

# Morgan Lewis

**Paul M. Bessette**

Partner  
+1.202.739.5796  
paul.bessette@morganlewis.com

February 23, 2017

Ms. Annette Vietti-Cook  
Secretary, U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001  
ATTN: Rulemakings and Adjudications Staff

Re: Comments on PRM-50-114 (Docket NRC-2016-0204)

Dear Ms. Vietti-Cook:

On behalf of Entergy Nuclear Operations, Inc. (Entergy), we provide the following comments on the Petition for Rulemaking (PRM-50-114 or Petition) noticed in the *Federal Register* on December 9, 2016.<sup>1</sup> The Petition, submitted by the Union of Concerned Scientists and two co-petitioners, seeks issuance of new regulations applicable to nuclear power reactors with operating licenses but in an extended outage. The Petition also requests that the Nuclear Regulatory Commission (NRC) issue a rule that a licensee providing the NRC with written certification under 10 CFR § 50.82(a)(1)(i) of permanent cessation of reactor operations cannot retract that certification. It is the latter proposed regulation that is the subject of these comments.

On February 22, 2017, the Nuclear Energy Institute (NEI) provided comments on the Petition. As noted in those comments, the Petition provides no basis for suggesting that the NRC should explicitly prohibit withdrawal of the certification of the permanent cessation of operation submitted pursuant to 10 CFR § 50.82(a)(1)(i). NEI further notes that imposing such a requirement would unnecessarily limit a licensee's flexibility, including Entergy's, to make decisions regarding the continued operation of its commercial reactors with no corresponding safety or security benefit, particularly as the certification may be submitted well in advance of the time when the plant is scheduled to be shutdown. Entergy agrees with and endorses NEI's comments on this issue.

Entergy further notes that making a 10 CFR § 50.82(a)(1)(i) certification irrevocable is directly contrary to the assumptions and conditions of a recent settlement agreement entered into by Entergy, the State of New York (among other related New York governmental entities), and Riverkeeper, Inc. regarding the continued operation of Indian Point Units 2 and 3 (IP2 and IP3). Under that agreement, IP2 will shut down by April 30, 2020, and IP3 will shut down by April 30, 2021, subject to operating extensions under circumstances specified in the agreement including energy-related emergencies. As part of the settlement agreement, Entergy filed, on February 8, 2017, a certification pursuant to 10 CFR § 50.82(a)(1)(i) of the proposed permanent cessation of operations of IP2 and IP3 in 2020 and 2021, respectively. Further, Entergy noted in the

---

<sup>1</sup> 81 Fed. Reg. 89,011 (Dec. 9, 2016)

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
United States

📞 +1.202.739.3000  
📠 +1.202.739.3001

certification that the agreement to cease permanent operations at IP2 and IP3 by these dates is dependent on successful implementation of the terms of the agreement and issuance of renewed operating licenses for IP2 and IP3. Thus, there is an inherent and important assumption in the agreement that, under limited circumstances defined therein, Entergy could withdraw or amend its certification.

Accordingly, while Entergy has no intent at this time to withdraw its certification, Entergy believes that making a 10 CFR § 50.82(a)(1)(i) certification irrevocable would nevertheless nullify key terms of this important agreement, contrary to the assumptions and expectations of the parties to the agreement.

In summary, the Petition offers no support for prohibiting a licensee's ability to withdraw a 10 CFR § 50.82(a)(1)(i) certification. Issuing such a regulation also would restrict, unnecessarily, a licensee's ability to respond to changed circumstances between the time the certification is submitted and the date of permanent shutdown, including circumstances explicitly defined in the IP2 and IP3 settlement agreement. The petition should, therefore, be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Paul Bessette".

Paul M. Bessette

PMB/lwr

**From:** [Bessette, Paul M.](#)  
**To:** [RulemakingComments Resource](#)  
**Subject:** [External\_Sender] Entergy Comments on PRM-50-114; NRC-2016-0204  
**Date:** Thursday, February 23, 2017 11:58:04 AM  
**Attachments:** [Entergy Comments on PRM-50-114 Docket NRC-2016-0204.pdf](#)

---

Please see attached comments submitted on behalf of Entergy Nuclear Operations, Inc.

Sincerely,

**Paul M. Bessette**

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW | Washington, DC 20004-2541

Direct: +1.202.739.5796 | Main: +1.202.739.3000 | Fax: +1.202.739.3001

[paul.bessette@morganlewis.com](mailto:paul.bessette@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)

Assistant: Lesa Williams-Richardson | +1.202.739.5581 | [lrichardson@morganlewis.com](mailto:lrichardson@morganlewis.com)

#### DISCLAIMER

This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential and/or it may include attorney work product. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.