulemaking), CLI-84-15, 20 NRC 288, 293 (1984); Final Waste Confidence Decision, 49 Fed. Reg. 34,658, 34,658 (Aug. 31, 1984); Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses, 49 Fed. Reg. 34,688, 34,694 (Aug. 31, 1984) ("Spent Fuel Requirements").

8 *See* Spent Fuel Requirements, 49 Fed. Reg. at 34,694; 10 C.F.R. § 51.23(b).

environmental impacts through the TSR, rather than repeatedly litigating identical or near-identical issues in individual licensing proceedings.[9]

After considering public comments, the Commission issued WCD and TSR revisions in December 2010.[10] Of relevance, the Commission revised WCD Finding 2 to remove a predicted high-level waste repository availability date and to instead state that a suitable repository will be available "when necessary."[11] The Commission also revised WCD Finding 4, concluding that that spent fuel can be safely stored without significant environmental effects for at least 60 years beyond each plant's licensed life, instead of the 30 years in the earlier WCD.[12]

NYS and three other states, an Indian community, Riverkeeper, and several other environmental groups (but not Clearwater) challenged that rulemaking in the D.C. Circuit. On June 8, 2012, the D.C. Circuit issued a decision in *New York v. NRC*, vacating and remanding the WCD and TSR update.[13] The Court found that the WCD was a major federal action requiring an environmental impact statement ("EIS") or an environmental assessment ("EA") finding of no significant impact.[14] In addition, the Court found the NRC's spent fuel risk evaluation deficient because the conclusion that a permanent repository will be available "when necessary" was not a sufficient basis to forego evaluating possible environmental effects if a permanent repository is not put in place.[15]

---

9 *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), CLI-10-19, 72 NRC 98, 99 (2010) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 343 (1999)).

10 Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010); Consideration of Environmental Impacts of Spent Fuel After Cessation of Reactor Operation, 75 Fed. Reg. 81,032 (Dec. 23, 2010).

11 *See* Waste Confidence Decision Update, 75 Fed. Reg. at 81,038, 81,040-43.

12 *See id.* at 81,040-41.

13 *See New York*, 681 F.3d at 483.

14 *See id.* at 476-77.

15 *See id.* at 478-79.

The Court also concluded that, in determining that spent fuel can safely be stored onsite for at least 60 years after plant's license expires, the NRC failed to examine whether spent fuel pool ("SFP") leaks during the extended storage period would occur in different ways than in the past and therefore, might have different impacts.[16] Further, the Court ruled that the NRC could not dismiss consideration of the consequences of SFP fires based upon their low probability alone and instead must consider both the probability and consequences of SFP fires in determining whether SFP fires require a full EIS analysis.[17]

No mandate has yet issued and parties are still evaluating their options, including potentially seeking rehearing, rehearing en banc, or petitioning for certiorari.[18] Thus, the WCD and TSR remain in effect, and it is possible that they will never actually be vacated, depending upon the course that future litigation takes.

B. Intervenors' New Contention NYS-39/RK-EC-9/CW-EC-10

Notwithstanding the still-evolving developments in *New York*, on July 8, 2012, Intervenors filed New Contention NYS-39/RK-EC-9/CW-EC-10. That proposed New Contention alleges:

> The [FSEIS] for Indian Point fails to comply with the requirements of Sections 102 (c) and (e) of [NEPA] and 10 C.F.R. §§ 51.20(b)(2), 51.71(d), 51.90, 51.91(c), 51.92, 51.95(c)(1), 51.95(c)(2), and 51.101(a), because it fails to include or incorporate a legally sufficient analysis of the environmental impacts of on-site storage of nuclear waste after the conclusion of the extended operating period, including the impacts in the event that no permanent repository is ever established, and fails to consider alternatives to mitigate those impacts; because there is no valid analysis of these issues, NRC may not reach a final decision on whether to renew Indian Point's operating licenses until such a

---

16 *See id.* at 480-81.

17 *See id.* at 481-82.

18 *See New York v. NRC*, No. 11-1045, Clerk's Order (D.C. Cir. July 6, 2012) (unpublished) (extending until August 22, 2012 the time to file petition for rehearing or rehearing en banc).

> valid analysis has been completed in compliance with applicable federal law and regulations.[19]

According to Intervenors, this New Contention is a "contention of omission."[20] Intervenors provide no expert or other factual support for the New Contention, asserting that beyond the *New York* decision, no support is needed because the D.C. Circuit has already found the NRC's spent fuel storage environmental impact evaluation "legally deficient."[21]

Intervenors identify the following six issues that the NRC Staff must now allegedly evaluate as a result of the *New York* decision to cure this omission: (1) "the environmental effects of on-site storage of waste after the period of extended operation;" (2) "offsite land use impacts of continued operations and the additional storage of spent fuel on real estate values in the surrounding areas;" (3) "the impacts and safety of the generation and long-term storage of radioactive waste;" (4) "the impacts of spent fuel storage in pools versus in dry casks;" (5) "the implications of on-site storage of waste for decommissioning;" and (6) "alternatives to mitigate any of these adverse consequences, among *other* issues."[22] Aside from indicating that the D.C. Circuit specifically found deficient the NRC's evaluation of SFP leaks and SFP fires,[23] Intervenors provide no indication what "other" issues the New Contention covers.

---

19 New Contention at 2.

20 *See id.* at 12; *see also* Joint Motion at 8 ("This contention addresses a material omission in the Staff's environmental review . . . .").

21 Joint Motion at 12.

22 New Contention at 13-14 (emphasis added).

23 *See id.* at 4.

III. LEGAL STANDARDS GOVERNING ADMISSION OF NEW CONTENTIONS

A. Timeliness Requirements

After the expiration of the deadline in 10 C.F.R. § 2.309(b) for filing a timely petition to intervene, an intervenor may file new contentions only with leave of the Board 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.[24]

The Commission recently reiterated that issuance of a new document, standing alone, does not meet this standard unless the information in that document is new and *materially different* from what was previously available.[25] Furthermore, the intervenor must act promptly to bring the new or amended contention.[26] A new contention is not an occasion to raise additional arguments that could have been raised previously.[27]

If an intervenor cannot satisfy the criteria of Section 2.309(f)(2), then a contention is considered nontimely, and the intervenor must successfully address the eight-factor balancing

---

[24] 10 C.F.R. § 2.309(f)(2)(i)-(iii).

[25] *See*, *e.g.*, *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 72 NRC 481, 493-96 (2010).

[26] *See Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 573, 579-80 (2006) (rejecting petitioner's attempt to "stretch the timeliness clock" because its new contentions were based on information that was previously available and petitioners failed to identify precisely what information was "new" and "different").

[27] *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 385-86 (2002).

test for non-timely filings in Section 2.309(c)(1)(i) to (viii).[28] The burden is on the intervenors to demonstrate "that a balancing of these factors weighs in favor of granting the petition."[29] The eight factors in Section 2.309(c)(1) are not of equal importance. The first factor, whether "good cause" exists for the failure to file on time, is entitled to the most weight.[30]

B. Contention Admissibility Standards

Any new contention also must meet the admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1)(i) to (vi).[31] These requirements are discussed in detail in Entergy's Answer to NYS's original proposed contentions[32] and the key contention admissibility requirements are briefly discussed below.

The Commission's rules on contention admissibility are "strict."[33] "[T]he NRC in 1989 revised its rules to prevent the admission of 'poorly defined or supported contentions,' or those 'based on little more than speculation.' The agency deliberately raised the contention-

---

28 *See* Scheduling Order at 5-6; 10 C.F.R. § 2.309(c)(2) ("The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.").

29 *Tex. Utils. Elec. Co.* (Comanche Peak Steam Elec. Station, Units 1 & 2), CLI-88-12, 28 NRC 605, 609 (1988).

30 *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC __, slip op. at 25 n.96 (June 7, 2012) ("The standard for new or amended contentions involves a balancing of eight factors set forth in 10 C.F.R. § 2.309. The factor given the most weight is whether there is 'good cause' for the failure to file on time."); *see also Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 3), CLI-09-5, 69 NRC 115, 125-26 (2009).

31 That section specifies that each contention must: (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) 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 (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)-(vi).

32 *See* Answer of Entergy Nuclear Operations, Inc. Opposing New York State Notice of Intention to Participate and Petition to Intervene at 14-22, 26-32 (Jan. 22, 2008), *available at* ADAMS Accession No. ML080300149.

33 *FirstEnergy Nuclear Operating Co. (*Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC __, slip op. at 31 (Mar. 23, 2012); *see also Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (characterizing the contention admissibility rules as "strict by design").

admissibility standards to relieve the hearing delays that such contentions had caused in the past."[34]

The purpose of the six Section 2.309(f)(1) admissibility criteria is to focus litigation on concrete issues and thereby ensure a clear and focused record for decision.[35] The Commission has stated that it should not have to expend resources on the hearing process unless there is an issue that is susceptible to resolution in an NRC hearing.[36] Thus, a licensing proceeding is not the proper forum to attack an NRC rule or regulation.[37] Similarly, the Commission will "not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission."[38] Further, in evaluating the admissibility of a contention, the Board must specify each basis relied upon for admitting the contention.[39]

IV. THE NEW CONTENTION SHOULD BE REJECTED

A. The New Contention Fails to Satisfy the 10 C.F.R. § 2.309(c)(1) and (f)(2) Timeliness Requirements

1. The New Contention Fails to Satisfy the 10 C.F.R. § 2.309(f)(2) New Information Requirement Because the D.C. Circuit's Mandate Has Not Issued

Intervenors have not shown that the information upon which the New Contention is based is materially different than information previously available and thus fails to satisfy 10 C.F.R. § 2.309(f)(2)(ii). The D.C. Circuit has not yet issued its mandate returning the WCD proceeding

---

34 *Davis-Besse*, CLI-12-8, slip op. at 3-4 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

35 Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

36 *Id.*

37 *See, e.g.*, *Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 89 (1974); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003).

38 *Oconee*, CLI-99-11, 49 NRC at 345 (quoting *Douglas Point*, ALAB-218, 8 AEC at 85).

39 *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC __, slip op. at 11 n.50 (Mar. 8, 2012).

to the Commission. In fact, the earliest the mandate will issue, if ever, is late August 2012.[40] Because it is the mandate that makes the decision effective, the *New York* decision has no legal effect on the WCD or TSR. In turn, it cannot have an effect on this proceeding. As the Commission has previously held, it is premature for a party to request relief based upon a court decision before the mandate issues.[41] Accordingly, *New York* does not provide any new and materially different information and the New Contention fails to satisfy Section 2.309(f)(2)(ii).

Similarly, the Scheduling Order specifies that a new contention shall be deemed timely under Section 2.309(f)(2)(iii) if filed within 30 days of "when the new and material information on which it is based first becomes available."[42] Because no new material information has become available, the New Contention fails to satisfy Section 2.309(f)(2)(iii) as well.

Likely recognizing that the New Contention fails to provide any new and materially different information, Intervenors ask the Board to hold the Joint Motion and New Contention in abeyance pending the mandate's issuance.[43] However, placing a currently inadmissible contention in abeyance would be inconsistent with NRC case law. In this very proceeding, the Commission directed the Board to deny two WCD contentions notwithstanding a similar NYS request to hold the contention admissibility ruling in abeyance pending future potential action.[44]

---

[40] *See* Fed. R. App. P. 41(b) (indicating that a mandate will not issue until the later of seven days after the time to file a petition for rehearing expires or seven days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate); *New York v. NRC*, No. 11-1045, Clerk's Order (D.C. Cir. July 6, 2012) (unpublished) (extending until August 22, 2012 the time to file petition for rehearing or rehearing en banc). In addition, upon motion, the court's mandate also may be stayed pending an application to the U.S. Supreme Court for a writ of certiorari. *See* Fed. R. App. P. 41(d)(2).

[41] *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation), CLI-06-23, 64 NRC 107, 109 (2006) (denying premature motion seeking procedural relief in advance of an appellate court's mandate).

[42] *See* Scheduling Order at 6.

[43] Joint Motion at 7 n.4.

[44] *See Indian Point*, CLI-10-19, 72 NRC at 100; Answer of the State of New York to Hudson River Sloop Clearwater, Inc.'s Petition Presenting Supplemental Contentions EC-7 and SC-1 Concerning Storage of High-

Licensing boards also have rejected requests to admit previous WCD contentions and hold them in abeyance pending prospective later developments.[45] Likewise, Intervenors' current abeyance request should be rejected.

Intervenors also fails to address the considerable uncertainty underlying the New Contention's central assumptions, including when (and whether) the mandate will issue, whether the prior TSR or an interim TSR will take the place of the current TSR, and whether the NRC will initiate a generic rulemaking. An admissible contention cannot be based on such speculative guesswork. As discussed above, the Commission refuses to admit contentions "based on little more than speculation."[46] This speculation provides an additional basis for rejecting the New Contention and not holding it in abeyance.

2. The New Contention Fails to Satisfy the 10 C.F.R. § 2.309(c)(1) Timeliness Requirements

Because the New Contention does not rely upon new and materially different information to render it timely under 10 C.F.R. § 2.309(f)(2), it must satisfy the criteria for non-timely submissions in 10 C.F.R. § 2.309(c)(1)(i) to (viii).[47] Intervenors, however, completely ignore these requirements. This failure to address the Section 2.309(c)(1) factors is alone a sufficient

---

Level Radioactive Waste at Indian Point at 16 (Nov. 19, 2009), *available at* ADAMS Accession No. ML100820028.

[45] *See, e.g.*, *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 NRC 939, 977 (2009); *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), 70 NRC 227, 251 (2009); *Luminant Generation Co.* (Comanche Peak Power Plant, Units 3 & 4), LBP-09-17, 70 NRC 311, 341 (2009).

[46] *Davis-Besse*, CLI-12-8, slip op. at 4 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

[47] *See* Scheduling Order at 6 (indicating that an untimely "motion and proposed contention shall be evaluated as a nontimely proposed contention under the rubric of 10 C.F.R. § 2.309(c)(1)"); *see also* 10 C.F.R. § 2.309(c)(2) ("The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.").

basis to reject the New Contention.[48] Nonetheless, even if the Section 2.309(c)(1) factors are considered, the New Contention should be denied based on the balancing of those factors.

The most important of the Section 2.309(c)(1) factors, good cause, requires a "judgment about when the matter is sufficiently factually concrete and *procedurally ripe* to permit the filing of a contention."[49] Intervenors fail to demonstrate that the New Contention is procedurally ripe because the D.C. Circuit has not yet issued its mandate returning the proceeding to the Commission. Accordingly, Intervenors have not demonstrated good cause.

Because Intervenors fail to show "good cause" under Section 2.309(c)(1)(i), the remaining factors would have to weigh heavily in their favor for the New Contention to be admitted.[50] They do not. The New Contention, if admitted, would add an entirely new contention, with mandatory disclosures and the involvement of new experts and personnel, on an issue that impacts numerous other ongoing proceedings. Accordingly, admission of the New Contention could significantly and unnecessarily delay this proceeding. Thus, the most important of the remaining factors, the potential for the broadening of issues or delay in the proceeding (factor seven), weighs heavily against Intervenors.

Furthermore, Intervenors provide no indication that their participation in the litigation of the New Contention would contribute to the development of a sound record (factor eight). The Commission has stated that to make a showing on this factor, an intervenor should specify the

---

48 *See, e.g.*, *Millstone*, CLI-09-5, 69 NRC at 126 ("The Board correctly found that failure to address the requirements [of 10 C.F.R. §§ 2.309(c) and (f)(2)] was reason enough to reject the proposed new contentions."); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 & n.10 (1998) ("Indeed, the Commission has itself summarily dismissed petitioners who failed to address the . . . factors for a late-filed petition.").

49 *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-99-21, 49 NRC 431, 437 (1999) (emphasis added) (denying as premature a motion to amend a contention to contest an applicant exemption request that had yet to be granted).

50 *See Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 & 2), CLI-86-8, 23 NRC 241, 244 (1986).

precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.[51] Intervenors have failed to satisfy any of those requirements. In fact, aside from discussing the *New York* decision, Intervenors have expressly declined to offer any expert opinion or evidence suggesting that they would assist in developing a sound record.[52]

In addition, should the Commission proceed with a rulemaking, as it has consistently done in the past on this issue, that generic proceeding would provide Intervenors with adequate means to protect its interests (factor five). Moreover, two issues covered by the New Contention—SFP leaks and offsite land use property value impacts—are already being litigated in separate contentions RK-EC-3/CW-EC-1 and NYS-17B, respectively.[53] As such, that factor also weighs against admitting the New Contention.[54]

In summary, having failed to establish good cause and make a compelling showing on the remaining factors, the balance of the untimely factors weighs against Intervenors. Therefore, the New Contention should be denied.

B. The New Contention Fails to Satisfy the 10 C.F.R. § 2.309(f)(1) Admissibility Requirements

In addition to the timeliness requirements, Intervenors also must demonstrate that the New Contention is admissible under 10 C.F.R. § 2.309(f)(1). As discussed below, Intervenors fail to satisfy the Commission's substantive admissibility requirements.

---

51 *See id.* at 246.

52 *See* Joint Motion at 12-13.

53 NYS is not a party to RK-EC-3/CW-EC-1, and Riverkeeper and Clearwater are not parties to NYS-17B.

54 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 565-66 (2005) (finding that opportunity to petition for rulemaking and opportunity to comment on pending petition for rulemaking provides a means for petitioner to protect its interests).

1. The New Contention Lacks Legal Basis, Contrary to 10 C.F.R. § 2.309(f)(1)(ii)

Based on the D.C. Circuit's recent *New York* decision, Intervenors claim that the Indian Point FSEIS improperly omits a required environmental evaluation of spent fuel storage for the time period after the cessation of operations.[55] However, as discussed above, the D.C. Circuit has not yet issued its mandate returning the proceeding to the Commission, and no evaluation or other action is "required" by the *New York* decision at this time.[56] Accordingly, the contention lacks a legal basis, contrary to 10 C.F.R. § 2.309(f)(1)(ii).

2. The New Contention Challenges the Temporary Storage Rule, Contrary to 10 C.F.R. § 2.309(f)(1)(iii) and 2.335(a)

Because the mandate has not yet issued, the New Contention also constitutes an impermissible challenge to the TSR. The contention demands a spent fuel storage environmental impact evaluation in this proceeding for the period after the cessation of operations.[57] The current regulation, however, makes clear that "no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license . . . for which application is made, is required in any environmental report, environmental impact statement, environmental assessment, or other analysis."[58] Unless and until the mandate issues, the current TSR remains in effect. Accordingly, the New Contention constitutes an impermissible challenge to that regulation and should be rejected pursuant to 10 C.F.R. §§ 2.309(f)(1)(iii) and 2.335(a).

---

55 *See* New Contention at 2; Joint Motion at 13-14.

56 *See* New Contention at 3; Joint Motion at 7, 11, 13.

57 *See* New Contention at 2; Joint Motion at 13-14.

58 10 C.F.R. § 51.23(b).

3. The New Contention Raises Issues That Are Likely to Become the Subject of Rulemaking, Contrary to 10 C.F.R. § 2.309(f)(1)(iii)

Even if the mandate were to issue, Commission precedent clearly dictates that the Board cannot admit a contention raising an issue that is, or is about to become, the subject of a rulemaking.[59] As the Commission made clear in CLI-10-19, its longstanding practice has been to address long-term waste storage issues generically through rulemaking rather than litigating issues case-by-case in individual adjudicatory proceedings.[60] The Commission does so for the specific purpose of avoiding inefficiencies of case-by-case adjudication of generic issues.[61] Thus, if the mandate issues, the contention would still be inadmissible because it may reasonably be expected that the Commission will continue this practice and institute a rulemaking addressing the issues on remand.

The *New York* decision rejected the notion that the Commission must examine each site individually and allows the Commission to continue its traditional generic approach.[62] Moreover, the long-term spent fuel storage issues identified by the D.C. Circuit are eminently suitable for generic resolution, as the Commission has consistently chosen. Because Intervenors have elected not to provide any expert or other factual support for their contention, they present no basis to believe that spent fuel storage risks differ significantly from site to site. Thus, unless and until the Commission directs otherwise, CLI-10-19 governs and the Board should presume the Commission will proceed generically through rulemaking. Accordingly, the Board should deny the New Contention pursuant to 10 C.F.R. § 2.309(f)(1)(iii).

---

59 *See Indian Point*, CLI-10-19, 72 NRC at 100; *Oconee*, CLI-99-11, 49 NRC at 345.

60 *See Indian Point*, CLI-10-19, 72 NRC at 99 (citing *Oconee*, CLI-99-11, 49 NRC at 343).

61 *See id.* at 100.

62 *New York*, 681 F.3d at 483.

Entergy recognizes that the Commission has not yet announced how it intends to address the issues identified in the *New York* decision.[63] Thus, to the extent the Board has any uncertainty concerning whether the Commission will proceed with a generic rulemaking, the Board should certify a question pursuant to 10 C.F.R. § 2.319(l) to the Commission for its determination.[64] Such certification also would avoid the potential for inconsistent treatment with the various other proceedings in which similar contentions have been filed.

4. The New Contention Also Lacks Basis Because It Demands Action Inconsistent with the *New York* Decision, Contrary to 10 C.F.R. § 2.309(f)(1)(ii)

Intervenors have proffered a "contention of omission" and elected not to provide expert or other factual support.[65] A properly-pled contention of omission, however, must demonstrate the omission of a "relevant matter *as required by law*."[66] In other words, the contention must describe the information that should have been included and establish *legally-required* information is omitted. The New Contention, however, demands numerous actions and analyses that are simply not required by the *New York* decision even if the mandate issues. Thus, the New

---

63 Several intervenors and petitioners in other proceedings have already placed this issue before the Commission for decision. *See Callaway*, LBP-12-15, 76 NRC __, slip op. at 28 n.15 (noting that on June 18, 2012, intervenors and petitioners associated with 19 difference pending proceedings filed a Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings). The Board should defer to Commission direction on this issue. *See id.*

64 *See* 10 C.F.R. §§ 2.319(l), 2.341(f)(1). The mandate would invalidate the 2010 WCD and TSR update. According to precedent, the prior WCD and TSR may remain effective because the D.C. Circuit has not undertaken review or issued a decision vacating the prior TSR. *See Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 757-58 (D.C. Cir. 1987) (holding that a decision vacating an agency rule "necessarily reinstated" the previous rule); *Action on Smoking & Health v. Civil Aeronautics Bd.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (holding that vacating an agency rule has the "effect of reinstating the rules previously in force"); *In re Polar Bear Endangered Species Act Listing & § 4(d) Rule Litigation*, 818 F. Supp. 2d 214, 238-39 (D.D.C. 2011) (holding that once the court vacated an agency rule for failing to conduct a NEPA review prior to finalizing the rule, the prior rule would be reinstated despite the argument that the prior rule suffered from the same legal flaws because the prior rule was not before the reviewing court). To the extent any uncertainty exists concerning this issue, the Board can likewise certify such a question to the Commission for its determination.

65 New Contention at 12-13; *see also* Joint Motion at 8 ("This contention addresses a material omission in the Staff's environmental review . . . .").

66 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

Contention demands environmental evaluations that are inconsistent with the *New York* decision and therefore, lacks legal basis, contrary to 10 C.F.R. § 2.309(f)(1)(ii).

a. The New Contention Fails to Demonstrate That *New York* Obligates the NRC to Prepare a Site-Specific NEPA Evaluation

As an initial matter, Intervenors contend that the *New York* decision "obligates" the NRC Staff to prepare an Indian Point-specific draft FSEIS supplement addressing spent fuel storage environmental impacts after cessation of operations.[67] To the contrary, the D.C. Circuit specifically held that "we do not require, as petitioners would prefer, that the Commission examine each site individually."[68] Indeed, the D.C. Circuit observed that the NRC is currently preparing an EIS generically addressing spent fuel storage environmental impacts beyond the 60-year post-license period and that "some or all" of the issues identified in the Court's decision "may be addressed in such a rulemaking."[69]

b. The New Contention Fails to Demonstrate That *New York* Requires Consideration of Spent Fuel Storage Offsite Land Use Property Value Impacts

In addition, Intervenors claim that any environmental evaluation resulting from the *New York* remand must address "offsite land use impacts of continued operations and the additional storage of spent fuel on real estate values in the surrounding areas."[70] The *New York* decision, however, provides no support that such an analysis is legally required. In fact, the D.C. Circuit specifically rejected NYS's argument that the Commission's WCD should have considered

---

67 Joint Motion at 13-14.

68 *New York*, 681 F.3d at 483.

69 *Id.*

70 New Contention at 14.

property value impacts allegedly caused by Indian Point.[71] Although NYS's WCD comments included several Dr. Sheppard reports also used to support NYS-17B,[72] the Court found:

> [T]hat study actually *assumes* a diminution in values caused by current plant operation and simply extends it mathematically—it in no way asserts whether or how any harm to property values might occur nor how that harm is related to a change in the physical environment. Petitioners' failure to raise these objections to the agency waives them. We note, as did the Supreme Court in *Public Citizen*, that primary responsibility for compliance with NEPA lies with the Commission, not petitioners; nonetheless, the non-health effects alluded to here are not "so obvious that there is no need for a commentator to point them out."[73]

As with NYS's procedurally-deficient property value-based WCD challenge, the New Contention provides no indication that alleged property value impacts are in any way related to changes in the physical environment. Moreover, the current NYS-17B litigation already covers offsite land use property value impacts from continued operations and, under the rubric of the no-action alternative, after cessation of operations.

c. The New Contention Fails to Demonstrate That *New York* Requires Consideration of Mitigation Alternatives

Intervenors also assert that the NRC NEPA evaluation must address "the impacts of spent fuel storage in pools versus in dry casks" and "alternatives to mitigate any of these adverse consequences."[74] The *New York* decision, however, establishes no such requirements. In fact,

---

71 *New York*, 681 F.3d at 482.

72 Citing to two reports offered in this proceeding (NYS000226 and NYS000227), NYS argued that Dr. Sheppard identified property value impacts "in the event that license renewal is not allowed and the plant is promptly decommissioned and the spent fuel removed to a waste disposal site by 2025 (land values will increase) and in the event that spent fuel is stored indefinitely at the site (land values will remain depressed for the indefinite future)." [NYS] Mot. for Leave to File Timely Am. Bases to Contention 17A (Now To Be Designated Contention 17B) (Jan. 24, 2011), Attach. 13, Supplemental Comments Submitted by the Office of the Att'y General of the [NYS] Concerning the [NRC]'s Proposed [WCD] Update & Consideration of Env'l Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation at 13 (Feb. 9, 2010), *available at* ADAMS Accession No. ML110390250.

73 *New York*, 681 F.3d at 482 (quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 764 (2004)).

74 New Contention at 14.

D.C. Circuit never discussed mitigation and expressly left it to the Commission's discretion on how best to address the remand issues.[75] Moreover, as the D.C. Circuit has previously held, an agency may decline to discuss mitigation measures when it believes the environmental impact of the action will be minor.[76]

d. The New Contention Fails to Demonstrate That *New York* Requires Consideration of Decommissioning Issues

According to Intervenors, the *New York* decision also requires that the NRC address "the implications of on-site storage of waste for decommissioning."[77] The D.C. Circuit's *New York* decision, however, does not discuss decommissioning issues. Because Intervenors provide no nexus between such issues, *New York*, and long-term spent fuel storage environmental impacts, the New Contention fails to establish that any legally-required decommissioning-related evaluation is omitted.[78]

e. The New Contention Fails to Specify What "Other Issues" Intervenors Seek to Litigate

In addition to the list of issues specified above, Intervenors contend that the *New York* decision requires that the NRC address certain unspecified "other issues."[79] This is precisely the type of speculative, unfocused notice pleading that the Commission sought to exclude when it

---

75 *New York*, 681 F.3d at 477 (stating that NRC need not prepare a full EIS if it conducts an EA and issues an appropriate finding of no significant impact), 480 (providing the Commission with the choice of proceeding on a site-specific or generic basis).

76 *See Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 737 (D.C. Cir. 2000) (upholding agency's decision to "decline to adopt mitigation measures to address a problem that it believed might not even develop").

77 New Contention at 14.

78 Furthermore, decommissioning issues are codified as generic, Category 1 issues with SMALL impacts in Table B-1, Appendix B to Subpart A of 10 C.F.R. Part 51. Thus, any challenge to decommissioning impacts is impermissible. *See Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 21 (2007).

79 New Contention at 14.

toughened the contention pleading standards twenty years ago.[80] Accordingly, the New Contention lacks legal basis, contrary to 10 C.F.R. § 2.309(f)(1)(ii) for this additional reason.

V. CONCLUSION

As discussed above, Intervenors fail to satisfy the standards for either a timely or non-timely contention in 10 C.F.R. §§ 2.309(f)(2) and (c)(1). The New Contention also fails to meet the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). For all of these reasons, the New Contention should be denied in its entirety.

Respectfully submitted,

Signed (electronically) by Jonathan M. Rund
Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Jonathan M. Rund, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-3000
Fax: (202) 739-3001
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: jrund@morganlewis.com

William B. Glew, Jr., Esq.
William C. Dennis, Esq.
ENTERGY NUCLEAR OPERATIONS, INC.
440 Hamilton Avenue
White Plains, NY 10601
Phone: (914) 272-3202
Fax: (914) 272-3205
E-mail: wglew@entergy.com
E-mail: wdennis@entergy.com

Counsel for Entergy Nuclear Operations, Inc.

Dated in Washington, D.C.
this 2nd day of August 2012

[80] *See*, *e.g.*, Proposed Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 51 Fed. Reg. 24,365, 24,366 (July 3, 1986) (proposing the introduction of the support and genuine dispute standards to avoid the admission of contentions where the petitioner does not "adequately identify the issues that [it] seeks to litigate.").

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 2, 2012

MOTION CERTIFICATION

Counsel for Entergy certifies that he has made a sincere effort to make himself available to listen and respond to the moving parties, and to resolve the factual and legal issues raised in the motion, and that his efforts to resolve the issues have been unsuccessful.

Executed in Accord with 10 C.F.R. § 2.304(d)

Paul M. Bessette, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, DC 20004
Phone: (202) 739-5796
Fax: (202) 739-3001
E-mail: pbessette@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-247-LR and
	)	50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 2, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of "Entergy's Answer to New York State, Riverkeeper, and Clearwater's Joint Contention NYS-39/RK-EC-9/CW-EC-10 Concerning On-Site Storage of Nuclear Waste at Indian Point" was served electronically via the Electronic Information Exchange on the following recipients.

Administrative Judge
Lawrence G. McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Lawrence.McDade@nrc.gov)

Administrative Judge
Dr. Michael F. Kennedy
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Michael.Kennedy@nrc.gov)

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Richard.Wardwell@nrc.gov)

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: hearingdocket@nrc.gov)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-7H4M
Washington, DC 20555-0001
(E-mail: ocaamail.resource@nrc.gov)

Shelby Lewman, Law Clerk
Anne Siarnacki, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Shelbie.Lewman@nrc.gov)
(E-mail: Anne.Siarnacki@nrc.gov)

Sherwin E. Turk, Esq.
Edward L. Williamson, Esq.
Beth N. Mizuno, Esq.
David E. Roth, Esq.
Brian G. Harris, Esq.
Mary B. Spencer, Esq.
Anita Ghosh, Esq.
Brian Newell, Paralegal
Office of the General Counsel
Mail Stop: O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: Sherwin.Turk@nrc.gov)
(E-mail: Edward.Williamson@nrc.gov)
(E-mail: Beth.Mizuno@nrc.gov)
(E-mail: David.Roth@nrc.gov)
(E-mail: Brian.Harris@nrc.gov)
(E-mail: Mary.Spencer@nrc.gov)
(E-mail: Anita.Ghosh@nrc.gov)
(E-mail: Brian.Newell@nrc.gov)

Melissa-Jean Rotini, Esq.
Assistant County Attorney
Office of Robert F. Meehan, Esq.
Westchester County Attorney
148 Martine Avenue, 6th Floor
White Plains, NY 10601
(E-mail: MJR1@westchestergov.com)

Phillip Musegaas, Esq.
Deborah Brancato, Esq.
Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(E-mail: phillip@riverkeeper.org)
(E-mail: dbrancato@riverkeeper.org)

Manna Jo Greene
Karla Raimundi
Stephen Filler
Hudson River Sloop Clearwater, Inc.
724 Wolcott Ave.
Beacon, NY 12508
(E-mail: mannajo@clearwater.org)
(E-mail: karla@clearwater.org)
(E-mail: stephenfiller@gmail.com)

Daniel Riesel, Esq.
Victoria Shiah Treanor, Esq.
Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022
(E-mail: driesel@sprlaw.com)
(E-mail: vtreanor@sprlaw.com)

John J. Sipos, Esq.
Charlie Donaldson, Esq.
Assistant Attorneys General
Office of the Attorney General
of the State of New York
The Capitol
Albany, NY 12224-0341
(E-mail: John.Sipos@ag.ny.gov)
(E-mail: Charlie.Donaldson@ag.ny.gov)

John Louis Parker, Esq.
Office of General Counsel, Region 3
NYS Dept. of Environmental Conservation
21 S. Putt Corners Road
New Paltz, New York 12561-1620
(E-mail: jlparker@gw.dec.state.ny.us)

Michael J. Delaney, Esq.
Vice President -Energy Department
New York City Economic Development
Corporation (NYCDEC)
110 William Street New York, NY 10038
mdelaney@nycedc.com

Robert D. Snook, Esq.
Assistant Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
(E-mail: Robert.Snook@po.state.ct.us)

Sean Murray, Mayor
Kevin Hay, Village Administrator
Village of Buchanan
Municipal Building
236 Tate Avenue
Buchanan, NY 10511-1298
(E-mail: smurray@villageofbuchanan.com)
(E-mail: Administrator@villageofbuchanan.com)

Janice A. Dean, Esq.
Teresa Manzi
Assistant Attorney General
Office of the Attorney General
of the State of New York
120 Broadway, 26th Floor
New York, New York 10271
(E-mail: Janice.Dean@ag.ny.gov)
(E-mail: Teresa.Manzi@ag.ny.gov)

Signed (electronically) by Jonathan M. Rund

Jonathan M. Rund, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, DC 20004
Phone: (202) 739-5061
Fax: (202) 739-3001
E-mail: jrund@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.

DB1/ 70548534