

SETTLEMENT AGREEMENT

I. RECITALS

- A. Central Interstate Low-Level Radioactive Waste Commission ("CIC") is the governing body of the Central Interstate Low-Level Radioactive Waste Compact ("Compact"), established by legislative action of the States of Nebraska, Arkansas, Louisiana, Kansas, and Oklahoma and approval through action of the United States Congress in 1986.
- B. The State of Nebraska ("Nebraska") has been a member of the Compact and has been represented on the CIC since the Congressional approval in 1986.
- C. Nebraska formally notified CIC in or about August 1999, of its intent to withdraw from the Compact, effective five years after that formal notice was given. CIC on or about July 17, 2003, gave Nebraska formal one-year notice that Nebraska's membership in the Compact would be revoked under Article VII of the Compact, for failure to comply with terms of the Compact and for failure to meet its obligations. In response, Nebraska filed suit against CIC in the United States District Court for the District of Nebraska, Docket No. 4:03-CV-3308, alleging that the revocation was unjustified and unlawful ("Revocation Case"). That case remains pending.
- D. CIC in 1998 sued Nebraska in the United States District Court for the District of Nebraska, Docket No. 4:98-CV-3411 ("Bad Faith Case"). After a lengthy trial in the summer of 2002, a judgment was entered in favor of CIC and against the defendants, Nebraska and certain officials of the state, providing for injunctive relief and a declaratory judgment with regard to all defendants, and a money judgment against the State of Nebraska and in favor of CIC in the amount of \$151,408,240.37, plus costs in the amount of \$35,432.88. Federally imposed post-judgment interest has accrued on that judgment at a rate of 1.68%, compounded annually since the date of the judgment, September 30, 2002. As of August 1, 2004, the pending judgment against Nebraska, with accrued interest, is \$156,156,751.99. The judgment was affirmed in its entirety by the United States Court of Appeals for the Eighth Circuit, and Nebraska's petition for rehearing by the entire Eighth Circuit Court of Appeals was denied on April 21, 2004. Nebraska has sought further review by a timely petition for a writ of certiorari from the United States Supreme Court.
- E. During the 2004 Legislative session, and during the pendency of the above-described appeals, Nebraska's Legislature modified a Nebraska state law, which provides a practice and procedure for enforcement of judgments against the state,

specifically Neb. Rev. Stat. §25-21,211. The amendment in 2004 passed by the Legislature substantially reduced the sanction for the State's failure to promptly to pay upon demand a judgment against the State. CIC contends that such a modification during the stay may constitute a "new bad-faith" act by member state Nebraska, and may be voidable by legal action as between CIC and Nebraska. Nebraska denies any such claims of additional bad faith. CIC, by a Resolution passed on June 8, 2004, has authorized legal action to pursue its rights in regard to this issue.

- F. CIC and Nebraska now desire to settle and compromise all of their respective claims, rights, and defenses raised or which could have been raised in the actions described herein, namely those arising directly from the two above-described federal lawsuits: the "Bad Faith Case," the "Revocation Case," and, those arising from the action of the Nebraska Legislature in 2004 in regard to Neb. Rev. Stat. §25-21,211.

II. EFFECTIVE DATE

This Agreement and the terms and conditions within it shall be deemed effective and binding as of August 1, 2004. Nebraska and CIC expressly warrant and represent that the signatories have full authority to bind Nebraska and CIC to the terms herein, subject only to the lack of legal authority of Nebraska's signatories to bind the Nebraska Legislature. Nebraska's Governor and Attorney General will seek the necessary legislation to implement this agreement.

III. SCOPE OF SETTLEMENT AGREEMENT

Integrated Agreement. This agreement sets forth all of the consideration and terms of the settlement, and is not intended nor does it purport to settle any dispute between the parties not expressly designated as settled in any part of this agreement. Should either party fail to perform any material term of this agreement for any reason, including but not limited to, a refusal of the Nebraska Legislature to appropriate the payments required in paragraph IV.A., then the breaching party shall lose the benefit of any and all consideration otherwise granted to it by this agreement, and the party against which the breach occurred shall be entitled to declare the entire settlement void, or in the alternative to pursue enforcement of the Settlement Agreement by all legal means available. For the limited purposes of this settlement only, Nebraska agrees that by entering into this agreement it has expressly waived any claim of sovereign immunity to a suit in Nebraska or federal court to enforce the obligations set forth in this agreement.

IV. CONSIDERATION

- A. (1) Schedule of Payments by Nebraska to CIC. Nebraska agrees to pay CIC \$140,541,076.79, subject to the contingent discount contained in Subsection IV.A.(2). Nebraska shall make its payments by completed, wire-transferred payments to a CIC-designated bank account in at least the following amounts no later than 5:00 o'clock p.m., Central Time, on or before the dates shown. If Nebraska pays any or all of the agreed upon amounts sooner than these scheduled payments, the interest will be recalculated accordingly. There will be no

prepayment penalty for any payments made earlier than the due dates shown. The payments are based on the agreed settlement amount as of August 1, 2004, of \$140,541,076.79 (subject to the potential triggering of the agreed upon, contingent reduced principal amount set forth in Subsection IV.A.(2) of this agreement) with an applicable interest rate on any unpaid balance of 3.75%, compounded annually and starting August 1, 2004.

<u>Due Date of Payment</u>	<u>Total Payment</u>
August 1, 2005	\$38,489,808.77
August 1, 2006	\$38,489,808.77
August 1, 2007	\$38,489,808.77
August 1, 2008	\$38,489,808.77

This payment schedule reflects the amount owed if no prepayments are made by Nebraska. The calculation of these amounts is shown in Attachment "A" to this agreement, which is incorporated herein.

(2) In the event the parties jointly negotiate suitable access to the proposed Texas site for waste generated in the CIC states and Nebraska at a cost no greater than the maximum cost agreed upon by the parties, the State shall be granted an agreed upon discount on its final payment to reflect a reduced principal amount of \$130,000,000.00. The parties understand and agree that the payment for initial access to the Texas site, if agreement should be reached with the Texas authorities, would be made from the amounts paid to the CIC by Nebraska pursuant to this agreement. Nothing in this agreement shall be deemed or understood to obligate either Nebraska or the CIC to any specific contractual arrangement for access to a disposal site. Furthermore, nothing in this agreement shall bind the CIC or Nebraska to continue to negotiate with the Texas authorities or any other entity for joint access, although the parties have expressed their intention to do so at least for a period of up to nine (9) months. CIC and Nebraska each retains the right to withdraw any unaccepted offers to any proposed access site, and at their option, to terminate the contingent discount agreement referred to in this agreement, thereby making the entirety of the \$140,541,076.79 and applicable interest due as set forth in Subsection IV.A.(1) in the amounts and at the times shown therein. Agreement by Nebraska and the CIC to any contractual arrangement for access to a disposal site will not require the expenditure of additional funds by Nebraska beyond those paid pursuant to this agreement.

- B. Nebraska to Satisfy Judgment in Part, End Litigation of Bad Faith Case and Dismiss Revocation Case; and, CIC to Release New Bad Faith Claim and Claims of Continuing Liabilities and Obligations of Nebraska. Nebraska will dismiss the Revocation Case with prejudice and at its own costs. Nebraska will dismiss its petition for certiorari review of the Bad Faith Case. Upon Nebraska's timely payment of the \$140,541,076.79 and any accrued interest, CIC will file with the U.S. District Court for the District of Nebraska a "Satisfaction of Judgment" in

the Bad Faith Case which shall be a full release of all claims that were or could have been brought in that case. Upon Nebraska's timely payment of all amounts owed as described herein, this agreement shall also then be deemed a full release of CIC's potential claim of Nebraska's bad faith relating to the 2004 change in Neb. Rev. Stat. §25-21,211, but until all payments are timely satisfied by Nebraska, CIC reserves that claim. Also, upon Nebraska's timely payment of all amounts owed under the terms this agreement, CIC agrees Nebraska will have no further host-state or other Compact obligations and all prior liabilities and obligations of Nebraska will be deemed satisfied. During the payment schedule period, if Nebraska makes all payments on or before their due dates, CIC agrees that it will forbear to take any action to pursue or otherwise enforce the judgment in the Bad Faith Case and will forbear to pursue or otherwise enforce any claims that Nebraska retains a host-state or other Compact obligation beyond those set forth in this agreement. CIC further agrees that during the payment schedule, if Nebraska makes all payments on or before their due dates, it will take no action to pursue or otherwise enforce any claims it may have arising out of the 2004 change in Neb. Rev. Stat. §25-21,211. Nothing in this agreement shall affect any claims made by any third party to the payments made by Nebraska to the CIC, and any such claims shall be the responsibility of the CIC. By entering into this agreement, Nebraska does not waive its sovereign immunity from suit by anyone not a party to this agreement.

In addition to the actions referenced herein, an action was filed in January 1999 by Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Wolf Creek Nuclear Operating Corporation and Omaha Public Power District filed a claim against Nebraska in the District Court of Lancaster County, Nebraska, Entergy Arkansas, Inc. et. al. v. State of Nebraska, et. al. Docket 577 Page 123. Upon execution of this settlement agreement the Entergy entities, Wolf Creek and OPPD have agreed to voluntarily dismiss those claims. That agreement is referenced in the letters attached hereto as Attachments C & D.

- C. Cooperation. CIC and Nebraska agree that an initial contingent joint proposal has been made to the State of Texas, seeking at least thirty (30) years of low-level radioactive waste disposal access to the potential site being developed and licensed, with the terms of such joint proposal as set forth in Attachment B, which is incorporated herein. Should negotiations succeed in obtaining the accessibility the parties seeks, and for an amount agreed to by the parties, Nebraska shall be entitled to a certain discount on its principal amount owed, pursuant to paragraph IV.A., said discount to be calculated as an adjustment to its final payment.

CIC and Nebraska further agree that, for a minimum of nine (9) months, in addition to their already existing effort and contingent offer to obtain access to the potential site in Texas, they will explore other potential avenues for long-term disposal for low-level radioactive waste generated in the Central Interstate Low-Level Radioactive Waste Compact states and Nebraska at potential sites located outside the boundaries of the State of Nebraska.

The CIC and Nebraska further agree that, if necessary to obtain access to any potential site otherwise mutually agreed upon and successfully arranged for, consistent with this provision, the CIC will amend its rules to allow Nebraska to rejoin the Central Interstate Low-Level Radioactive Waste Compact upon effective re-enactment of the Compact by the Nebraska Legislature. Should the Nebraska Legislature approve Nebraska's rejoining the Compact under this provision, such action shall not create new host-state obligations for Nebraska and access to any potential site under this provision shall satisfy any host-state obligations of Nebraska until such time as all other Central Interstate Low-Level Radioactive Waste Compact states have fulfilled host-state obligations for a period no less than that fulfilled by Nebraska under this provision.

- D. Contested Case. Upon complete fulfillment by Nebraska of its obligations under this agreement, including all payments and every other item of consideration herein listed, CIC agrees to dismiss and to require its contractor, US Ecology, to dismiss, with prejudice, their contested case appeal of the license denial decision made by the State of Nebraska in December, 1998. Nothing in that dismissal shall be deemed or understood to admit, by US Ecology or CIC, the legitimacy of the denial decision.
- E. Appropriations. The signatories for Nebraska represent that they will use their best efforts to obtain legislative approval of all necessary appropriations and other state actions to fulfill each and every term of this Settlement Agreement. In the event they are unable to secure the appropriations and the necessary legislative actions to comply with any of the payments in paragraph IV.A.(1), as set forth above, then CIC shall be entitled to enforce its original judgment, including any remaining unpaid portion of the original judgment by any and all legal remedies available, including but not limited to, enforcement pursuant to federal court orders in aid of execution under Fed.R.Civ.P. 69, by triggering the collection practice and procedure set forth in Neb. Rev. Stat. §25-21,211 in the form as it read as of June 2004. The parties hereto agree for purposes of this settlement agreement and the Bad Faith Case only that such remedy, including the 10% rate, shall not be deemed to have been modified by the amended version of said statute as created by LB 692, passed by the 2004 Session of the Nebraska Unicameral Legislature.

V. COMPLETENESS AND AUTHORITY

The parties hereto acknowledge that this Settlement Agreement contains all enforceable representations, conditions, covenants, and terms and cannot be deemed modified or changed by any oral or written representations outside the express terms of this agreement, except for the agreement expressly provided herein in Subsection IV.A., without the express written consent and signed agreement of the parties. By signing, the signatories approve the form, warrant their own authority to bind Nebraska and the CIC respectively, and agree to all conditions and terms herein.

Date: _____

STATE OF NEBRASKA



Governor

Attorney General

Date: _____

INTERSTATE LOW-LEVEL
WASTE COMMISSION

By: _____
Chairperson

**Principal and Interest Calculation
3.75% Compounded Annually**

(\$140,541,076.79 @ 3.75%)

Principal Amount: \$151,443,673.25
Interest Rate/Month: 3.75%
Beginning Date: 09/30/02 (Date of Judgment)

Principal Amount compounded annually at 1.68% to 8/1/04 settlement date

Balance on 8/1/04 reduced by 10%

Reduced balance compounded annually at 3.75%; 4 equal payments

<u>Amount Due</u>	<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Payment Amount</u>	<u>Balance Remainder</u>
\$151,443,673.25	09/30/02	\$151,443,673.25	\$0.00	\$0.00	\$151,443,673.25
\$153,987,926.96	09/30/03	\$151,443,673.25	\$2,544,253.71	\$0.00	\$153,987,926.96
\$156,156,751.99	08/01/04	\$151,443,673.25	\$4,713,078.74	\$0.00	\$156,156,751.99
\$140,541,076.79	08/01/04	\$140,541,076.79	N/A	\$0.00	\$140,541,076.79
\$145,811,367.17	08/01/05	\$140,541,076.79	\$5,270,290.38	\$38,489,808.77	\$107,321,558.40
\$111,346,116.84	08/01/06	\$107,321,558.40	\$4,024,558.44	\$38,489,808.77	\$72,856,308.07
\$75,588,419.63	08/01/07	\$72,856,308.07	\$2,732,111.55	\$38,489,808.77	\$37,098,610.86
\$38,489,808.77	08/01/08	\$37,098,610.86	\$1,391,197.91	\$38,489,808.77	\$0.00

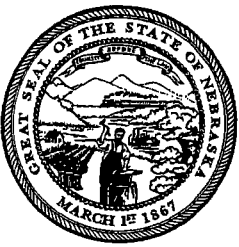
Total of 4 payments: \$153,959,235.07

Amortization in four (4) equal payments calculated by standard amortization formula:

$$\text{Payment} = ((\text{Principal} \times r)) / (1 - (1 / ((1 + r)^{ny})))$$

Where r = annual interest rate/n; n = number of periods/payments per year; y = total years

If Nebraska prepays any amount, there will be no prepayment penalty and the interest will be recalculated accordingly.



STATE OF NEBRASKA
Office of the Attorney General

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JON BRUNING
ATTORNEY GENERAL

DAVID D. COOKSON
SPECIAL COUNSEL TO THE
ATTORNEY GENERAL

July 2, 2004

Kathleen Hartnett White, Chairman
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, TX 78753

RE: Disposal of Low-level Radioactive Waste

Dear Chairman White:

On May 18, 2004 Governor Mike Johanns, of the State of Nebraska, spoke with Governor Rick Perry about the possibility of the State of Nebraska and the Central Interstate Low-Level Radioactive Waste Compact disposing of our low-level waste in the Texas Compact facility. Governor Johanns specifically asked if we might make a proposal to the Texas Compact for a long-term contractual relationship between the Texas Compact, Nebraska and the Central Interstate Compact. Governor Perry indicated that he would be willing to review any proposal that we might submit. Nebraska and the Central Interstate Compact Commission are currently in negotiations to resolve several issues, including pending litigation. This proposal addresses one aspect of those discussions. Our submission of this proposal to the State of Texas and the Texas Compact is conditioned upon Nebraska and the Central Interstate Compact Commission resolving all other issues currently being discussed by Nebraska and the Commission.

Prior to and subsequent to the Governors' conversation, members of the Nebraska Attorney General's Office communicated with Governor Perry's staff concerning some of the matters that would be included in any proposal. We indicated that we would send the proposal in letter form outlining the basic elements of the proposed contractual arrangement. In addition, Governor Perry's office directed that we should send the proposal to you.

On behalf of the State of Nebraska and the Central Interstate Compact, the following outlines the five basic elements of a long-term contractual relationship between Nebraska, the Central Interstate Compact and the Texas Compact to dispose of low-level radioactive waste at the Texas Compact facility.

Privileged and Confidential Draft for Settlement Purposes

Chairman White

June 25, 2004.

Page -2-

Part One –

Access: The Texas Compact site will accept for disposal low-level radioactive waste generated in the Central Interstate Compact states and Nebraska on the same terms and conditions and subject to the same restrictions as waste generated within Texas. The agreement shall remain in effect until the Texas Compact site is closed permanently. The life of the Texas Compact facility is contemplated to be no less than thirty years.

Part Two –

Access Fee: In exchange for access to the Texas Compact facility, Nebraska and the Central Interstate Compact will pay to the State of Texas the sum of \$25 million as a one-time access fee for the Central Interstate Compact and Nebraska to gain access to the Texas Compact facility. The \$25 million access fee would be payable to the State of Texas upon the State of Texas issuing a license to a low-level radioactive waste disposal facility in a form enabling the access proposed here.

Part Three –

Annual Waste Volume Cap & Waste Fees: The Texas Compact site will accept for disposal the actual amount of waste generated in the Central Interstate Compact states and Nebraska, subject to an annual cap. Nothing in this agreement will require the Texas Compact site to accept for disposal more than the annual cap. The annual cap shall not be less than 12,000 cubic feet of waste. If the Central Interstate Compact and Nebraska do not utilize all of the disposal capacity to which they are entitled under the agreement they may in any year use up to 2,000 cubic feet per year of the unused capacity. The annual cap may also be adjusted by mutual agreement of the parties. Fees charged for disposal of waste generated in the Central Interstate Compact states and Nebraska would be the same as those charged for disposal of waste generated in Texas.

Part Four –

Decommissioning Waste: Decommissioning waste will not be considered for purposes of computing the volume cap. The parties will agree to a cap for annual waste resulting from decommissioning of a facility but will not be less than 1,000 cubic feet more than the highest estimated decommissioning waste stream of any one facility in the Central Interstate Compact states and Nebraska.

Part Five –

Perpetual Care Fund: Nebraska and the Central Interstate Compact will pay to the State of Texas a total of \$5 million to be deposited in the Texas Perpetual Care Fund, as

Chairman White
July 2, 2004
Page - 3 -

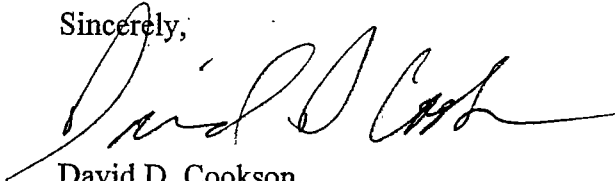
established under Texas law, to provide for any added expense resulting from disposal of waste generated in the Central Interstate Compact states and Nebraska in the Texas Compact facility. The \$5 million payment to the Texas Perpetual Care Fund would be payable to the State of Texas upon the State of Texas issuing a license to a low-level radioactive waste disposal facility.

In addition to the five basic components, we would also propose that: 1) by agreeing to accept waste for disposal from the Central Interstate Compact and Nebraska, the Texas Compact and the States of Texas and Vermont do not assume any of the liabilities or obligations of the State of Nebraska or of any the Central Interstate Compact states; and 2) the Central Interstate Compact and Nebraska will be provided notice and may send representatives to observe all public meetings held by the Texas Compact Commission. The Central Interstate Compact and Nebraska will be invited to participate as an interested party in any studies or proceedings regarding the rates for the disposal of low-level radioactive waste at the Texas Compact Commission.

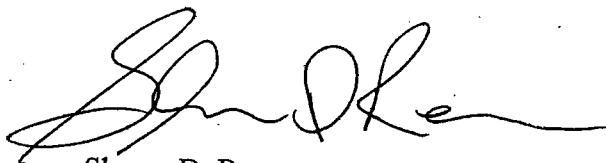
On behalf of Governor Johanns, Attorney General Jon Bruning and the Central Interstate Compact Commission, we appreciate the willingness of the State of Texas to consider this proposal. We would suggest that once you have had an opportunity to review this proposal that we arrange a meeting between representatives of the State of Texas, the State of Nebraska and the Central Interstate Compact to discuss the proposal and answer any questions you may have.

Thank you again for your consideration of our proposal.

Sincerely,



David D. Cookson
Special Counsel to the Nebraska Attorney General



Shawn D. Renner
Counsel, Central Interstate Low-Level Radioactive
Waste Commission

Thomas E. Johnson

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August 4, 2004

**VIA FACSIMILE ((402) 471-3297)
 AND UNITED STATES MAIL**

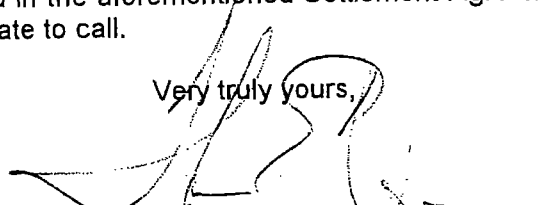
 Mr. David D. Cookson
 Assistant Attorney General
 Room 2115
 State Capitol Building
 Lincoln, NE 68509

Dear Dave:

Confirming today's conversation, this letter will acknowledge that, upon the complete execution of the Settlement Agreement between the State of Nebraska and the Central Interstate Low Level Radioactive Waste Commission, in substantially the same form as provided to me by counsel for the Central Interstate Low Level Radioactive Waste Commission or about August 3, 2004, settling in all respects the case of Entergy Arkansas, Inc., et al., v. State of Nebraska, et al.; Case No. 4:98CV3411, my clients, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc. and Wolf Creek Nuclear Operating Corporation shall voluntarily dismiss, at their own costs, their claims currently pending in the District Court of Lancaster County, Nebraska at docket 577, page 123 captioned Entergy Arkansas, Inc. et al., v. State of Nebraska, et al.

We understand this letter is necessary to facilitate a proposed settlement between the Commission and the State as outlined in the aforementioned Settlement Agreement. If I can be of further assistance, please do not hesitate to call.

Very truly yours,



Thomas E. Johnson
 FOR THE FIRM

TEJ/daw

DOCS/622817.1

 cc: Alan Peterson
 Shawn Renner ✓
 Mark Carver
 Travis McCullough
 Warren Wood

AUG - 5 2004

FRASER STRYKER MEUSEY OLSON BOYER & BLOCH, PC
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STEPHEN M. BRUCKNER
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August 6, 2004

Sent Via Fax 402-471-3297
and U.S. Mail

Mr. David D. Cookson
Assistant Attorney General
Room 2115
State Capitol Building
Lincoln, NE 68509

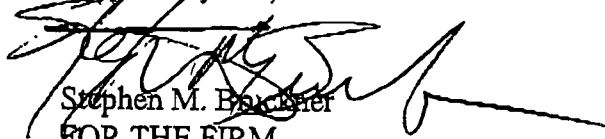
Dear Mr. Cookson:

This letter is submitted on behalf of our client, the Omaha Public Power District ("OPPD"). This letter has been requested in connection with a proposed settlement by the State of Nebraska and the Central Interstate Low Level Radioactive Waste Commission ("Commission") of a judgment entered in the United States District Court for the District of Nebraska, Docket No. 4:98-CV-3411.

Upon the complete execution of the Settlement Agreement between the State of Nebraska and the Commission, in a form substantially identical to the August 5, 2004, document provided to me, OPPD shall voluntarily dismiss, at its own cost, the action pending in the District Court of Lancaster County, Nebraska, entitled Entergy Arkansas, Inc., et al. v. State of Nebraska, et al., Docket 577, Page 123.

Please contact me if you have any further questions.

Very truly yours,


Stephen M. Bruckner
FOR THE FIRM

SMB/sac

cc: Charles N. Eldred, OPPD (via fax)
William L. Neal, OPPD (via fax)
Thomas J. Richards, OPPD (via fax)
Alan Peterson, Commission Counsel (via fax)
Thomas E. Johnson, Entergy/Wolf Creek Counsel (via fax)
Robert A. Green, NPPD Counsel (via fax)

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