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**MILTON B. SHAPIRO, ESQ.**  
**SUSAN H. SHAPIRO, ESQ.**  
**ATTORNEYS AT LAW**  
**MBS@OURROCKLANDOFFICE.COM**

**21 PERLMAN DRIVE**  
**SPRING VALLEY, NY 10977**  
**(845) 371-2100 TEL**  
**(845) 371-3721 FAX**

3/1/10

Honorable Chairman Jazcko  
Nuclear Regulatory Commission  
Washington, DC 20555

Office of the Inspector  
General  
Att: George Mulley  
Mail Stop 05-E13  
11555 Rockville Pike  
Rockville, MD 20852  
[gam@nrc.gov](mailto:gam@nrc.gov)

Dear Honorable Chairman Jazcko and Office of the Inspector General:

Please accept for filing the enclosed Objection to the finding by the NRC Staff on December 28, 2009 of adequate decommissioning funds, Petition to Repeal Finding of Adequacy Decommissioning Funds, Petition to Reopen for Consideration, Petition for Leave to Intervene and Request for a Hearing, and Contentions regarding Indian Point Generating Unit 2.

Respectfully yours,



Susan Shapiro  
Representing  
Indian Point Safe Energy Coalition  
Westchester Citizen's Awareness Network  
Public Health and Sustainable Energy

TEMPLATE=SECF 041

DS03

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the matter of

ENTERGY NUCLEAR INDIAN POINT 2, L.L.C,	)	Docket No. 50 -237
Entergy Nuclear Operations, Inc. and	)	
Entergy NorthEast, Inc.,	)	License No. DPR 26
	)	
(Indian Point Energy Generating Unit 2	)	
	)	
Regarding Adequacy of Required	)	
Decommissioning Funds	)	
<hr/>		March 1, 2010

INDIAN POINT SAFE ENERGY COALITION, WESTCHESTER CITIZEN'S  
AWARENESS NETWORK and PUBLIC HEALTH AND SUSTAINABLE  
ENERGY, INC 's OBJECTION TO FINDING OF ADEQUATE  
DECOMMISSIONING FUNDS, PETITION TO REPEAL FINDING OF  
ADEQUATE DECOMMISSIONING FUNDS, PETITION TO REOPEN FOR  
CONSIDERATION, PETITION FOR LEAVE TO INTERVENE and  
REQUEST FOR HEARING, AND CONTENTIONS

Indian Point Safe Energy Coalition ("ISPEC"), Westchester  
Citizen's Awareness Network ("WestCAN"), and Public Health and  
Sustainable Energy (referred to hereinafter as "PHASE"), are  
individually and jointly referred to hereinafter as "Stakeholders",  
pursuant to 10 CFR § 2.309 (d) and (e) object to the finding of the NRC  
Staff on December 28, 2009 of adequate decommissioning funds for  
Indian Point 2 which is owned and operated by Indian Point 2, LCC,

Entergy Nuclear Operations, Inc, and Entergy Northeast, Inc.,  
(hereinafter referred to as "Entergy" or "Licensee").

Stakeholders object to the Nuclear Regulatory Commission's (NRC) Staff's determination of August 13, 2009 that Entergy has provided reasonable assurance of adequate decommissioning funds despite a) an acknowledged shortfall of \$38.6 million; b) an assumption by the Licensee of the use of SAFSTOR for 60 years, even though the use of SAFSTOR has not been approved, nor applied for by the Licensee; and that the c) cost calculations do not take into consideration all required factors, including known and undetected leaks, lack of a plan for disposal of both high level and low level radioactive waste evidenced by the Commission's recent vote of no confidence in the waste confidence rule, cost of living increases and Entergy's proposed corporate restructuring.

Acceptance by the NRC Staff of the adequacy of Entergy's biannual decommissioning report as satisfactory creates significant and substantial changes to the operating license for Indian Point 2. Therefore, Stakeholders request a hearing under 10 C.F.R. §2.309 (a) and request the Commission to reopen the review as to whether there is reasonable assurance of adequate decommissioning funds required by the operating license pursuant to 10 CFR 50.75(b)(1).

Further the Stakeholders request that NRC Commissioner's to Repeal the determination of reasonable assurance of adequate decommissioning funds made by Mr. John P. Boska, Senior Project Manager Plant Licensing Branch 1-1 Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation (Docket No. 50-247) on December 28, 2009 and commence an enforcement action to bring the Licensee into compliance with the operating license.

It is an abdication of the NRC Commissioner's responsibility and authority to accept SAFESTOR as a foregone conclusion, without application or required hearings.

#### HEARING REQUEST

As stated on the NRC website, "The NRC considers public involvement in decommissioning activities to be a cornerstone of strong, fair regulation of the nuclear facilities decommissioning. The public is invited to comment on decommissioning process and proposed regulation in additions to observing or participating in certain meetings. (See NRC website: Public Involvement pages for more information) Multiple meetings and conference calls took place between the NRC Staff and Entergy took place without notification or inclusion of the Stakeholders despite the Stakeholders known interest the

adequacy of the decommissioning funds, dating from the time of the license transfer hearings, and including a letter submitted on May 7, 2008 regarding Decommissioning Planning RIN-3150-AH45.

Insufficient decommissioning funds injure the public and, yet in the approval of this shortfall by the NRC staff there were no opportunities for public hearings or review of the evaluation findings, review procedures of the NRC reviewer or acceptance criteria of the decommissioning shortfall funds. The NRC must establish clear and accessible procedures by which the affected public is given an opportunity to participate in evaluation of adequacy and use of the decommissioning funds.

Alternative Hybrid Hearing Procedures: The Commission hereby provides notice that if a proceeding on an application for a license amendment falls within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on

matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPAA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors." Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in

accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing.

## BACKGROUND

In 1988 the U.S. Nuclear Regulatory Commission (NRC) amended its regulations in 10 CFR Parts 30, 40, and 70 to set forth the technical criteria for decommissioning licensed nuclear facilities. These regulations, as published in the Federal Register (FR) on June 27, 1988 (53 FR 24018), and including amendments promulgated in the 1990s, are the basis of this Part O. Their intent is to ensure that decommissioning of all licensed nuclear facilities is performed in a safe and timely manner.

The NRC decommissioning regulations were amended on July 26, 1993 (58 FR 39628), effective October 25, 1993, to establish additional recordkeeping requirements, including documentation of restricted areas and spill sites. On July 15, 1994 (59 FR 36026), NRC established time frames and schedules for the decommissioning of licensed nuclear facilities. This "Timeliness Rule" was effective August 15, 1994. A

licensed facility that has been unused for NRC licensed operations for a period of 24 months is subject to the timeliness rule. The timing provisions related to the decommissioning of unused outside areas (including burial areas) containing elevated levels of licensed radioactive materials are at 10 CFR 30.36(d), 40.42(d), 70.38(d) and 72.54(d). On July 26, 1995 (60 FR 38235), effective November 24, 1995, NRC clarified that financial assurance requirements must be in place during operations and updated when licensed operations cease.

The intent of this requirement, as prescribed in the financial assurance sections of these regulations, is to ensure that adequate funds are available to ensure that the decommissioning of licensed facilities can be accomplished. Additional requirements for disposition of records were added to 10 CFR Parts 30, 40 and 70 on May 16, 1996 (61 FR 24669), effective June 17, 1996. These provisions are reflected in the recordkeeping section of Part C of these regulations.

### III. STAKEHOLDERS SUBMIT ADMISSABLE CONTENTIONS

The following summary clearly raises in scope, material issues, supported by facts and expert opinions, that raise genuine issues of material law or facts, regarding the NRC staff's acceptance of the



shortfall in decommissioning funds, the unilateral determination of the use of SafeStor, the accuracy and adequacy of the calculations used by Entergy and the NRC to determine adequate financial assurance of the required decommissioning funds.

#### A. SHORTFALL OF DECOMMISSIONING FUND.

Entergy has acknowledged a deficit in the present funding of its required financial assurance. According to 10 CFR 50.82(a)(9)(i), among other things, the licensee must submit the LTP at least 2 years before termination of the license. The estimated remaining costs of decommissioning must be compared with the present funds set aside for decommissioning. The financial assurance instrument required per 10 CFR 50.75(b)(1) must be funded at least to the amount of the cost estimate. If there is a deficit in present funding, the LTP must indicate the means for ensuring adequate funds to complete the decommissioning.

Delaying decommissioning by 60 years in order for Entergy's accumulate adequate decommissioning funds is in violation to the Timeliness Rule and the ongoing the minimal financial assurance requirements per 10 CFR 50.75(b)(1).

## B. ADEQUACY OF CALCULATIONS USED TO DETERMINE DECOMMISSIONING COSTS

There is an issue of fact as to whether the calculations used by the Entergy and accepted by the NRC staff (See ADAMS Accession No. ML091940387) adequately take into consideration.

The following standards for cost calculations to determine decommissioning costs are set forth in NUREG-1713 Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors Final Report Manuscript Published: December 2004, Prepared by: C.L. Pittiglio, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, are:

### 1. FINANCIAL ASSURANCE

Licensees of operating nuclear power reactors must provide reasonable assurance that funds will be available for the decommissioning process. For these licensees, reasonable assurance consists of fulfilling a series of steps identified in 10 CFR 50.75(b), (c), (e), and (f). These steps assure that the licensee can certify that financial assurance is in effect for an amount that may be more but not less than the amount stated in the table in 10 CFR

50.75(c)(1).

### 1.3 Acceptance Criteria:

The acceptance criteria are based on the requirements of 10 CFR 50.75(f)(2), 10 CFR 50.75(f)(4), and 10 CFR 50.82(a)(8)(iv), as applicable. The regulations require that each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.

1.4.2 Assessment of the major factors that could affect the preliminary cost estimate:

The following factors should be used by the reviewer to ensure that the cost estimate includes an up-to-date assessment of the major factors that could affect the cost to decommission:

- a. **POTENTIAL FOR KNOWN AND SUSPECTED  
CONTAMINATION OF THE FACILITY OR SITE TO AFFECT  
THE COST OF DECOMMISSIONING**

At Indian Point 2 the site specific known and suspected contamination that will affect the cost of decommissioning are the ongoing leaks of radioactive tritium, cesium and strontium 80, which were discovered not

from routine inspection but by accident. Spent Fuel Pool #2 has been identified as having leaks, yet less than 50% can be or has been inspected. Additionally there are suspected unknown and uninvestigated leaks from the 8,000 ft of underground piping, including piping on the “clean” side of the plant which is now known to be contaminated with tritium..

In Entergy’s License Renewal Application, GEIS for Indian Point, there is an assessment that the impacts to onsite land use is small based on the assumption that the land used for storage of nuclear wastes at the generic reactor site will not exceed 30 years after the end of the license term and is based on a zero leak assumption.. It is invalidated by the reality that the Indian Point 1, 2 & 3 are already leaking unmonitored radioactive effluent into the bedrock, groundwater and Hudson River. By relying upon the incorrect “generic” assumption that the decommissioning of Indian Point will be generic, the licensee fails to take into account the current leaks into the bedrock, ground water and Hudson River, that will dramatically increase decommissioning costs at this site, adding to the current acknowledged \$38.6 million dollar shortfall.

**b. LOW LEVEL WASTE (LLW) DISPOSITION PLAN and HIGH LEVEL WASTE (HLW) DISPOSITION PLAN**

Since the Commission has voted that there is no confidence in the waste confidence rule high level radioactive waste (HLW) and low level radioactive waste (LLW) will remain stored on-site at Indian Point 2 for an undetermined time period, since no permanent storage facilities are available.

The designers of commercial nuclear reactor sites, like Indian Point, assumed that spent fuel, a highly radioactive form of nuclear waste, would only remain on-site for approximately 5 years, to allow the radioactivity in the waste to decay sufficiently to allow it to be transported off-site to another facility for reprocessing or disposal *alio* that a central waste repository will open within 30 years after power generation at reactors ceases. Yet in the September 24, 2009 the Commission voted not to approve a finding of waste confidence, and that does not have confidence that a central waste repository for spent fuel will be available within 50- 60 years. The Commissioners made it clear that waste will remain at reactor sites for the foreseeable future and it is impossible to predict when any waste might be removed. Instead, the country still continues to grapple with how to dispose of nuclear waste, which we have failed to resolve for the last half century. Meanwhile any waste generated during any period of extended operation would continue to accumulate at Indian Point and there are no identified

acceptable disposal alternatives. Therefore and the Commission do not have a functional waste confidence rule that can be relied on by Entergy or the NRC Staff cannot plan decommissioning relying on a waste confidence rule.

The NRC has discussed plans to store both Low Level Radioactive Waste (LLRW) and High Level Radioactive Water (HLRW) on site at reactor facilities for a period in excess of 100 years. Therefore since high level and low level waste storage may exceed the 60 years required for decommissioning Indian Point 2 probably cannot be completed during required time frame of 60 years.

Since the closing of Barnwell, no such site has been established for Indian Point's LLW including Class A, B & C waste, and therefore it is currently stored on site, indefinitely. Such on site storage increases the risk and costs to eventual decommissioning. Adjustments for these changes in industry practices must be fully funded and available for the decommissioning funds to be deemed adequate.

LLW disposal is one of the most expensive factors in plant decommissioning. There has been up to 3800% increase in the cost of disposal of LLW from \$13/ft<sup>3</sup> in 1983 to prior to the closure of the Barnwell facility costs ranged from \$200/ft<sup>3</sup> to \$500/ft<sup>3</sup>, these costs will

continue to increase exponentially due to the increasing costs of fossil fuels needed for decommissioning.

Additionally the planned replacement of the reactor heads for IP2 creates additional and significant amounts of HLW and LLW radioactive waste that has not been fully considered in the adequacy of the required Decommissioning funds

c. THE PRELIMINARY SCHEDULE OF DECOMMISSIONING ACTIVITIES:

i. Timeliness Rule: Entergy's proposed 60 year SafeStor of Indian Point 2 creates a delay in decommissioning in violation of the Timeliness Rule. On July 15, 1994 (59 FR 36026), NRC established time frames and schedules for the decommissioning of licensed nuclear facilities. The NRC established time frames and schedules for the decommissioning of licensed nuclear facilities. This "Timeliness Rule" was effective August 15, 1994. A licensed facility that has been unused for NRC licensed operations for a period of 24 months is subject to the timeliness rule.

The use of the SafeStor option as method to avoid decommissioning in a timely manner has resulted in groundwater and soil contamination and adds to the cost of decommissioning while increasing the damage to the environment and public health in violation

of NEPA. Indian Point 1, which has been in SafeStor since the 1970's is now leaking Strontium 90, Cesium 89 and Tritium into the groundwater and the Hudson River, in violation of the SafeStor agreement. The NRC cannot provide the necessary guarantees to the State and stakeholders that Indian Point 2, which is currently leaking in violation of its current license, will continue to leak radioactive elements into the ground, ground water and Hudson River during the proposed 60 years SafeStor. The NRC staff approval is not based on the safety of the public or the environment but on the \$38.6 million shortfall in decommissioning funds created by a down turn in the volatile investment market.

ii. Procedure for approval of SAFESTOR

To adopt SafeStor for the proposed period of 60 years, Entergy must first apply to the NRC for a license amendment, set forth public notice in the Federal Registry and allow for public hearings. This has not occurred, yet Mr. Boska has evaluated and accepted financial assurance of the decommissioning fund for Indian Point 2 based on an unapplied or an unapproved SafeStor period of 60 years. The NRC staff's unilateral acceptance of Entergy's proposed SafeStor is an overstepping of its authority, and creates and abdication of the NRC's



responsibilities to evaluate and determine whether to grant this proposed license amendment.

**d. ANY OTHER FACTOR THAT COULD SIGNIFICANTLY AFFECT THE COST OF DECOMMISSIONING.**

**i. Current Application for a new 20 year license under review:**

Entergy currently has submitted an application for a new 20 year license, yet the NRC Staff did not consider the additional waste that will be accumulated during the proposed new 20 year license period and the additional costs of decommissioning the additional accumulation of waste.

**ii. Inadequate Cost of Living Increase for 60-70 years**

The escalation factor used by Entergy is less than the cost of living increase, therefore the decommissioning funds will be inadequate in 60-70 years after the proposed SAFESTOR period. This underfunding has been established by the GAO in various reports, including General Accounting Office (GAO) report, "Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants," June 15, 1999, and the GAO Report October 2003 Highlights of GAO-04-32, a report to the Honorable Edward J. Markey, House of Representatives NRC Needs More Effective Analysis to Ensure Accumulation of Funds to Decommission Nuclear Power Plants

e. Evaluation of the reasonable assurance of funding is not conducted as part of the review of the licensee's decommissioning cost estimate. It is conducted according to NUREG-1577. The reviewer should ensure that the appropriate information has been provided.

In a letter entitled Sharing Regulatory Perspective: The NRC in the Time of Change by NRC Commissioner Shirley Ann Jackson, she states that

*"Decommissioning Funding Assurance,*

"Under Section 161 of the Atomic Energy Act of 1954, as amended, the NRC has statutory authority to regulate the decommissioning of its licensed nuclear facilities. Existing decommissioning regulations require power reactor licensees to set aside funds periodically in external trust fund accounts (or to provide third-party guarantees for estimated decommissioning costs). In the emerging environment of electricity utility restructuring, the NRC has had to re-evaluate certain aspects of these provisions, including the NRC definition of an electricity utility, the potential impact of new ownership arrangements, and the problem of above-market or "stranded" costs"

Entergy has proposed to create a the holding company, Enexus, that will own the six Northeast reactors, including Indian Point 2. The deal would add \$4 billion to Entergy's bottom line, but would leave the newly created LLC saddled from the start with \$4 billion in debt.

The New York Power Commission has rejected the spinoff, telling regulators that Entergy's proposal is not in the public's best interest, because

the new company would be saddled with too much debt and could be financially unstable.

In a 2002 report written by former NRC Commissioner Peter Bradford cited a history of Entergy of setting up shell companies. Entergy Corporation was a pioneer in establishing separate corporate entities to own and operate nuclear power plants. The consolidation of nuclear ownership shifts the risk of accidents and decommissioning costs from the plant owners to the general public because the relatively secure financial backing of substantial utility companies have been replaced by a limited liability subsidiary whose only asset is an individual nuclear power plant. Currently there are approximately 21 levels of corporate ownership, shielding Entergy's assets. The limited liability structures being utilized are effective mechanisms for transferring profits to the parent/owner while avoiding tax payments. They also provide a financial shield for the parent/owner if an accident, equipment failure, safety upgrade, or unusual maintenance need at one particular plant creates a large, unanticipated cost. The parent/owner can walk away, by declaring bankruptcy for that separate entity which holds the operating license, without jeopardizing its other nuclear and non-nuclear investments.

The Decommissioning Plan must guarantee that

decommissioning funds will be available to clean up reactor sites, even in the event of bankruptcy or insolvency of the licensee or one of the corporations in complicate corporate structures of the licensee. The NRC does not have the ability to compel a corporation in bankruptcy to make the necessary additional payments and adjustment into decommissioning funds. In fact after Hurricane Katrina, Entergy successfully filed bankruptcy and its the bond rating for Entergy New Orleans was CCC, and assigned a D upon Bankruptcy filing which is lower than bond ratings acceptable for decommissioning trust fund.

By permitting the Decommissioning Trust Fund to be placed in a shell corporation, and gambled in unsecure instruments in the volatile investment cannot be relied upon as a guarantee that adequate decommissioning funds will be in place at the end of the license term or even at the end of the unapproved proposed 60 year SafeStor period. “Prices on the nonregulated spot market — though offering potential for greater profits — can fall as quickly as they rise, leading to credit downgrades and higher interest costs,” said, Entergy CEO Wayne Leonard.

**PARTICIPATION AS A MATTER OF RIGHT**

A . Indian Point Safe Energy Coalition (“ISPEC”), Westchester Citizen’s Awareness Network ( “WestCAN”), and Public Health and Sustainable Energy (referred to hereinafter as “PHASE”), are individually and jointly referred to hereinafter as “Stakeholders have standing on their own behalf and on behalf of their members.

1. IPSEC is a grassroots coalition of over 70 environmental, health, and public policy organizations concerned with the vulnerability of the Indian Point Nuclear Facility in Buchanan, NY and the radioactive waste it produces, both to internal incidents and to external accidents or acts of terrorism. IPSEC has mobilized to call for its closure, orderly decommissioning, and securing of the irradiated fuel. IPSEC has consistently followed the events at Indian in order to keep the public informed through its listserve, ISPEC has approximately one thousand members who live within the State of New York, in Westchester, Rockland, Putnam and Orange County, and who make their residences, places of occupation and recreation within fifty (50) miles of Indian Point, and whose concrete and particularized interests will be directly affected by this proceeding. ISPEC has participated in hearings on this issue. IPSEC’s central office is located in Ossining, NY 10562-0131 which is within 10 miles of Indian Point and situated within the Plume Exposure Pathway

(EPZ), also referred to as the Peak Fatality Zone.

2. WestCAN is a grassroots coalition that has advocated for a nuclear free Northeast and has consistently followed the events at Indian in order to keep the public informed through its listserve, WestCAN has approximately five hundred members who live within the State of New York, in Westchester, Rockland, Putnam and Orange County, and who make their residences, places of occupation and recreation within fifty (50) miles of Indian Point, and whose concrete and particularized interests will be directly affected by this proceeding. WestCAN has participated in hearings on this issue. 20. WestCAN's central office is located at 2A Adrian Court, Cortland Manor, NY which is within five miles of Indian Point and situated within the Plume Exposure Pathway (EPZ), also referred to as the Peak Fatality Zone.

3. PHASE has standing on its own behalf and on behalf of its members. PHASE is a grassroots think tank, that advocates for the development and use of sustainable energy, in an effort to protect public health and safety, and the protection of the environment. PHASE has members who live within the State of New York, primarily in Rockland and Westchester Counties, and who make their residences, places of occupation and recreation within thirty (30) miles of Indian Point, and whose concrete

and particularized interests will be directly affected by this proceeding.

PHASE's central office is located at 21 Perlman Drive, Spring Valley, NY 10977, which is within eleven miles of Indian Point and situated within the Plume Exposure Pathway (EPZ), also referred to as the Peak Fatality Zone.

5. Indian Point Safe Energy Coalition ("ISPEC"), Westchester Citizen's Awareness Network ("WestCAN"), and Public Health and Sustainable Energy (referred to hereinafter as "PHASE"), meet the requirements of 10 CFR §2.310(d) for a full adjudicatory hearing on all contentions it raises, and do not concede the procedures of 10 CFR §2.310 which restrict use of full adjudicatory hearing procedures are lawful and reserves the right to challenge, in an appropriate legal forum, these procedures should that be necessary to permit Stakeholders to fully adjudicate the important nuclear safety and environmental issues it raises.

B. . Indian Point Safe Energy Coalition ("ISPEC"), Westchester Citizen's Awareness Network ("WestCAN"), and Public Health and Sustainable Energy (referred to hereinafter as "PHASE") meet Prudential Standing Requirements.

In addition, Courts have created a prudential standing requirement that

if a petitioner's interests fall within the "zone of interests" protected by the statute on which the claim is based. *Bennett v. Spear*, 520 U.S. 154, 162(1997). The Atomic Energy Act and NEPA, the statutes at issue here, protect the same interests of protecting public health and safety, that are held . Indian Point Safe Energy Coalition ("ISPEC"), Westchester Citizen's Awareness Network ("WestCAN"), Public Health and Sustainable Energy (referred to hereinafter as "PHASE"), Gary Shaw, Marilyn Elie, Judy Allen , Margo Schepart, Maureen Ritter, Susan Shapiro, Michel Lee, and Kenneth Okin (jointly and individually).

C. . Indian Point Safe Energy Coalition ("ISPEC"), Westchester Citizen's Awareness Network ("WestCAN"), Public Health and Sustainable Energy (referred to hereinafter as "PHASE"), DO NOT WAIVE THEIR RIGHTS TO SUBMIT SUPPLEMENTAL CONTENTIONS AND AMEND THE CONTENTIONS SET FORTH HEREIN, AND TO OTHER PROCEDURAL MATTERS

D. . Right to supplement and amend contentions is not waived.

The Indian Point Safe Energy Coalition ("ISPEC"), Westchester Citizen's Awareness Network ("WestCAN"), and Public Health and Sustainable



Energy (referred to hereinafter as “PHASE”), , are submitting a statement of the contentions that reflect the concerns of the Stakeholder community and should be accepted for hearing by the Nuclear Regulatory Commission. The contentions submitted herein should not be deemed to waive . Indian Point Safe Energy Coalition (“ISPEC”), Westchester Citizen’s Awareness Network ( “WestCAN”), and Public Health and Sustainable Energy (referred to hereinafter as “PHASE”), reserve the right to submit further contentions in the future or amend the contentions set forth herein. Further

#### E. Efficiency of Cross Examination of Expert or Fact Witnesses

The most efficient manner by which statutory rights can be exercised is to allow both depositions and live testimony to the extent the issues are not fully developed during discovery. Although not specifically mentioned in 10 CFR §2.102, cross-examination of witnesses will be more efficient when possible for . Indian Point Safe Energy Coalition (“ISPEC”), Westchester Citizen’s Awareness Network ( “WestCAN”), and Public Health and Sustainable Energy (referred to hereinafter as “PHASE”) and the Licensee to submit cross-examination outlines five days before the hearing, to alert each witness to the subjects which the parties will explore.

. Indian Point Safe Energy Coalition (“ISPEC”), Westchester Citizen’s Awareness Network ( “WestCAN”), and Public Health and Sustainable Energy (referred to hereinafter as “PHASE”), have the right to seek production of documents, if for no other reason than production of documents will facilitate interrogation of witnesses and narrow the scope of their examination. Otherwise, witnesses will be asked questions about issues which are addressed in documents which either are not present during the interrogation or the analysis of which will require a hiatus in the interrogation. Relevant documents and cross-examination outlines are hereby requested to be submitted by all parties wherever possible, at least five days in advance such that the witness may be prepared to fully answer the questions posed.

F. . Indian Point Safe Energy Coalition (“ISPEC”), Westchester Citizen’s Awareness Network ( “WestCAN”), and Public Health and Sustainable Energy (referred to hereinafter as “PHASE”),(the Stakeholders) contend that the Nuclear Regulatory Commission and Applicant have had and will continue to have ex parte communications in violation of the requirements of Title 5, the parties shall adhere in the strictest sense to the requirements of Title 5, Part I Chapter 5 subchapter II, §557.

The Stakeholders request that the NRC follows the regulations with regard to ex parte communications with the Applicant as required by Title 5, Part 1, Chapter 5 subchapter II§557. The sections that have particular relevance are provided below. In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law:

(i) No interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(ii) No member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(iii) A member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be

involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(A) All such written communications;

(B) Memorandum stating the substance of all such oral communications; and

(C) All written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph

(iv) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(v) The prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be

noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(vi) Therefore the Nuclear Regulatory Commission bound under these regulations throughout the License Renewal Application proceedings may not have ex parte communications with the Applicant.

#### CONCLUSION:

The Stakeholders respectively submit to the Commission that for the reasons set forth above the NRC's staff finding of adequate decommissioning funds for Indian Point 2 must be repealed by the Commission and Stakeholders request for public hearings on the adequacy of the decommissioning funds should be granted.

Submitted Respectfully by,



**Susan Shapira**

21 Perlman Drive  
Spring Valley, NY 10977

Representing:  
Indian Point Safe Energy Coalition,  
Westchester Citizen's Awareness Network,  
Public Health and Sustainable Energy ( "PHASE" )

21 Perlman Drive  
Spring Valley, NY 10977  
(845) 371-2100  
[mbs@ourrocklandoffice.com](mailto:mbs@ourrocklandoffice.com)

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the matter of

ENERGY NUCLEAR INDIAN POINT 2, L.L.C,) Docket No. 50 -237  
Entergy Nuclear Operations, Inc. and )  
Entergy NorthEast, Inc., ) License No. DPR 26  
)  
(Indian Point Energy Generating Unit 2 )  
)  
Regarding Adequacy of Required )  
Decommissioning Funds )  
\_\_\_\_\_)

NOTICE OF APPEARANCE

Susan H. Shapiro, on March 1, 2010 and pursuant to 10 CFR §2.314(b) gives notice of her appearance on behalf of the Indian Point Safe Energy Coalition, Westchester Citizen's Awareness Network, Public Health and Sustainable Energy, Inc. The undersigned is a member of good standing of the bar of one or more Courts of the United States, and has been duly retained by the above mentioned groups and individuals to represent them in this matter.

## CERTIFICATE OF SERVICE

I, Susan Shapiro, do hereby certify that on this 1st day of March, 2010 a copy of the Indian Point Safe Energy Indian Point Safe Energy Coalition, Westchester Citizen's Awareness Network, Public Health and Sustainable Energy, Inc. Objection to finding of adequate decommissioning funds, Petition to Repeal Finding of Adequacy Decommissioning Funds, Petition to Reopen for Consideration, Petition for Leave to Intervene and Request for a Hearing, and Contentions regarding Adequacy of Required Decommissioning Funds for Indian Point Generating Unit 2 was sent by Expedited Overnight Mail to the addresses below; and, where indicated by an e-mail address below, by electronic mail on March 1, 2010.

Office of the Secretary,  
Sixteenth Floor,  
One White Flint North,  
11555 Rockville Pike, Rockville,  
Maryland 20852,  
Attention: Rulemakings and Adjudications Staff.  
secy@nrc.gov

Annette L. Vietti-Cook  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Mail Stop 0-16G4  
Washington, DC 20555-001

Honorable Chairman Gregory B. Jazcko  
Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC 20555-0001

John P. Boska  
Senior Project Manager  
Plant Licensing Branch I-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation



Entergy Nuclear Operations, Inc  
440 Hamilton Ave.  
White Plains, NY 10601

Commissioner Dale E. Klein  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC 20555-0001  
[cmrklein@nrc.gov](mailto:cmrklein@nrc.gov)

Commissioner Kristine L. Svincki  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16G4  
Washington, DC 20555-0001  
[cmrsvinick@nrc.gov](mailto:cmrsvinick@nrc.gov)

Hearing Docket  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Office of the Inspector General  
Att: Mr. Hubert T. Bell  
Mail Stop 05-E13  
11555 Rockville Pike  
Rockville, MD 20852  
[gam@nrc.gov](mailto:gam@nrc.gov)

Kathryn M. Sutton, Esq.  
Martin J. O'Neill, Esq.  
Paul M. Bessette, Esq.  
Morgan, Lewis and Bockius, LLP  
1111 Pennsylvania Ave. N.W.  
Washington, DC 20004  
[ksutton@morganlewis.com](mailto:ksutton@morganlewis.com)  
[pbessette@morganlewis.com](mailto:pbessette@morganlewis.com)  
[martin.o.neill@morganlewis.com](mailto:martin.o.neill@morganlewis.com)

John Sipos  
New York State Office of the Attorney General  
[john.sipos@oag.state.ny.us](mailto:john.sipos@oag.state.ny.us),

John Parker  
New York State DEC  
[jlparker@gw.dec.state.ny.us](mailto:jlparker@gw.dec.state.ny.us)

Assemblyman Richard Brodsky  
[richardbrodsky@msn.com](mailto:richardbrodsky@msn.com)

Manna Jo Greene  
Environmental Director  
Hudson River Sloop Clearwater  
[Mannajo@clearwater.org](mailto:Mannajo@clearwater.org),

Phillip Musegas, Esq.  
Riverkeeper  
[phillip@riverkeeper.org](mailto:phillip@riverkeeper.org),