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 20, 2012

ENTERGY'S ANSWER OPPOSING NEW YORK STATE'S MOTION TO CROSS-EXAMINE

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.
Raphael P. Kuyler, 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: rkuyler@morganlewis.com

COUNSEL FOR ENTERGY NUCLEAR OPERATIONS, INC.

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I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.1204 and 2.323, and in accordance with the Board's Scheduling Order and its Order Memorializing Items Discussed During the July 9, 2012, Status Conference,[1] Entergy Nuclear Operation, Inc. ("Entergy"), hereby opposes New York's Motion to Cross-Examine.[2]

This license-renewal proceeding is being held pursuant to 10 C.F.R. Part 2, Subpart L. *See* Licensing Board Notice of Hearing (Application for License Renewal) at 4 (June 8, 2012) (unpublished) ("Notice of Hearing"). In a Subpart L proceeding, parties may cross-examine witnesses "*only* if the presiding officer determines that cross-examination by the parties is *necessary* to ensure the development of an adequate record for decision." 10 C.F.R. 2.1204(b)(3) (emphases added). Under the Atomic Energy Act of 1954 ("AEA"), as amended, 42 U.S.C. § 2011 *et seq*., and the Administrative Procedure Act ("APA"), as amended, 5 U.S.C.

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1 Licensing Board Order (Memorializing Items Discussed During the July 9, 2012, Status Conference) at 2 (July, 12, 2012) (unpublished) ("July 12 Order").

2 State of New York Motion to Implement Statutorily-Granted Cross-Examination Rights Under Atomic Energy Act § 274(*l*) (Aug. 8, 2012) ("Motion").

§ 551 *et seq*., that requirement applies to *all* agency actions and to *all* participants in NRC proceedings—whether or not the participant seeking cross-examination is a state.

Notwithstanding that statutory and regulatory command, the State of New York ("New York") insists that states have an "absolute," "inviolate," and "essentially unfettered" right to cross-examine witnesses in NRC proceedings—and therefore unlike all other participants in those proceedings are *not* subject to Section 2.1204(b)(3). Motion at 1, 4, 7, 10. New York believes it is entitled to ask whatever cross-examination questions *it* believes are "needed to be asked to assure a complete record," regardless of this Board's view as to the necessity or reasonableness of such questioning. *Id*. at 10-11, 15-16. What is more, New York claims that while states can disregard the limitations on cross-examination set forth in the Commission's Rules of Practice in 10 C.F.R. Part 2, the APA, and the AEA, all other parties must abide by those same requirements and limitations.

Nothing in the relevant statutes, regulations, and case law supports—let alone requires—such an unprecedented and unfair proceeding. New York's argument rests entirely on one provision of the AEA, Section 274(l), 42 U.S.C. § 2021(l), which confers nothing more than a limited opportunity to cross-examine that is "equivalent" to the opportunity in Section 2.1204(b)(3). The two Atomic Safety and Licensing Boards that have addressed New York's argument have rejected it.[3] This Board should, too. New York's motion should therefore be denied.

[3] *Entergy Nuclear Vt. Yankee, L.L.C.* (Vt. Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 698 (2004) ("*Vermont Yankee I*"); *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 203-04 (2006) ("*Vermont Yankee II*"), *rev'd on other grounds*, *Entergy Nuclear Vt. Yankee.* (Vt. Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371 (2007).

II. FACTS AND PROCEDURAL HISTORY

The hearing in this license renewal proceeding is scheduled to begin less than two months from now, on October 15, 2012. *See* Notice of Hearing at 5. The Board's Scheduling Order requires "all parties" to "file any motions or requests to permit that party to conduct cross-examination of a specified witness or witnesses, together with associated cross-examination plan(s), *pursuant to 10 C.F.R. § 2.1204(b)*." Licensing Board Order (Scheduling Order) at 16 (July 1, 2010) (unpublished) ("Scheduling Order") (emphasis added). On July 9, 2012, this Board held a status conference and discussed with the parties deadlines for motions for cross-examination under the Scheduling Order. Three days later, the Board issued an order memorializing those discussions and directing all parties to "file motions for cross examination . . . no later than Wednesday, August 29, 2012." July 12, 2012 Order ¶ C.

New York filed this motion on August 8, 2012. It did not, however, file its motion "pursuant to 10 C.F.R. § 2.1204(b)," as this Board ordered. Instead, New York announced its unfettered right to cross-examination under Section 2021(l), arguing that Section 2.1204 does not apply to states.

III. ARGUMENT

A. New York May Cross Examine Witnesses Only When "Necessary To Ensure The Development Of An Adequate Record For Decision"

New York's motion should be denied because Section 2021(l) does not provide an "absolute right," as New York insists, but only a "reasonable opportunity," as the statute says, to cross-examine that is "equivalent" to that set forth in Section 2.2104(b)(3).[4]

[4] Arguably, Section 2021(l) does not even apply to New York given that it is a "party" to this proceeding. The language of the statute, its implementing regulation, and its legislative history all strongly indicate that Section 2021(l) applies only to an "interested state." *See* 42 U.S.C. § 2021(l) (discussing that the state need not take "a position for or against the granting of the application"); 10 C.F.R. § 2.315(c) (instructing that "an "*interested* State" shall be afforded a "reasonable opportunity" to "interrogate witnesses" (emphasis added)); *Selected Materials on Federal-State Cooperation in the Atomic Energy Field*, Joint Committee on Atomic Energy, 86th

1. *Section 2021(l) Affords A "Reasonable Opportunity" To Cross-Examine, Not An "Absolute Right"*

New York's "absolute right" argument contravenes the plain language of Section 2021(l), which provides that "the *Commission* . . . shall afford *reasonable opportunity*" for cross-examination. (Emphases added). The plain text of the statute establishes two fundamental propositions, each of which is fatal to New York's argument.

First, it is a "reasonable opportunity"—not an "absolute right"—that the statute affords. The statute on its face imposes the limit of reasonableness, and because "reasonable is a relational term," whether states shall have an opportunity to cross-examine witnesses "must be made on a case-by-case basis." *Wernick v. Fed. Reserve Bank of N.Y.*, 91 F.3d 379, 385 (2d Cir. 1996) (internal quotation marks omitted). Determining whether states may cross-examine on a case-by-case basis is the exact opposite of the "absolute right to conduct cross-examination of witnesses in NRC licensing proceedings" claimed by New York. *See* Motion at 1.

Second, it is *the Commission*—acting through the presiding hearing officer—that must afford a reasonable opportunity for cross examination, and therefore it can only be *the Commission* that determines if and when such questioning is "reasonable" (and thus should be afforded). Contrary to the plain language of Section 2021(l), however, New York argues that a state alone has the "prerogative to decide what it believe[s is] needed to be asked to assure a complete record," and therefore its "absolute right" cannot "be restricted by allowing the

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Cong., 1st Sess. at 451 (Joint Comm. Print, Mar. 1959) ("Selected Materials on Federal-State Cooperation") (recommending to Congress that the Commission should give any "*interested* State . . . an opportunity to examine witnesses" (emphasis added)); *cf. Gulf States Utils. Co*. (River Bend Station, Units 1 & 2), ALAB-317, 3 NRC 175, 178 (1976) (explaining that "the 'interested State' provisions of Section 2.715(c)[, (currently Section 2.315(c)),] have a statutory foundation . . . [in] 42 U.S.C. § 2021(l)"). Under the AEA, states can participate in licensing proceedings either as a "party" or as an "interested state," but not both. 10 C.F.R. §§ 2.309 & 2.315(c); *see also*, *e.g.*, *La. Energy Servs., L.P.* (Nat'l Enrichment Facility), CLI-04-35, 60 NRC 619, 626-27 (2004) (holding that states may "claim 'interested state' participation only if they are not already admitted parties"); *Massachusetts v. United States*, 522 F.3d 115, 129 n.7 (1st Cir. 2008) (same). Having intervened as a party under Section 2.309, New York cannot avail itself of statutory provisions—such as Section 2021(l)—that apply only to interested states.

Commissioners or a hearing board to decide whether cross-examination is 'necessary'" to develop an adequate, fair, and full record. Motion at 1, 16. That argument cannot be squared with the plain language of the statute, which instructs that "*the Commission* . . . shall afford reasonable opportunity" for cross-examination. 42 U.S.C. § 2021(l) (emphasis added). The necessary implication of that language is that the Commissioners, the Board, or the presiding officer must determine when cross-examination is "reasonable." Otherwise, the state seeking cross-examination would be the arbiter of whether its own request is reasonable. That cannot be right.[5]

2. *The Reasonable Opportunity To Cross-Examine Under Section 2021(l) Is Equivalent To The Opportunity In Section 2.1204(b)*

Contrary to New York's argument, there is no meaningful difference between the reasonable opportunity to cross-examine afforded by Section 2021(l) and that afforded by Section 2.1204(b)(3). The AEA instructs that the APA "shall apply to *all* agency action taken under [Chapter 23]." 42 U.S.C. § 2231 (emphasis added).[6] Proceedings involving state participation pursuant to Section 2021(l) fall under Chapter 23 of Title 42 of the United States Code. The APA thus applies to this proceeding and New York's Motion.

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[5] New York's view that as a party it is entitled to be the sole arbiter of the scope of cross-examination is also in serious tension, to say the least, with federal court practice. *See*, *e.g.*, *Trademark Research Corp. v. Maxwell Online, Inc.*, 995 F.2d 326, 339 (2d Cir. 1993) ("There is no absolute right to ask a hypothetical question on cross-examination. [T]he proper scope for cross-examination is, like the qualification of witnesses, a matter of trial court discretion which we do not lightly disturb.") (alteration in original) (internal quotation marks omitted)). Boards may look to federal cases and practice as sources of authority in appropriate circumstances. *See* Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2187 (Jan. 14, 2004) ("Although the Commission has not required the application of the Federal Rules of Evidence in NRC adjudicatory proceedings, presiding officers and Licensing Boards have always looked to the Federal Rules for guidance in appropriate circumstances.")

[6] *See also*, *e.g.*, *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 345-46 (1st Cir. 2004) ("The APA . . . is made applicable to the Commission by 42 U.S.C. § 2231 . . . ."); *Friends of the Bow v. Thompson*, 124 F.3d 1210, 1214 (10th Cir. 1997) ("The APA governs agency procedures in *all* administrative proceedings." (emphasis added)). Thus, New York is wrong that its right to cross-examine exists "independently" of the APA. Motion at 14.

Under the APA, no party has an absolute right to cross-examine. "A party is entitled to . . . conduct such cross-examination *as may be required for a full and true disclosure of the facts*." 5 U.S.C. § 556(d) (emphasis added). The First Circuit and two Boards have held—and New York does not dispute—that the requirements for allowing cross-examination under Sections 2.1204(b)(3) and 556(d) are "equivalent."[7]

Therefore, under the AEA, the equivalent requirements in Section 2.1204(b)(3) for cross-examination "shall apply to all agency action," including those involving state participation pursuant to Section 2021(l). 42 U.S.C. § 2231. That is precisely what the Board held in *Vermont Yankee I*:

> [W]e hold, based on the finding in [*Citizens Awareness Network*] that the opportunity for cross-examination under [Section 2.1204(b)(3)] is equivalent to the opportunity for cross-examination under [Section 556(d)], that the opportunity for cross-examination under 10 C.F.R. § 2.1204(b)(3) is likewise consistent with New York's 'reasonable opportunity . . . to interrogate witnesses' under 42 U.S.C. § 2021(l).

LBP-04-31, 60 NRC at 710. The Board reaffirmed that holding in *Vermont Yankee II*, reiterating that "[t]he Subpart L grant of cross-examination to situations where it 'is necessary to ensure the development of an adequate record for decision,' 10 C.F.R. § 2.1204(b)(3), is consistent with the AEA requirement that State representatives be given a 'reasonable opportunity . . . to . . . interrogate witnesses.'" LBP-06-20, 64 NRC at 203-4. That holding is correct, and New York's contrary argument should be rejected.

Consistent with an interested state's "reasonable opportunity" to cross-examine under Section 2021(l), Section 2.1204(b)(3) provides that parties "shall" have the opportunity to cross-

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[7] *See Citizens Awareness Network*, 391 F.3d at 551; *Vt. Yankee I*, LBP-04-31, 60 NRC at 710; *Vt. Yankee II*, LBP-06-20, 64 NRC at 203-4.

examine when such cross-examination is needed to "ensure the development of an adequate record for decision" or "a full and true disclosure of the facts," 5 U.S.C. § 556(d). There is nothing *unreasonable* about that requirement.

Moreover, New York effectively concedes that it is bound by the requirements set forth in Section 2.1204(b)(3) by arguing that Section 2021(l) "preserve[s]" the right that states possessed to cross-examine witnesses under the 1956 version of 10 C.F.R. § 2.747. Motion at 5. That regulation used language that is indistinguishable from Section 556(d) to describe the opportunity that states had in 1956—and currently have—to cross-examine: "Every party to the hearing shall have the right to . . . conduct such cross-examination as may be required for a full and true disclosure of the facts." *Compare* 10 C.F.R. § 2.747 (1956) (published in Part 2—Rules of Practice, 21 Fed. Reg. 804, 808 (Feb. 4, 1956) (Attachment 1 to this Answer)), *with* 5 U.S.C. § 556(d) ("A party is entitled to . . . conduct such cross-examination as may be required for a full and true disclosure of the facts."). New York does not—because it cannot—challenge the First Circuit's holding (adopted by the Boards in *Vermont Yankee I & II*) that Section 556(d) is "equivalent" to Section 2.1204(b)(3). Thus, by admitting that Section 2.747 defines its opportunity to cross-examine, New York necessarily concedes that Section 2.1204(b)(3) also defines that same opportunity.

In another attempt to avoid its obligations under Section 2.1204(b)(3), New York incorrectly asserts that the "Part 2 regulations governing the conduct of hearings," which include Section 2.1204(b)(3), are "based on the APA," and "therefore they do not apply to this motion." Motion at 5, 15. The Commission, however, issued Section 2.1204(b)(3) pursuant to, *inter alia*, the AEA, 42 U.S.C. §§ 2201(p) and 2241(a). Under those provisions, the Commission may promulgate regulations "direct[ing]" the "conduct" of licensing hearings, Section 2241(a), as

well as regulations "necessary to carry out the purposes of [Chapter 23]," Section 2201(p). This hearing is a licensing hearing under Chapter 23.[8]

In all events, New York's insistence that Part 2 regulations do not apply here conflicts with its own concession that another Part 2 regulation, 10 C.F.R. § 2.333(e), *does* restrict cross-examination under Section 2021(l). *See* Motion at 11. That regulation empowers presiding officers to "take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination." 10 C.F.R. § 2.333(e). There is simply no reason why states are governed by Section 2.333(e), but somehow not by Section 2.1204(b)(3). Both regulations were passed pursuant to the same statutory authority—*inter alia*, Sections 2201 and 2241. And it would make little sense to hold hearings where presiding officers *can* prevent states from conducting "repetitious" or "cumulative" cross-examination, but they *cannot* prevent states from conducting cross-examination that is unnecessary "to ensure the development of an adequate record for decision." New York does not—because it cannot—explain how Section 2.333(e) is a permissible restriction on its purportedly "inviolate right" to cross-examine, but Section 2.1204(b)(3) is not. *See* Motion at 10-11.

New York's selective embrace of Section 2.333(3) is understandable only as an attempt to avoid the absurd consequences of its own argument. That is, if states really do possess the absolute right to cross-examine that New York claims—or if states are their own arbiters of what constitutes a "reasonable opportunity" to cross-examine, which amounts to the same thing—then states can cross-examine witnesses indefinitely (and even badger those witnesses) with impunity. New York's unprincipled acceptance of the limitations imposed by

[8] In any event, as previously shown, the requirements in Sections 2021(l) and 2.1204(b)(3) are "equivalent." Hence, by arguing that states are bound by Section 2021(l), New York necessarily concedes that it is bound by the same requirements for cross-examination set forth in Section 2.1204(b)(3).

Section 2.333(3) thus confirms the absurdity of New York's position that states (and states alone) possess an "unfettered" right to cross-examination, Motion at 7, such that the "reasonable opportunity" afforded under Section 2021(l) is somehow different than the "reasonable opportunity" afforded under Section 2.1204(b)(3).

B. Neither Legislative History Nor Policy Considerations Support New York's "Absolute Right" Theory

In asking this Board to disregard the plain language of pertinent statutes and regulations and to depart from the holdings of *Vermont Yankee I & II* and *Citizens Awareness Network*, New York primarily relies on legislative history to argue that states have an "absolute right" to cross-examine. *See* Motion at 1, 6-9. But legislative history is irrelevant here because, as demonstrated above, the statutory text makes plain on its face that states do not have an absolute right to cross-examine. *See William L. Rudkin Testamentary Trust v. Comm'r*, 467 F.3d 149, 157 (2d Cir. 2006) ("Because we find the statute's text clear and unambiguous, we need not address the . . . legislative history arguments.") (internal quotation marks omitted)). In any event, to the extent it is relevant here, the legislative history actually confirms that states do *not* have the absolute right to cross-examine witnesses under Section 2021(l) that New York claims.

As previously noted, when Congress passed Section 2021(l) in 1959, states did not have an absolute right to cross-examine. They had the same qualified opportunity that they have today under Section 2.1204(b)(3) and the APA—*i.e.*, they can cross-examine if needed to create a full, fair, and adequate record. Indeed, the report of the Joint Committee on Atomic Energy that New York cites discloses that the Committee had originally recommended that Congress pass a statute authorizing the Commission to give any "interested State . . . *an opportunity* to examine witnesses." Motion at 6 (*quoting Selected Materials on Federal-State Cooperation* at 451 (emphasis added)). But Congress ultimately rejected that recommendation by adding

"*reasonable*" to limit the "opportunity" that states would have to cross-examine. 42 U.S.C. § 2021(l) (emphasis added).[9]

Perhaps realizing that the legislative history does not support its "absolute right" theory, New York falls back on general "principles of state's rights" and assertions about the value of cross-examination. Motion at 9-14. Neither advances New York's cause.

First, New York's arguments about the value of cross-examination generally prove too much. They apply just as forcefully to the Board, which will be conducting its own cross-examination of the witnesses, and also to private parties—which New York concedes are subject to Section 2.1204(b)(3). *See* Motion at 18. And the Commission has already rejected New York's arguments about the value of cross-examination by the parties in administrative hearings like this one on highly technical issues. *See* Changes to Adjudicatory Process, 69 Fed. Reg. at 2195-96 (determining that questioning by the Board is the "better approach for assuring the expeditious, controlled and deliberate development of an adequate record for decision" in informal hearings).

Second, New York offers no reason or authority to explain why a state—whether participating as an interested state or as a party—should have an absolute right to cross-examine witnesses that is denied to all other participants in the proceedings. In establishing the statutory and regulatory framework governing licensing hearings, there is nothing suggesting that Congress or the Commission ever intended to elevate state interests *over* the interests of all others in the proceedings. On the contrary, since the inception of the AEA, *all* parties have had

[9] None of the legislative history that New York cites even remotely suggests that Congress intended states to have an "absolute" and "essentially unfettered" right to cross-examine witnesses. *See* Motion at 1, 7. Still less does the history suggest (1) that Boards have no ability to prevent states from asking cross-examination questions that are unnecessary for developing an adequate, full, and fair record, or (2) that an "interested state" is entitled to greater procedural rights than the license holder or applicant. In sum, the legislative history fails to support any argument that the "reasonable opportunity" afforded by the statute is an absolute right.

the same opportunity to cross-examine. That evenhanded practice is consistent with the practice in the federal courts, where an attorney for a state has the same opportunity to cross-examine as an attorney for a private party.[10]

There is no question that states occupy a unique position in our federalist system of government. *See*, *e.g.*, *Va. Office for Prot. & Advocacy v. Stewart*, 131 S. Ct. 1632, 1642 (2011) ("We are mindful of the central role autonomous States play in our federal system . . . ."). But Congress has already taken into account the legitimate needs of states by providing, among other things, an opportunity for "interested states" to participate in licensing proceedings and to have a "reasonable opportunity" to cross-examine witnesses. New York provides no justification for its attempt to rewrite the statute to vest an "absolute right" to cross-examine in states and states alone, and Entergy is aware of none.[11]

C. New York Has Failed To Demonstrate That Additional Cross-Examination By The Parties Is Necessary

The only reasonable explanation for New York's eleventh-hour argument that it has an "absolute right" to cross-examine witnesses is that New York must recognize that it cannot satisfy the governing standards for additional cross-examination by the parties. Under 10 C.F.R. § 2.1207(a)(3), the Board examines the parties' witnesses based in part on confidential questions submitted by the parties prior to the hearing. There is one narrow exception: parties may cross-examine only if "the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision." *Id.* § 2.1204(b)(3).

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[10] If this Board disagrees and determines that New York does possess an absolute right to cross-examine—which it does not—Entergy respectfully requests that it be granted the same right, especially considering that Entergy carries the ultimate burden of proof. *See AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station)*, CLI-09-7, 69 NRC 235, 269 (2009). If granted, then Entergy may need additional time, beyond August 29, to prepare and submit cross-examination plans.

[11] Not even the bedrock principle of state sovereign immunity to suit is absolute. *See*, *e.g.*, *Va. Office for Prot.*, 131 S.Ct. at 1642. (no "encroachment" on states' rights to allow suit against state to proceed under the *Ex parte Young* exception for suits seeking injunctive relief).

Under that standard, "[t]he party seeking to cross-examine bears the burden of showing that cross-examination is in fact necessary." *Citizens Awareness Network*, 391 F.3d at 351 (*quoting Seacoast Anti-Pollution League v. Costle*, 572 F.2d 872, 880 n.16 (1st Cir. 1978)).

In promulgating Section 2.1204(b)(3), the Commission explained that the bar for permitting cross-examination is high:

> [T]he presiding officer will permit cross-examination only in the *rare* circumstance where the presiding officer finds in the course of the hearing that his or her questioning of witnesses will *not* produce an adequate record for decision, and that cross-examination by the parties is the *only* reasonable action to ensure the development of an adequate record.

Changes to Adjudicatory Process, 69 Fed. Reg. at 2196 (emphases added); *see also id*. at 2228 (explaining that the Commission "expects that the use of cross examination will be rare"). Further, because "cross-examination conducted by the parties often is not the most effective means for ensuring that all relevant and material information with respect to a contested issue is efficiently developed for the record of the proceeding," and because the presiding officer "is ultimately responsible for the preparation of an initial decision on the . . . contested matter," the Commission also determined that questioning by the Board is the "better approach for assuring the expeditious, controlled and deliberate development of an adequate record for decision" in informal hearings. *Id*. at 2195-96.

New York does not even attempt to show that its additional cross-examination is necessary under Section 2.1204(b)(3). At most, New York speculates it is "possible" that its "cross-examination would be allowed" under that provision. Motion at 18. In support, however, New York asserts only that the value of its cross-examination "will be substantial" and that New York offers "extremely well-qualified experts." *Id.* at 17-18. Even if true, those assertions do nothing to establish that New York's additional cross-examination is necessary. New York has

not explained how its self-serving assertions and speculation about "possibly" satisfying the regulation overcome the Commission's presumption that examination by the Board is the better approach for this hearing.

D. New York's Eleventh-Hour Request for General Cross-Examination on All of Its Contentions Is Untimely, And Granting The Request Will Severely Prejudice Other Parties

Even if this Board concludes that Section 2021(l) affords states an independent and absolute right to cross-examine witnesses, New York's motion still should be denied as untimely. Under 10 C.F.R. § 2.323(a), "[a] motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises." There has been no occurrence or circumstance in the ten days between July 29th and August 8th—when New York filed this Motion—that would render it timely. Indeed, New York represented in August 2008, that it "would present its request to exercise [its right under Section 2021(l)] after witnesses had been identified and testimony had been filed." Motion at 3. That occurred more than ten days ago, and certainly no later than when Entergy and the NRC Staff submitted their pre-filed written testimony on the contentions at issue, on or about March 30, 2012.

New York's sole purported justification for filing its wide-ranging request so close to the hearing is this Board's July 12 Order directing the parties to file motions for cross-examination by August 29, 2012. July 12 Order at ¶ C. But the "motions for cross examination" addressed in that order are motions filed "pursuant to 10 C.F.R. § 2.1204(b)." *See* Scheduling Order at 16.[12] New York's motion rejects any obligation under Section 2.1204(b), and it has filed this motion under Section 2021(l). Motion at 15 (stating that Sections 2.315 and 2.1204(b)

[12] Considering the matters discussed at the July 9, 2012 pre-hearing conference, it is clear that paragraph C of the July 12 Order clarifies the deadlines in paragraph K.6 of the Scheduling Order. *See* Official Tr. of Proceedings at 1155-68 (July 9, 2012), *available at* ADAMS Accession No. ML12192A159.

are "inapplicable to this motion"). Therefore, the July 12, 2012 order does not excuse the untimeliness of New York's motion.[13]

Moreover, granting New York's untimely motion at this juncture would severely prejudice Entergy. The first phase of the hearing is scheduled to start in less than two months. In that time, Entergy must, among numerous other tasks, work with approximately 30 witnesses; submit proposed questions for approximately 38 witnesses; and address any other issues that may arise. New York itself recently complained of similar obligations in a motion for a 90-day extension of time to respond to an issue raised by Entergy. *See* State of New York Motion for Extension of Time to Respond to Entergy's Motion for Declaratory Order Regarding the Coastal Zone Management Act at 4-5 (Aug. 6, 2012) ("Motion for Extension"). New York does not explain how, given all of the obligations recited in the Motion for Extension, its legal team found time to prepare and file the instant 20-page Motion three weeks ahead of New York's own purported deadline—or why it chose to file this Motion now, more than four years after it first expressed its intent to file such a Motion. *See* Motion at 2.

[13] New York's motion violates this Board's July 1, 2010 Order and Section 2.1204(b) in yet another way. The Order and Section 2.1204(b)(1) require parties who wish to cross-examine to submit a "cross-examination plan" containing certain information: "(i) A brief description of the issue or issues on which cross-examination will be conducted; (ii) The objective to be achieved by cross-examination; and (iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination." New York has indicated that it will submit only its "proposed areas of cross-examination of witnesses as contemplated by the Board's July 1, 2012 Scheduling Order." Motion at 1. Thus, it is not clear to Entergy whether New York intends to fully comply with the requirements of the Scheduling Order. That Order requires New York to follow the requirements set forth in Section 2.1204(b), but New York argues that it need not comply with Section 2.1204.

IV. CONCLUSION

For the reasons set forth above, New York's Motion should be denied.

Respectfully submitted,

Signed (electronically) by Raphael P. Kuyler

William B. Glew, Jr., Esq.
William C. Dennis, Esq.
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601
Phone: (914) 272-3202
E-mail: wglew@entergy.com
E-mail: wdennis@entergy.com

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Raphael P. Kuyler, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5738
E-mail: ksutton@morganlewis.com
E-mail: pbessette@morganlewis.com
E-mail: rkuyler@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.

Dated in Washington, D.C.
this 20th day of August 2012

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 20, 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) by Paul M. Bessette

Kathryn M. Sutton, Esq.
Paul M. Bessette, Esq.
Raphael P. Kuyler, 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.

ATTACHMENT 1

Rules of Practice, 21 Fed. Reg. 804 (Feb. 4, 1956)

dividends, the entire $30 is excludable, and there is included in gross income in the joint return only $150 consisting of the dividends received by the husband ($200 less his $50 exclusion). For further examples illustrating the application of the exclusion, see § 1.34–1.

(c) Where two or more persons hold stock as tenants in common, as joint tenants, or as tenants by the entirety, the dividends received with respect to such stock shall be considered as being received by each tenant to the extent that he is entitled under local law to a share of such dividends. Where dividends constitute community property under local law each spouse shall be considered as receiving one-half of such dividends.

(d) For restrictions and limitations with respect to the type of dividends to which the exclusion is applicable, see § 1.34–3.

(e) For taxpayers not entitled to the exclusion, see § 1.34–4.

(f) The regulations with respect to determination of when dividends are received under section 34 apply also to section 116. See § 1.34–1 (e).

§ 1.116–2 *Effective date; taxable years ending after July 31, 1954, subject to the Internal Revenue Code of 1939.* Pursuant to section 7851 (a) (1) (C), the regulations prescribed in § 1.116–1 shall also apply to taxable years beginning before January 1, 1954, and ending after July 31, 1954, and to taxable years beginning after December 31, 1953, and ending after July 31, 1954, but before August 17, 1954, though such years are subject to the Internal Revenue Code of 1939.

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: January 31, 1956.

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 56–912; Filed, Feb. 3, 1956; 8:48 a. m.]

TITLE 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

Pursuant to the Administrative Procedure Act, Public Law 404, 79th Congress, 2d session, the following rules are published as a document subject to codification, effective 30 days after publication in the FEDERAL REGISTER.

DESCRIPTION OF PART

AUTHORITY: §§ 2.1 to 2.790 issued under sec. 161, 68 Stat. 948, 42 U. S. C. 2201.

DESCRIPTION OF PART

§ 2.1 *Scope.* This part governs the conduct of all proceedings before the Atomic Energy Commission involving licensing and licenses,[1] including patent licensing under section 153 of the Atomic Energy Act of 1954 but excluding all other patent matters.[2]

§ 2.2 *Subparts.* Each of the subparts which precedes Subpart G of this part sets forth special rules applicable to the type of proceeding described in the opening section of the subpart. Subpart G of this part sets forth general rules applicable to all types of proceedings and should be read in conjunction with the subpart governing the particular proceeding.

§ 2.3 *Resolution of conflicts.* In any conflict between a general rule in Subpart G of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

§ 2.4 *Definitions.* In this part, words or phrases which are defined in the Atomic Energy Act of 1954 and in the several parts of this chapter to which this part applies, shall take the meaning defined in the act and the pertinent parts with the following exception and explanation:

(a) "Commission" means the commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Atomic Energy Act of 1954, or any officer or board to whom has been delegated, pursuant to section 161o of the act and as set forth in Part 1 of this chapter, final authority for making decisions in the course of adjudication or for issuing, amending, or rescinding rules in the course of rule making.

(b) "AEC" means the agency established by the Atomic Energy Act of 1954, comprising the members of the Commission and all officers, employees, and representatives authorized to act in the case or matter whether clothed with final authority or not.

SUBPART A—PROCEDURE ON APPLICATIONS FOR ISSUANCE, AMENDMENT OR TRANSFER OF A LICENSE OR CONSTRUCTION PERMIT AND RENEWAL OF A LICENSE

§ 2.100 *Applicability of subpart.* The provisions of this subpart prescribe the procedure covering applications for the issuance of a license, construction permit, amendment of a license or construction permit at the request of the holder, transfer of a license or construction permit, and renewal of a license. Reference should also be made to Subpart G of this part which sets forth the rules applicable to all types of proceedings.

§ 2.101 *Administrative examination of applications, notice to others, informal conferences.* Applications described in

[1] Part 30—Byproduct Material Licensing, Part 40—Source Material Licensing, Part 50—Licensing of Production and Utilization Facilities, Part 55—Licensing of Operators, Part 70—Special Nuclear Material Licensing.

[2] The specifications, pursuant to section 156 of the act, for patent licenses to use AEC held patents or those declared subject to licensing under section 153a of the act, are set forth in Part 81 of this chapter. The Patent Compensation Board proceedings under sections 157 and 173 of the act, are governed by Part 81 of this chapter.

§ 2.100 will be given a docket or other identifying number and routed to the appropriate AEC offices for administrative examination. AEC will give to others such notice of the filing of the application as is required under the applicable regulations of this chapter and such additional notices as it deems appropriate. The applicant may be required to submit additional information and may be requested to confer informally regarding the application.

§ 2.102 *Action on applications, hearings.* (a) The AEC will, upon request of the applicant or an intervener, and may upon its own initiative, direct the holding of a formal hearing prior to taking action on the application. If no prior formal hearing has been held and no notice of proposed action has been served as provided in paragraph (b) of this section, AEC will direct the holding of a formal hearing upon receipt of a request therefor from the applicant or an intervener within 30 days after the issuance of a license or other approval or a notice of denial.

(b) In such cases as it deems appropriate, AEC may cause to be served upon the applicant, and published, a notice of proposed action upon his application and shall cause copies thereof to be served upon interveners or others entitled to or requesting notification. The notice shall state the terms of the proposed action. If a formal hearing has not been held prior to issuance of the notice, AEC will direct the holding of a formal hearing upon the request of the applicant or an intervener received within fifteen days following the service of the notice.

§ 2.103 *Effect of timely renewal applications.* In the case of an application for renewal, if the licensee has made application for the renewal of a subsisting license at least 30 days prior to its expiration date, the license shall not be deemed to have expired until such application shall have been determined.

SUBPART B—PROCEDURE FOR IMPOSING REQUIREMENTS BY ORDER, OR FOR MODIFICATION, SUSPENSION, OR REVOCATION OF A LICENSE OR CONSTRUCTION PERMIT

§ 2.200 *Applicability of subpart.* The provisions of this subpart prescribe the procedure in cases initiated by AEC to impose requirements by order upon a licensee or holder of a construction permit or to modify, suspend, or revoke a license or construction permit. Reference should also be made to Subpart G of this part, which sets forth the rules applicable to all types of proceedings. The provisions of this subpart shall not apply to action taken pursuant to section 108 of the act.

§ 2.201 *Notice of violation.* (a) Prior to the institution of any proceeding for the suspension or revocation of a license or construction permit for alleged violation of any provision of the act, regulations, or conditions of the license or permit, the licensee or permit holder shall be served with a written notice calling the facts to his attention and requesting a written explanation or statement in reply. Within 15 days of the receipt of such notice, or such other reasonable period as may be specified in the notice, the licensee or permit holder shall send his reply to the AEC office designated in the notice. If the notice relates to conditions or conduct which may be susceptible of correction or of being brought into full compliance by action of the licensee or permit holder, he shall state in his reply the corrective steps taken or to be instituted in achieving correction and preventing further violations, and the date when such correction and full compliance will be achieved.

(b) Where in the opinion of AEC the public health, interest, or safety requires, or the failure to be in compliance is wilful, the notice provided for in this section may be omitted.

§ 2.202 *Orders to show cause; conditional orders.* (a) (1) In any case described in § 2.200, and after notice if any as required by § 2.201, AEC may issue to the licensee or permit holder an order directing him to show cause why the proposed action should not be taken. There will be included a notice of formal hearing. The time for hearing specified shall not be less than 20 days after issuance of the order except that, where the public interest or safety requires, AEC may provide in the order for a shorter period.

(2) Where in the opinion of AEC the public health, interest and safety requires, the proposed action may be made temporarily effective prior to the time for hearing.

(b) In cases initiated by AEC to impose requirements by order upon a licensee or holder of a construction permit, the AEC may (in lieu of following the procedures provided in paragraph (a) of this section) issue such order to be effective at a time specified therein. The order will designate also a period of time, not less than 15 days from the date of issuance of the order, within which the licensee or permit holder may file a written request for formal hearing. The timely filing of a request for formal hearing with respect to any order, or any part of an order, issued pursuant to this paragraph shall stay the order, or such part of the order, pending determination of the issues by the Commission.

§ 2.203 *Recapture of material or entry in emergency revocation cases.* In cases found by the Commission to be of extreme importance to the common defense and security or to the health and safety of the public, the Commission may without prior notice or hearing recapture any special nuclear material held by the licensee or enter upon and operate the licensed facility, provided that as promptly as possible and not later than 10 days from the recapture or entry, AEC will serve upon the licensee or permit holder an appropriate order to show cause why the license or construction permit should not be revoked and notice of formal hearing, or will initiate steps to restore the material or facility of which the licensee or permit holder has been deprived.

SUBPART G—RULES OF GENERAL APPLICABILITY

COMMON PROVISIONS

§ 2.700 *Filing of papers; when complete.* Unless otherwise specified, papers required to be filed with AEC shall be filed with the Atomic Energy Commission, 1901 Constitution Avenue, NW., Washington 25, D. C. Papers required to be filed with AEC shall be deemed filed upon actual receipt by AEC at the place specified accompanied by proof of service upon parties required to be served. Upon actual receipt the filing, when by mail or telegraph, shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraph (d) of § 2.703.

§ 2.701 *Computation of time.* In computing any period of time prescribed or allowed by any applicable statute, rule, notice, or order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

§ 2.702 *Extension of time.* Unless discretion is denied by statute, extensions of time for filing or performing any act required or allowed to be done, and continuances of any proceeding or hearing, may be granted in the discretion of AEC upon application and good cause shown by any party, or upon the initiative of AEC or stipulation of all the parties. Where a presiding officer has been designated for hearing, the discretion in granting extensions of time and continuances in matters relating to the hearing shall rest with the presiding officer.

§ 2.703 *Service of papers, methods, proof.* (a) Except for subpenas, service of which is governed by § 2.744, AEC will serve all orders, notices, and other papers issued by it when service thereof is required, together with any other papers which it is required by law to serve. Every other paper requiring service, such as answers, petitions, motions, briefs, exceptions, and notices, shall be served by the party filing it upon all parties entitled to service thereof; and proof of service shall accompany the paper when it is tendered for filing. Where there are numerous parties to a proceeding the Commission may, upon motion or its own initiative, make special provision regarding the service of papers.

(b) Service shall be made upon the parties or their designated representatives.

(c) Service of papers may be made by personal delivery, by first class, certified or registered mail including airmail, by telegraph, or by publication when publication is authorized by statute, rule, or order.

(d) Service upon parties shall be regarded as complete:

(1) By personal delivery, upon handling the paper to the individual, or leaving it at his office with his clerk or other person in charge thereof or, if there is no one in charge, leaving it in a con-

spicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing therein;

(2) By mail, upon deposit in the United States mail properly stamped and addressed;

(3) By telegraph, when deposited with a telegraph company properly addressed and with charges prepaid;

(4) By publication, when due notice shall have been given in the publication for the time and in the manner provided by statute, rule, or order.

Service by mail or telegraph shall be made at the principal place of business of the individual or party to be served or at his usual residence.

(e) Proof of service of any document may consist of: (1) A certificate describing the service by the person mailing, telegraphing, or making personal service of the paper or causing its publication; or (2) an acknowledgment of service signed by the individual receiving service personally.

§ 2.704 *Representation.* (a) Except as provided in paragraph (b) of this section, any person appearing before AEC may do so in person or by a representative. Any person transacting business with AEC in a representative capacity may be required to show his authority to act in that capacity.

(b) In a formal hearing, a person may appear in person or be represented by an attorney at law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any state, territory or possession of the United States. Presiding officers may permit qualified individuals having scientific training or experience to participate on behalf of a party in the presentation of evidence.

§ 2.705 *Intervention.* (a) Any person whose interest may be affected by a proceeding may file a petition to intervene, describing his interest, how it may be affected by AEC action, and the position he is taking in the matter. Service of copies of the petition shall be made upon all parties to the proceeding. The licensee or applicant upon prompt notice and motion, and other parties by leave, may contest the right of the petitioner to intervene.

(b) As soon as is practicable after filing of a petition and the hearing of argument, if any, the Commission will issue and serve an order either permitting or denying intervention. If the order is a denial of intervention, it shall contain a statement of the grounds. If a petition is filed after a notice of hearing has been issued, the designated presiding officer will act upon the petition. An order permitting intervention may be conditioned upon such terms as the Commission or presiding officer may direct.

§ 2.706 *Effect of intervention or denial thereof.* (a) A person permitted to intervene becomes a party to the proceeding.

(b) Where a notice of hearing has been issued or a hearing has begun, the admission thereafter of an intervener shall not of itself enlarge or alter the issues without amendment as provided in § 2.741.

(c) An order denying intervention will be without prejudice to any proposed limited appearance by the petitioner as one who is not a party for the purposes provided in § 2.731.

§ 2.707 *Consolidation.* Upon motion and good cause shown or upon its own initiative, the Commission may contemporaneously consider or consolidate for hearing or for other purposes two or more proceedings if it finds that such action will be conducive to the proper dispatch of its business and to the ends of justice.

§ 2.708 *Hearings, formal and informal.* Hearings will be either formal or informal. Formal hearings will be held in cases of adjudication, as that term is used in the Administrative Procedure Act, unless the parties otherwise agree, and in such other cases as may specifically be directed. Informal hearings will normally be held for the purposes of obtaining necessary or useful information, and affording participation by interested persons, in the formulation, amendment, or rescission of rules and regulations.

§ 2.709 *Authority to administer oaths and affirmations.* Any oath or affirmation required by or pursuant to the regulations in this Chapter may be administered by any person authorized to administer oaths for general purposes by the laws of the United States, or the laws of any state, territory or possession of the United States, or of the District of Columbia, or the Commonwealth of Puerto Rico, wherein such oath or affirmation is administered, or by any consular officer of the United States. This section shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

INFORMAL HEARINGS

§ 2.720 *Informal hearing procedure.* The procedure to be followed in informal hearings shall be such as will best serve the purpose of the hearing. For example, an informal hearing may consist of the submission of written data, views, or arguments with or without oral argument, or may partake of the nature of a conference, or may assume some of the aspects of a formal hearing in which the subpena of witnesses and the production of evidence may be permitted or directed.

FORMAL HEARINGS

§ 2.730 *Parties.* The parties to a formal hearing shall be AEC, the licensee or applicant as the case may be, and any person permitted to intervene pursuant to § 2.705.

§ 2.731 *Limited appearances by persons not parties.* With the consent of the presiding officer, limited appearances may be entered without request for or grant of permission to intervene by persons who are not parties to a hearing. With the consent of the presiding officer, and on due notice to the parties, such persons may make oral or written statements of their position on the issues involved in the proceeding, but may not otherwise participate in the hearing.

§ 2.732 *Designation of presiding officer, disqualification, unavailability.* (a) There will be designated to preside at hearings one or more members of the Commission, or an officer or board to whom has been delegated final authority in the matter with which the hearing is concerned, or a hearing examiner appointed pursuant to section 11 of the Administrative Procedure Act. To the extent practicable, the name of the presiding officer designated will be included in the notice of hearing or, if omitted from the notice, made known to the parties or public as soon as is possible thereafter, prior to the holding of the hearing.

(b) Whenever a presiding officer deems himself disqualified he shall notify the Commission and withdraw from the hearing. Any party shall have 7 days, but not beyond expiration of the hearing unless further extended for good cause shown, after notice or knowledge of the designation of the presiding officer in which to file a request that the presiding officer withdraw on the ground of personal bias or other disqualification. The request shall be accompanied by an affidavit setting forth the facts alleged to constitute the ground for disqualification. The presiding officer may file a response thereto. If the presiding officer believes himself not disqualified, he may so rule and proceed with the hearing; and in such case, the Commission will determine the matter only as a part of the decision in the case where exceptions are filed to the presiding officer's intermediate decision. The presiding officer may, in his discretion, certify the question to the Commission for consideration and disposition, and suspend the hearing until the Commission has ruled on the question.

(c) Whenever a presiding officer becomes unavailable in the course of a hearing another presiding officer will be designated. If the presiding officer becomes unavailable after the taking of evidence at a hearing has been concluded, in lieu of designating another presiding officer the Commission may direct that the record be forwarded to it for decision.

§ 2.733 *Powers of presiding officers.* From the date of his designation in a case until transfer of the case to the Commission, or expiration of the time for filing exceptions to his intermediate decision, a presiding officer shall have authority in the case to:

(a) Administer oaths and affirmations;

(b) Examine witnesses;

(c) Rule upon offers of proof and receive evidence;

(d) Issue subpenas authorized by law;

(e) Take or cause depositions to be taken;

(f) Regulate the course of the hearing;

(g) Hold appropriate conferences before or during the hearing;

(h) Dispose of procedural requests or similar matters;

(i) Within his discretion or upon direction of the Commission, certify questions to the Commission for its consideration and disposition;

(j) Make the intermediate decision in conformity with § 2.751;

(k) Take any other action consistent with the rules of the Commission, the Administrative Procedure Act, and the Atomic Energy Act of 1954.

§ 2.734 *Separation of functions.* (a) Hearing examiners appointed pursuant to section 11 of the Administrative Procedure Act shall perform no duties inconsistent with their duties and responsibilities as presiding officers, and shall not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of investigative or prosecuting functions for AEC.

(b) In any case of adjudication other than initial licensing,

(1) The presiding officer, unless he is a member of the Commission or officer having final authority in the case, may not consult any person or party on any fact in issue except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters as authorized by law;

(2) No officer or employee of AEC, other than a member of the Commission or officer having final authority in the case, who has engaged in the performance of any investigative or prosecuting function in the case or a factually related case may participate or advise in the intermediate or final decision, except as witness or counsel in the formal hearing.

§ 2.735 *Notice of hearing.* (a) Whenever a hearing is granted, AEC will give timely notice of the hearing to all parties and to other persons, if any, entitled to notice. Such notice will state the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; the matters of fact and law asserted or to be considered, which will be identified as the "Specification of Issues"; and a request for an answer. The time and place for hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives.

(b) The notice of hearing may be a separate notice or when appropriate may be embodied in an order to show cause or other order.

(c) The procedure for issuance of the notice of hearing and specifying of the issues by AEC shall not affect the burden of proof.

§ 2.736 *Answer.* (a) Within the time allowed by the notice of hearing for filing and serving an answer, and as required, the answer of a licensee or applicant shall fully advise AEC and any other parties as to the nature of the defense or other position of the answering party, the items of the specification of issues he proposes to controvert and those he does not controvert, and whether or not he proposes to appear and present evidence. If facts are alleged in the specification of issues the answer shall admit or deny specifically each allegation of fact; or where knowledge is lacking, the answer may so state and the statement shall operate as a denial. Allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be controverted. The answer of an intervener shall fully advise AEC and other parties of his position and whether or not he proposes to appear and present evidence.

(b) If a party does not oppose any order or proposed action of AEC embodied in or accompanying the notice of hearing or does not wish to appear and give evidence at the hearing, the answer shall so state. In lieu of appearing, the party may if he chooses submit a statement of reasons why the proposed order or sanction should not be issued or should be different than proposed, and the Commission will attribute such weight as it deems deserving to the written reasons.

§ 2.737 *Reply.* In appropriate cases AEC may file and serve a reply to the answer or, if the answer affects other parties to the proceeding, may permit such parties to file and serve a reply.

§ 2.738 *Default.* Failure of a party to file and serve an answer within the time provided in the notice of hearing or as prescribed in this part or to appear at a hearing, shall be deemed to authorize the Commission, in its discretion, as to such party (a) to find the facts alleged in the specification of issues to be true and to enter such finding or order as may be appropriate, without further notice or hearing; or (b) to proceed to take proof, without further notice, on the allegations or issues set forth in the specification of issues.

§ 2.739 *Admissions.* After answer has been filed, any party may file and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in or attached to the request or for the admission of the truth of any relevant matters of fact stated in the request. Each matter for which an admission is requested shall be deemed admitted unless within the time designated in the request, but not less than 10 days after service thereof or such further time as the presiding officer may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying the matters upon which the admission is requested or setting up the reasons why he cannot truthfully admit or deny such matters.

§ 2.740 *Prehearing conferences.* (a) In order to provide opportunity for the settlement of a proceeding or any of the issues therein, or for agreement upon procedural and other matters, there may be held at any time prior to or during a hearing, upon due notice of the time and place given to all parties, such conferences of the parties as, in the discretion of the presiding officer, time, the nature of the proceeding, and the public interest may permit.

(b) Action taken at a prehearing conference may be recorded for appropriate use at the hearing in the form of a written stipulation among the parties reciting the matters upon which there has been agreement. The stipulation shall be binding upon the parties thereto.

§ 2.741 *Amendments.* At any time prior to the time fixed for hearing but not later than five days prior, the party responsible for the specification of issues, answer, or reply, respectively, may amend the same by filing an amendment and serving it upon the parties. At any time thereafter, amendments may be permitted in the discretion of the presiding officer upon such terms as he shall prescribe.

§ 2.742 *Hearings public.* Except as may be required pursuant to section 181 of the act, hearings shall be public.

NOTE: Provisions with respect to parallel procedures pursuant to section 181 of the Act will be published at an early date.

§ 2.743 *Official reporter, transcript.* Hearings shall be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter, who may be designated from time to time by AEC or may be a regular employee of AEC. The transcript of the report shall be a part of the record and the sole official transcript of the proceeding. Except as limited pursuant to section 181 of the act or order of the Commission, the transcript will be open for inspection at AEC offices and copies may be obtained from the official reporter upon payment of the charges fixed therefor. Errors in the transcript may be corrected by order of the presiding officer following a notice of motion to correct filed and served on the affected parties within 10 days after notice that the completed transcript has been received by AEC, or as otherwise agreed upon by the parties and approved by the presiding officer.

§ 2.744 *Subpenas.* (a) Upon application by any party to a hearing, the designated presiding officer or, if he is not available, a member of the Commission or other designated officer will issue to such party subpenas requiring the attendance and testimony of witnesses or the production of evidence in the hearing. In his discretion, the officer to whom application is made may require from the requesting party a showing of general relevance of the testimony or evidence sought and may withhold issuance of the subpena if such showing is not made; but such officer shall not attempt to determine the admissibility of evidence in passing upon an application for subpena.

(b) Every subpena shall bear the name of the Commission, the name and office of the issuing officer, and the title of the hearing, and shall command the person to whom it is directed to attend and give testimony or produce specified data at a designated time and place. The subpena shall also contain a statement advising of the existence of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpena is acknowledged on its face by the witness, it shall be served by a person who is not a party to the hearing and is not less than 18 years of age, but may in any case be served by an officer or employee of AEC. Service of a subpena upon a person named therein shall be made by delivering a copy of the subpena to such person and by tendering him the fees for one day's attendance and the mileage allowed by law. When the subpena is issued on behalf of AEC, fees and mileage may but need not be tendered, and the subpena may be served by registered mail.

(d) Witnesses summoned before AEC shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the district courts of the United States.

(e) The person serving the subpena shall make proof of service by filing the subpena and the required return, affidavit, or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with AEC. Failure to make proof of service shall not affect the validity of the service.

(f) Upon motion made promptly, and in any event at or before the time specified in the subpena for compliance, by the person to whom the subpena is directed, and upon notice to the party to whom the subpena was issued, the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable terms.

(g) Upon application and for good cause shown, AEC will seek judicial enforcement of a subpena issued to a party and which has not been quashed.

§ 2.745 *Depositions.* (a) Upon application and good cause shown, the designated presiding officer or, if he is unavailable, the Commission may order that the testimony of any person, including a party, be taken by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The attendance of witnesses may be compelled by the use of a subpena.

(b) The application shall be in writing and shall be served upon the parties and filed, giving reasonable notice of the proposed time and place for taking the deposition, the name and address of each person to be examined, if known, or if the name is not known a general description sufficient to identify him or the class or group to which he belongs, and the reasons why such deposition should be taken. If good cause is shown, an order will be issued authorizing the deposition, and specifying the time, place, and manner of taking of the deposition, any limitations imposed for the benefit of witnesses or parties, and the number of copies of the deposition to be supplied. The order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Within the United States, depositions shall be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside the United States, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul, or consular agent of the United States, or a person authorized to administer oaths designated by AEC or agreed upon by the parties by stipulation in writing filed with AEC.

(d) Unless the order provides otherwise, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the hearing. He shall be sworn or shall affirm before any questions are put to him. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. However, the officer shall not decide on the competency, materiality, or relevancy of evidence but shall record the evidence subject to objection. Objections to questions or evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signed by him, unless he is ill or cannot be found or refuses to sign. The officer shall certify to the deposition, and if not signed by the deponent shall certify to the reasons therefor, and shall promptly forward the deposition by registered mail to AEC., The party taking the deposition shall give prompt notice of its filing to all other parties.

(f) Where the deposition is to be taken upon written interrogatories, the party proposing the deposition shall serve upon each of the parties and file a copy of the proposed interrogation showing each interrogatory separately and consecutively numbered, the name and address of the person who is to answer them, and the name, descriptive title, and address of the officer before whom they are to be taken. Within 7 days after service any party may serve cross-interrogatories upon the party proposing to take the deposition. Objections to interrogatories or cross-interrogatories shall be made promptly after service and will be settled by the presiding officer or the Commission, as the case may be; provided that objections to form, unless made before the order for taking the deposition is issued, shall be deemed waived. Except as the parties otherwise agree, the deposition upon written interrogatories shall be taken only with the deponent, the officer, and the reporter or stenographer present during the interrogation, to which fact the officer shall certify. The interrogatories, cross - interrogatories, and the answers shall be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition upon oral examination.

(g) A deposition will not become a part of the record in the hearing until and unless received in evidence by the presiding officer, upon his own motion or the motion of any party. If only part of a deposition is offered in evidence by a party, any other party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(h) Deponents whose depositions are taken and the officers taking depositions shall be entitled to the same fees as are paid for like services in the district courts of the United States to be paid by the party at whose instance the depositions are taken.

§ 2.746 *Order of procedure.* The presiding officer or the Commission, as the case may be, will designate the order of procedure at hearings including the order in which interveners will be heard. Normally, at hearings for the grant, amendment or transfer of a license or construction permit or the renewal of a license, the applicant will open and close; and at hearings for the revocation, suspension, or AEC initiated modification of a license or construction permit, AEC will open and close.

§ 2.747 *Evidence.* (a) Every party to the hearing shall have the right to present such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. The parties shall be encouraged to present evidence in written form.

(b) The presiding officer shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(c) Objections to the admission or exclusion of evidence shall state the grounds of objections. The transcript shall include the objections, the grounds, and the rulings, but not the argument of the grounds unless ordered by the presiding officer.

(d) Any offer of proof made in connection with an objection taken to the ruling of the presiding officer, excluding or rejecting proffered oral testimony, shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony. If the excluded material is documentary or written, a copy of such material shall be marked for identification and shall constitute the offer of proof.

(e) Unless the presiding officer permits otherwise, written exhibits will not be received in evidence unless offered in duplicate. In addition, a copy of each such exhibit must be furnished each of the parties at the hearing, unless the parties have previously been furnished with copies or the presiding officer directs otherwise. The presiding officer shall fix a time for the exchange of exhibits. The presiding officer may permit a party to replace with a true copy an original document admitted as evidence.

(f) An official record of a governmental agency or an entry in such record, when admissible, may be evidenced

by an official publication thereof or by a copy attested as a true copy by the officer having legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody.

§ 2.748 *Interlocutory appeals to the Commission from rulings of presiding officers.* Except as may be otherwise specifically provided, the rulings of a presiding officer may not be appealed from during the time the proceeding is pending before him, except in extraordinary circumstances where in the judgment of the presiding officer prompt decision by the Commission is necessary to prevent detriment to the public interest or unusual delay or expense. In such instances the matter shall be referred for determination forthwith by the presiding officer to the Commission.

§ 2.749 *Proposed findings and conclusions.* At the close of the reception of evidence, or within a reasonable time thereafter as fixed by the presiding officer, the parties may file for consideration proposed findings and conclusions with supporting reasons, briefs, or memoranda of law. Such proposals shall contain exact references to the record and authorities relied on.

§ 2.750 *Official notice.* (a) With or without prior request or notice, the presiding officer or the Commission, as the case may be, may take official notice of any fact which might be judicially noticed by the courts of the United States or of any technical and scientific fact within the knowledge of AEC as an expert body.

(b) Any party may controvert a request or a suggestion that official notice be taken of a fact at the time the request or suggestion is made, if it be made orally, or by a pleading, brief, or notice. If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exception if an intermediate decision is involved or by a petition for reconsideration if a final decision is involved. The controversion shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

§ 2.751 *Intermediate decisions and their effect.* (a) After hearing, the presiding officer will ordinarily render an intermediate decision, which decision shall become final unless exceptions are taken in accordance with § 2.752 or the Commission has directed that the record be certified to it for final decision.

(b) However, in any case involving an application for an initial license the Commission may direct that the presiding officer certify the record to it without an intermediate decision. In such case the Commission may:

(1) Direct a responsible officer to prepare an intermediate decision which will not become final until the Commission acts upon it; or

(2) Prepare its own intermediate decision, which shall become final unless exceptions are taken in accordance with § 2.752; or

(3) Omit an intermediate decision upon a finding on the record that due and timely execution of the Commission's functions imperatively and unavoidably so requires.

(c) Each intermediate decision shall be in writing and shall contain:

(1) Findings and conclusions, with the reasons or basis therefor upon all material issues of fact, law, or discretion presented on the record;

(2) The ruling upon each proposed finding or conclusion filed by a party;

(3) All facts officially noticed pursuant to § 2.750, relied upon in the decision;

(4) The appropriate rule, order, sanction, relief, or denial thereof, with the effective date;

(5) The time within which exceptions to the decision may be filed, the time in which briefs in support of or in opposition to the exceptions may be filed and, in the case of an intermediate decision which may become final unless exceptions are filed, the date when such decision will become final in the absence of exceptions thereto.

(d) The intermediate decision, other than an oral decision, shall be served upon all parties to the proceeding. In the case of an oral decision, the presiding officer shall apprise the parties before its pronouncement of his intention, and the time when he proposes, to render an oral decision.

(e) Intermediate decisions shall become a part of the record.

§ 2.752 *Exceptions to intermediate decisions.* Within 20 days after service of any intermediate decision, or such longer period as may be fixed therein, any party to a hearing may file exceptions to the decision with the Commission, and shall serve copies of such exceptions on all other parties to the hearing. Each exception shall be separately numbered, shall identify the part of the intermediate decision to which objection is made, shall designate by specific reference the portions of the record relied upon in support of the objections, and shall state the grounds for the exception including the citation of authorities in support thereof. Any objection to a ruling, finding, or conclusion which is not made part of the exceptions shall be deemed to have been waived, and the Commission need not consider such objections.

§ 2.753 *Briefs and oral arguments before the Commission.* (a) Within such period after service of an intermediate decision as may be fixed therein, any party to a proceeding may file a brief before the Commission in support of his exceptions to the decision or in opposition to the exceptions filed by any other party.

(b) In its discretion the Commission may allow oral argument upon the request of a party made in his exceptions or brief, or upon its own initiative.

§ 2.754 *Final decision.* (a) Upon submission of a case to the Commission for final decision, the Commission will normally consider the whole record. But when reviewing an intermediate decision, the Commission may limit the issues to be reviewed, and give consideration only to those findings and conclusions to which exceptions have been filed.

(b) The final decision shall be in writing and shall contain:

(1) A statement of findings and conclusions, with the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented;

(2) All facts officially noticed pursuant to § 2.750, relied upon in this decision;

(3) The ruling on each relevant and material exception filed;

(4) The appropriate rule, order, sanction, relief, or denial thereof, with the effective date.

(c) The decision shall be served upon all parties to the proceeding.

§ 2.755 *Waiver of procedures or intermediate decisions.* The parties to any hearing may agree to waive any one or more of the procedural steps or intermediate decisions which would otherwise precede the reaching of a final decision by the Commission.

§ 2.756 *Petition for reconsideration.* A petition for reconsideration of a final decision after hearing may be filed by any party to the hearing, within 10 days after the decision has been issued and served. However, no petition may be filed with respect to an intermediate decision which has become final through failure to file exceptions thereto. The petition for reconsideration shall state specifically wherein the matter determined is claimed to be erroneous, the grounds relied upon, and the relief sought. Within 7 days after a petition for reconsideration has been filed, any party to the hearing may file an answer in opposition to or support of the petition. Neither the filing nor the granting of the petition shall operate as a stay of the decision unless so ordered by the Commission.

PUBLIC RULE MAKING

§ 2.780 *Scope of rule making.* The procedure described in this subpart as rule making or public rule making relates to the issuance, amendment, or rescission of substantive rules in which participation by interested persons is prescribed under section 4 of the Administrative Procedure Act.

§ 2.781 *Initiation, petition.* Rule making will be initiated by AEC, upon its own motion, upon the recommendation of another agency of the government, or upon the petition of any other interested person as hereinafter provided.

§ 2.782 *Petition for rule making.* Any interested person may petition the Commission to issue, amend, or rescind any rule or regulation of the Commission within the score of § 2.780. The petition shall state the substance or text of any proposed rule or regulation, or amendment thereof, or shall specify the rule or regulation the rescission of which is desired, and shall state the basis for the request. The petition will be given a docket or other identifying number and will become a matter of public record, except as may otherwise be required pursuant to section 181 of the act or order of the Commission.

§ 2.783 *Determination of petition.* No hearing will be held directly on the petition unless the Commission deems it advisable. If the Commission determines that the petition discloses sufficient reasons to justify the relief requested, the Commission will issue an appropriate notice of proposed rule making. If the Commission determines that the petition does not disclose sufficient reasons to justify instituting the public rule making procedure, the Commission will so notify the petitioner with a simple statement of the grounds.

§ 2.784 *Notice of proposed rule making.* A general notice of proposed rule making will be published in the FEDERAL REGISTER unless all persons subject to the proposed rule making are named and either personally served with notice or otherwise have actual notice in accordance with law. The notice, whether published or personally served, shall include: (a) A statement of the time, place, and nature of the public rule making hearing; (b) reference to the authority under which the rule is proposed; (c) either the terms or substance of the proposed rule or a description of the subjects and issues involved. The publication or service of notice shall be made not less than 15 days prior to the time fixed for the hearing, provided that a lesser time may be prescribed upon good cause found and incorporated, with a brief statement of the reasons, in the notice.

§ 2.785 *Participation by interested persons.* After notice required by § 2.784, the Commission will afford interested persons an opportunity to participate in the rule making through the submission of data, views, or arguments in such informal hearing, pursuant to § 2.720, as the notice provides. The opportunity to participate may include an opportunity to comment upon or respond to the data, views, or arguments submitted by others. Where additional time may be needed for this purpose the Commission may, upon the request of an interested person, grant an additional reasonable period of time for the submission of data, views, or arguments in reply.

§ 2.786 *Commission action.* After consideration of all relevant matters presented, the Commission will incorporate in any rule adopted a concise general statement of its basis and purpose and will cause the rule to be published in the FEDERAL REGISTER or served upon the affected parties.

§ 2.787 *Effective dates.* The rule will specify its effective date. Publication or service of the rule, other than one granting or recognizing exemption or relieving restriction, shall be made not less than 30 days prior to the effective date thereof unless the Commission may provide otherwise upon good cause found and published with the rule.

AVAILABILITY OF OFFICIAL RECORDS

§ 2.790 *Public inspection, exceptions, requests for withholding.* (a) Except as provided in paragraph (b) of this section or as required to protect Restricted Data or defense information, matters of official record in any proceeding subject to this part (including applications for licenses, licenses, rules, regulations, orders, transcripts of hearings, exhibits received in evidence, and decisions) will be made available for public inspection.

(b) The AEC may withhold any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. Such withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document.

(c) Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. Where the applicant is responsible for the preparation of the document, he shall insofar as is possible segregate in a separate paper the information for which the special treatment is requested. The AEC may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the person concerned. If the request is denied, the applicant will be notified thereof with a statement of the reasons.

Dated at Washington, D. C., this 31st day of January 1956.

K. E. FIELDS,
General Manager.

[F. R. Doc. 56-908; Filed, Feb. 3, 1956; 8:48 a. m.]

PART 25—ACCESS TO RESTRICTED DATA

In view of the fact that the Atomic Energy Commission has received a substantial number of applications and has issued a substantial number of access permits in accordance with procedures set forth in the notice of proposed rule making published in the FEDERAL REGISTER on May 19, 1955 (20 F. R. 3634), and because interested persons will not be adversely affected, the Commission has found that good cause exists why the regulations in this part should be made effective without the customary 30-day period of notice.

Pursuant to the Administrative Procedure Act, Public Law 404, 79th Cong., 2d sess., the following rules are published as a document subject to codification, to be effective upon publication in the FEDERAL REGISTER.

GENERAL PROVISIONS

APPLICATIONS

PERMITS

AUTHORITY: §§ 25.1 to 25.31 issued under sec. 161, 68 Stat. 948; 42 U. S. C. 2201.

GENERAL PROVISIONS

§ 25.1 *Purpose.* The regulations in this part establish procedures and criteria for permitting persons to have access to Confidential or Secret Restricted Data relating to civilian uses of atomic energy.

§ 25.2 *Applicability.* The regulations in this part apply to any person within or under the jurisdiction of the United States who desires access to Restricted Data for use in his business, profession or trade.

§ 25.3 *Definitions.* As used in this part:

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(b) "Category" means a category of Restricted Data designated in Appendix A to the regulations in this part.

(c) "Commission" means the Atomic Energy Commission or its duly authorized representatives.

(d) "Permittee" means the holder of a permit issued pursuant to the regulations in this part.

(e) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any state or any political subdivision of, or any political entity within a state, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(f) "Restricted Data" means all data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the act.

§ 25.4 *Interpretations.* Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 25.5 *Communications.* All communications concerning the regulations in this part, and applications filed under them, should be addressed to the Atomic Energy Commission, 1901 Constitution

Avenue NW., Washington 25, D. C., Attention: Division of Civilian Application.

§ 25.6 *Categories of available information.* For administrative purposes the Commission has categorized Restricted Data which will be made available to permittees into a number of major categories as set forth in Appendix A to this part. Information pertaining to the design, manufacture or utilization of atomic weapons is not included in these categories and will not be made available under this part.

APPLICATIONS

§ 25.11 *Applications.* (a) Any person desiring access to Confidential or Secret Restricted Data pursuant to these regulations should submit an application (Form AEC 378) for an access permit to the Atomic Energy Commission, 1901 Constitution Avenue NW., Washington 25, D. C., Attention: Division of Civilian Application.

NOTE: Where an individual desires access to Restricted Data for use in the performance of his duties as an employee, the application for an access permit should be filed by his employer.

(b) Each application should contain the following information:

(1) Name of applicant;

(2) Address of applicant;

(3) Description of business or occupation of applicant;

(4) (i) If applicant is an individual, state citizenship.

(ii) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.

(iii) If applicant is a corporation or an unincorporated association, state:

(*a*) The state where it is incorporated or organized and the principal location where it does business;

(*b*) The names, addresses and citizenship of its directors and of its principal officers;

(*c*) Whether it is owned, controlled or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

(iv) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this subparagraph with respect to such principal;

(5) Total number of full-time employees;

(6) Classification of Restricted Data (Confidential or Secret) to which access is requested;

(7) Potential use of the Restricted Data in the applicant's business, profession or trade. If access to Secret Restricted Data is requested, list the specific categories by number and furnish detailed reasons why such access within the specified categories is needed by the applicant. The need for Secret information should be stated by describing its proposed use in specific research, design, planning, construction, manufacturing, or operating projects; in activities under licenses issued by the Commission; in studies or evaluations planned or underway; or in work or services to be performed for other organizations.

(8) Principal location(s) at which Restricted Data will be used.

(c) Each application shall contain complete and accurate disclosure with respect to the real party or parties in interest and as to all other matters and things required to be disclosed.

§ 25.12 *Non-eligibility.* The following persons are not eligible to apply for an access permit:

(a) Corporations not organized under the laws of the United States or a political subdivision thereof.

(b) Any individual who is not a citizen of the United States.

(c) Any partnership not including among the partners one or more citizens of the United States; or any other unincorporated association not including one or more citizens of the United States among its principal officers.

(d) Any organization which is owned, controlled or dominated by the Government of, a citizen of, or an organization organized under the laws or a country or area listed as a Subgroup A country or destination in § 371.3 (15 CFR 371.3) of the Comprehensive Export Schedule of the United States Department of Commerce.

§ 25.13 *Additional information.* The Commission may, at any time after the filing of the original application and before the termination of the permit, require additional information in order to enable the Commission to determine whether the permit should be granted or denied or whether it should be modified or revoked.

§ 25.14 *Public inspection of applications.* Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with the regulations contained in Part 2 of this chapter.

§ 25.15 *Requirements for approval of applications.* (a) An application for access to Confidential Restricted Data in all the categories set forth in Appendix A, will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his business, trade or profession.

(b) An application for access to Secret Restricted Data in any of the categories will be approved only if the application demonstrates that the applicant has a need for such data in his business, trade or profession. Such need must be demonstrated as to each of the categories to which such access is requested.

PERMITS

§ 25.21 *Issuance.* (a) Upon a determination that an application meets the requirements of this regulation, the Commission will issue to the applicant an access permit on Form AEC 379.

NOTE: An Access Permit is not a security clearance. It does not authorize any individual not having an appropriate AEC security clearance to receive Restricted Data. See § 25.24 and Part 95 of this chapter.

§ 25.22 *Scope of permit.* (a) All access permits will as a minimum, authorize access, subject to personnel security clearances, to Confidential Restricted Data in all of the categories set forth in Appendix A.

(b) In addition, access permits may authorize access, subject to personnel security clearances, to such Secret Restricted Data as is included within the particular category or categories specified in the permit.

§ 25.23 *Terms and conditions of access.* (a) Neither the United States, nor the Commission, nor any person acting on behalf of the Commission makes any warranty or other representation, express or implied, (1) with respect to the accuracy, completeness or usefulness of any information made available pursuant to an access permit, or (2) that the use of any such information may not infringe privately owned rights.

(b) The Commission hereby waives such rights with respect to any invention or discovery as it may have pursuant to section 152 of the act by reason of such invention or discovery having been made or conceived in the course of, in connection with, or resulting from access to Restricted Data received under the terms of an access permit.

(c) Each permittee shall:

(1) Comply with all applicable provisions of the Atomic Energy Act of 1954 and with Part 95 of this chapter and with all other applicable rules, regulations and orders of the Commission;

(2) Be deemed to have waived all claims for damages under section 183 of title 35 U. S. Code by reason of the imposition of any secrecy order on any patent application, and all claims for just compensation under section 173 of the Atomic Energy Act of 1954, with respect to any invention or discovery made or conceived in the course of, in connection with, or under the terms of the access permit;

(3) Be deemed to have waived any and all claims against the United States, the Commission and all persons acting on behalf of the Commission that might arise in connection with the use, by the applicant, of any and all information supplied by them pursuant to the access permit;

(4) Shall obtain and preserve in his files written agreements from all individuals who will have access to Restricted Data under the access permit to give effect to subparagraphs (2) and (3) of this paragraph.

§ 25.24 *Administration.* With respect to each permit issued pursuant to the regulations in this part, the Commission will designate an office, usually an Operations Office, to:

(a) Process all personnel security clearances requested in connection with the permit;

(b) Review the procedures submitted by the Applicant, in accordance with Part 95 of this chapter, for the safeguarding of Restricted Data; and

(c) Provide information to the permittee with respect to the sources and locations of Restricted Data available under his permit.

§ 25.25 *Term and renewal.* (a) Each access permit will be issued for a two year term, unless otherwise stated in the permit.

(b) Applications for renewal of an access permit shall be on Application Form AEC 378. In any case in which a permittee has filed a properly completed application for renewal more than thirty (30) days prior to the expiration of his existing permit, such existing permit shall not expire until the application for a renewal has been finally acted upon by the Commission.

§ 25.26 *Assignment.* An access permit is non-transferable and non-assignable.

§ 25.27 *Amendment.* An access permit may be amended from time to time upon application by the permittee. An application for amendment shall be filed in accordance with § 25.11 and shall specify the nature of and the grounds for the amendment requested.

§ 25.28 *Commission action on application to renew or amend.* In considering an application by a permittee to renew or amend his permit, the Commission will apply the criteria set forth in § 25.15.

§ 25.29 *Modification and revocation of permits.* The Commission may revoke, suspend or modify any access permit for any material false statement in the application or in any report submitted to the Commission pursuant to the regulations in this part or because of conditions or facts which would have warranted a refusal to grant the permit in the first instance, or for violation of any of the terms and conditions of the Atomic Energy Act of 1954 or Commission rules, regulations or orders issued pursuant thereto.

§ 25.30 *Exceptions and additional requirements.* Notwithstanding any other provision in the regulations in this part, the Commission may deny an application for an access permit or suspend, modify or revoke any access permit, or incorporate additional conditions or requirements in any access permit, upon finding that such denial, revocation or the incorporation of such conditions and limitations is necessary or appropriate in the interest of the common defense and security.

§ 25.31 *Effective date; amendment of permits previously issued.* (a) The regulations in this part are effective upon publication in the FEDERAL REGISTER.

(b) Each access permit heretofore issued by the Commission shall be deemed to have been amended, effective upon publication of this part in the FEDERAL REGISTER, by deleting those provisions of the permit, and of the application therefor, which grant to the Commission for governmental purposes a license in, and which require the permit holder to report to the Commission, any invention or discovery resulting from access to Secret Restricted Data under the access permit.

NOTE: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

APPENDIX A

CATEGORIES OF RESTRICTED DATA AVAILABLE (INCLUDING SCOPE NOTES FOR EACH CATEGORY)

C–4 *Chemistry; general.* This category includes such information as the relatively unspecialized and fundamental chemistry of elements and their compounds through element 92. It includes such information as the following:

1. Chemical properties, reactions, and corrosion studies.
2. Laboratory scale preparations and purification.
3. Physical chemistry including chemical thermodynamics, chemical kinetics, and crystal structure.
4. Analytical methods, including mass spectroscopy.
5. General chemical engineering theory, design, construction, and/or testing of laboratories and equipment of interest to chemists and chemical engineers.

See also categories C–7, C–10, C–16, C–55 for specialized applications.

C–7 *Chemistry; radiation and radiochemistry.* This category includes information on:

1. The chemical effects of radiation on matter.
2. The production of radioisotopes.
3. The chemical isolation and purification of radioisotopes and their compounds.
4. The chemistry of radioactive substances, including fission products.
5. The preparation of labeled compounds.
6. Tracer chemistry.
7. Effect of radiation on chemical reactions. See also categories C–4, C–10, and C–16.

C–10 *Chemistry; separation processes for plutonium and uranium.* This category includes information on:

1. The chemistry and chemical engineering of processes for the separation, decontamination, and processing of plutonium and uranium from materials or solutions containing real or simulated fission products.
2. The separation of U–233 from irradiated thorium, including the decontamination and purification of the U–233 and irradiated thorium.
3. Development work, chemical engineering problems, and pilot plant runs pertaining to the program of recovery of uranium from Hanford and Oak Ridge National Laboratory process solutions remaining after plutonium removal.

See also categories C–25, C–47, C–55, C–68 and C–78.

C–16 *Chemistry; transuranic elements.* This category includes information on:

The chemistry of the transuranic elements and their compounds.

C–20 *Controlled thermonuclear processes.* This category includes information on the theory, design, development, and operation of experiments relating to the controlled release of energy from thermonuclear reactions. Information relating to thermonuclear weapons is specifically excluded.

C–46 *Criticality hazards.* This category includes information on:

1. Critical mass experiments.
2. Safety precautions in conducting critical mass experiments.
3. Safe processing and storage of special nuclear materials.

This category does not include information on reactor hazards or critical experiments in support of reactor design (see categories C–42, C–80, and C–81).

C–41 *Health and safety.* This category includes information on biological and medical studies applicable directly to the health and safety of personnel, including such topics as toxicities, tolerance and maximal allowable concentrations, clinical tests and criteria of injury, industrial diseases, protective measures and safety procedures, personnel decontamination, and therapeutic measures with respect both to radioactive and other toxic agents.

C–22 *Isotope separation.* This category includes information on:

1. Any method (except gaseous diffusion) of separating one or more isotopes of an element from a mixture of isotopes of that element.
2. Design, construction, and operation of the electromagnetic separation process.
3. Production and isolation of stable isotopes.
4. Special methods such as those for the separation of boron and hydrogen isotopes.

See also categories C–28 and C–34.

C–37 *Instrumentation.* This category includes information primarily relating to the design, development, construction, testing, or evaluation of instruments of all types. In general the only classified information in this category is that which describes classified applications.

C–25 *Metallurgy and ceramics.* This category includes information on:

1. Metallurgy, including reduction to metal, of non-fissionable substances, thorium, uranium 233, and all isotopic mixtures of uranium 235 and uranium 238.
2. Ceramics and refractories which do not directly or exclusively pertain to plutonium technology. (See category C–55.)
3. Corrosion studies on uranium metal, alloys, and reactor elements.
4. Design and methods of manufacture, coating, canning, and testing uranium reactor fuel elements, including those for production reactors.
5. Laboratory-scale electrolytic deposition of high-purity uranium.
6. Laboratory-scale pyrometallurgical studies toward separation of uranium and fission products.

See also category C–40.

C–26 *Metallurgy; raw materials.* This category includes information on:

1. Uranium, thorium, zirconium, beryllium ore and mineral beneficiation.
2. Design, development, and equipment relating to raw materials technology.
3. Analytical procedures pertaining to ore beneficiation.
4. Chemical research directed toward the solution of raw materials processing problems.
5. Pilot plant, semi-works, or larger scale process design and flow sheets for beneficiation and concentration.

C–28 *Particle accelerators and high voltage machines.* This category includes information on the design, development, construction, and operation of high-voltage machines and particle accelerators, including Van de Graaff generators, linear accelerators, cyclotrons, synchrotrons, betatrons, X-ray machines, etc.

C–34 *Physics and mathematics.* This category is intended to cover basic physics and mathematics and includes, but is not limited to, the following:

1. Nuclear characteristics of all elements.
2. General theory of neutron diffusion and fundamental reactor theory.
3. Basic theory of shielding design and construction problems.
4. Mathematical theory and methods.
5. Mechanics, sound, and shock.
6. General heat-transfer and fluid-flow studies.
7. Basic theory of thermal diffusion, gaseous diffusion, and electromagnetic methods of isotope separation.
8. High-voltage break-down in vacuum, insulation in vacuum, etc.
9. Experimental data on ion cross sections for electrons, ions, secondary emisisons, etc.

10. The general phenomena of discharges in magnetic fields.

C–40 *Radiation effects on reactor materials.* This category includes information on the effects of radiation on reactor components, for example: Wigner effect, blisterings, etc., and reports on the effects of radiation on plastics, lubricants, etc.

See also category C–7

C–42 *Reactors; production.* This category includes information on:

1. Theory, design, construction and operation of Hanford and Savannah River production reactors, and any reactor proposed for large-scale production or special nuclear materials.

2. The effects of radiation on graphite and other structural materials which clearly relate to production reactors.

C–80 *Reactors; research and testing.* This category includes information on:

1. Theory, design, construction, and operation of nuclear reactors used primarily as a source of neutrons for the purpose of conducting experimental studies on neutron or other particle interactions with matter, or medical or biological research and application.

2. Fundamental shielding studies.

3. Basic nuclear research with reactors.

4. The production of nonfissionable isotopes.

5. Fundamental studies in breeding.

This category does not include:

1. Power reactors or experimental power reactors. (See category C–81.)

2. Classified defense information on reactors for military purposes.

C–81 *Reactors; power.* This category includes information on:

1. Theory, design, construction, and operation of nuclear reactors (including experimental power reactors) whose primary purpose is the production of power.

2. Economic, fundamental feasibility, development and design aspects of power reactors or experimental power reactor components.

3. Reactor technology and closely related topics pertaining to military reactors which are dissociated from military utilization systems.

This category does not include:

1. Classified defense information on nuclear power plants for military purposes.

2. Information concerning reactors for research or testing purposes.

3. Theory, design, and construction of production reactors.

4. Critical mass experiments or other physics data not related to specific power reactor design.

C–47 *Technology; feed materials.* This category includes information on:

1. Chemical research and development directed toward large-scale production of intermediate and feed materials, e. g., UO_2, UO_3, UF_4, UF_6, ThO_2, ThF_4, etc.

2. Refinery process development work for uranium ores and concentrates.

3. Uranium recovery procedures for scrap materials, residues, and effluents.

4. Quality control procedures pertinent to production of high-purity uranium compounds.

5. Designs, construction, and operational procedures for pilot-plant equipment.

See also category C–25.

C–66, 67, 68 *Technology; Hanford processes.* These categories include information on the design, construction, operation, and technology of present or proposed Hanford processes and reactors which is not included in categories C–25, C–42 and C–10 because it reveals operating levels, rates, and other production data.

C–66 Fuel element technology. (See category C–25.)

C–67 Reactor technology. (See category C–42.)

C–68 Separations process technology. (See category C–10.)

C–55 *Technology; plutonium.* This category includes information not involving weapon data on:

1. Reduction of plutonium compounds to metal.

2. Metallurgy of plutonium and its alloys.

3. Chemistry involved in final purification of plutonium compounds, plutonium metal production, and fabrication.

4. Special analytical techniques required to determine the purity of weapon grade plutonium.

5. Procedures for recovery of plutonium from scrap materials, residues, etc.

See also categories C–10, C–16.

C–76, 77, 78 *Technology; Savannah River processes.* These categories contain information on the design, construction, operation and technology of present or proposed Savannah River processes and reactors which is not included in categories C–25, C–42 and C–10 because it reveals operating levels, rates, and other production data.

C–76 Fuel element technology. (See category C–25.)

C–77 Reactor technology. (See category C–42.)

C–78 Separations process technology. (See category C–10.)

C–56 *Technology; tritium.* The scope note for this category is classified Confidential. It will be sent upon request to properly cleared persons pursuant to access permits.

C–70 *Radioactive waste.* This category includes research and development information on:

1. Chemical and chemical engineering problems incidental to the storage and disposal of waste radioactive materials, both natural and artificial.

2. Decontamination measures for process equipment and other contaminated surfaces.

3. Meteorological and geological information applied to problems of radioactive waste disposal or storage.

4. Air cleaning, control and disposal of radioactive effluents.

Dated at Washington, D. C., this 27th day of January 1956.

R. W. COOK,
Acting General Manager.

[F. R. Doc. 56–910; Filed, Feb. 3, 1956; 8:48 a. m.]

PART 95—SAFEGUARDING OF RESTRICTED DATA

Correction

In F. R. Document 56–787, appearing in the issue for Thursday, February 2, 1956, at page 718, the footnote designator "1" appearing after the word "Data" in the part heading of Part 95, should be deleted and inserted after "Part 25" in the first sentence of the introductory text.

PROPOSED RULE MAKING

FEDERAL HOME LOAN BANK BOARD

[24 CFR Part 109]

[No. 9262]

RULES OF PRACTICE AND PROCEDURE: ADJUDICATIONS UNDER ADMINISTRATIVE PROCEDURE ACT

NOTICE OF PROPOSED RULE MAKING

JANUARY 30, 1956.

Resolved, that, pursuant to Part 108 of the general regulations of the Federal Home Loan Bank Board (24 CFR Part 108) it is hereby proposed that, pursuant to section 17, 47 Stat. 736 (12 U. S. C. 1437) and section 5, 48 Stat. 132 (12 U. S. C. 1464), the general regulations of the Federal Home Loan Bank Board (24 CFR, Ch. I, Subchapter A) be amended by adding a new Part 109 at the end thereof to read as follows:

§ 109.1 *Scope of regulations.* The provisions of this part shall govern hearings to determine whether cause exists, under the provisions of section 6 (i) of the Federal Home Loan Bank Act, as amended (12 U. S. C. 1426 (i)), for the removal of any member of a Federal Home Loan Bank from membership or for depriving any nonmember borrower of the privilege of obtaining advances from a Federal Home Loan Bank; hearings under the provisions of section 5 (d) of the Home Owners' Loan Act of 1933, as amended (12 U. S. C. 1464 (d)), involving alleged violations of law or regulation by a Federal savings and loan association and upon the existence of grounds for the appointment of a conservator or receiver for a Federal savings and loan association; and hearings to determine whether cause exists for the termination of the insured status of any institution insured by the Federal Savings and Loan Insurance Corporation, as provided in section 407 of the National Housing Act, as amended (12 U. S. C. 1730).

§ 109.2 *Service, filing of papers, etc.*— (a) *Proof of service.* All documents or papers required to be served by the Board on any interested party shall be served by the Secretary unless some other person shall be designated for such purpose by the Board. Such service, except on Counsel for the Board, shall be made by personal service or by registered mail addressed to the last known address as shown on the records of the Board, on the attorney or representative of record of any party: *Provided,* That if there is no attorney or representative of record, such service shall be made upon the person or institution involved at the last known address, as shown on the records of the Board. The term Secretary as used in this part shall mean the Secretary and any Assistant Secretary to the Board.

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 20, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the "Entergy's Answer Opposing New York State's Motion to Cross-Examine" 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.
Joseph A. Lindell, 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: Joseph.Lindell@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
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: vshiah@sprlaw.com)

John J. Sipos, Esq.
Charlie Donaldson Esq.
Assistant Attorneys General
Office of the Attorney General
of New York 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
New York Dept. of Environmental
Conservation
21 S. Putt Corners Road
New Paltz, New York 12561-1620
(E-mail: jlparker@gw.dec.state.ny.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)

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

Janice A. Dean, Esq.
Teresa Manzi
Assistant Attorney General
Office of the Attorney General
of New York 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 Raphael P. Kuyler

Raphael P. Kuyler, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, DC 20004
Phone: (202) 739-5146
Fax: (202) 739-3001
E-mail: rkuyler@morganlewis.com

Counsel for Entergy Nuclear Operations, Inc.

DB1/ 70739435