

**UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION**

In the Matter of

**Power Authority of the State of New York,
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc.**

Indian Point 3 Nuclear Power Plant

Transfer of Facility Operating License and Proposed License Amendment

Docket No. 50-286

License No. DPR-64

**SUPPLEMENTAL FILING TO JULY 18, 2000
PETITION FOR EXTENSION OF TIME FOR
LEAVE TO INTERVENE AND REQUEST FOR HEARING
IN THE CONSIDERATION OF APPROVAL OF PROPOSED
LICENSE AMENDMENT AND TRANSFER OF
INDIAN POINT 3 NUCLEAR POWER PLANT OPERATING LICENSE
TO ENTERGY NUCLEAR INDIAN POINT 3, LLC, AND
ENTERGY NUCLEAR OPERATIONS, INC.**

Pursuant to the Commission order of July 20, 2000, extending the requisite deadline for the submission of Comments, Petition for Leave to Intervene and Request for Hearing, the Town of Cortlandt, New York, and the Hendrick Hudson School District ("Petitioners") respectfully submit this supplemental filing transmitting to the Commission the Affidavit of Peter Henner, Esq., and a preliminary assessment of issues pertaining to the sale transactions involved in this transfer proceeding regarding the transfer of and proposed amendment to the operating licenses held by the Power Authority of the State of New York ("PASNY") for its Indian Point 3 Nuclear Plant ("IP3"), Docket No. 50-286, License No. DPR-64, and James A. FitzPatrick Nuclear

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Plant ("JAF"), Docket No. 50-333, License No. DPR-59. The transferees for IP3 are Entergy Nuclear Indian Point 3, LLC, ("ENIP") and Entergy Nuclear Operations, Inc. ("ENO")("Applicants"). The transferees for JAF are Entergy Nuclear FitzPatrick3, LLC, ("ENF") and ENO.

Petitioners respectfully submit that their July 18 filing and this supplemental filing, demonstrate an adequate basis for the grant of Petitioners's request for intervention and hearing. In particular, Petitioners assert that they have shown that intervention should be granted as a "matter of right," because Petitioners's interest are directly affected by the transfer proceeding. See AEA, § 189a, 42 U.S.C. § 2239(a). Moreover, the Petitioners's have raised, in accordance with the Commission's rules for license transfer proceedings, several admissible issues. See 10 C.F.R. § 2.1306. Petitioners note also that even in the absence of such a showing that the Commission has sufficient discretion to grant their intervention request.

The Petitioners note herein their concern that this particular transfer proceeding under the Commission's Subpart M regulations may be too narrowly focused. As a consequence, the full implications of the transfer proceeding upon the public health and safety interests raised by Petitioners may get cursory treatment by the failure of NRC Staff to view the transfer proceeding in a context that takes into account:

1. That the license expiration dates for IP3 and IP2 are 2015 and 2013, respectively. Thus, the impact of the transfer proceeding upon decommissioning plans, and the adequacy for Applicants's ability to finance them, the need for changes to Emergency Evacuation Plans, and license extensions and renewals, at a minimum need to be considered as part of the transfer proceeding.

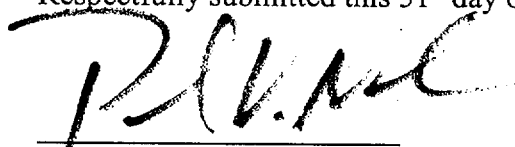
2. That the redacted agreements preclude a full assessment of the impacts upon the Petitioners's interest; thus, impairing their ability to amply demonstrate their right to intervention and a hearing. Certainly, a pro forma, or two, for IP3 reflecting all costs to be incurred by ENIP should have been made available. Hence, a hearing, with the issuance of a protective order therein, if necessary in order to protect the financial sensitivities of the Applicants, e.g., claims of trade secret, , is in the public interest as it would allow for a more comprehensive review of the Applicants's financial ability and plans for either decommissioning of IP3 or renewal of the IP3 license, or both.
3. That the non-apportioned costs contained in several of the agreements, especially those imposing joint and several liability, preclude any assessment of the financial ability of ENIP to hold the license for IP3.
4. That there is *de facto* an approved decommission plan in place for IP3 and as well as for IP2, i.e., the approved decommissioning plan for IP1, that will be affected by the Applicant's financial capability; hence, there is a need now in this proceeding to confirm that that decommissioning plan, unrestricted use (greenfield status), can be complied with without delay an/or in light of any extension of IP3's license or renewal thereof. Decommissioning of the entire Indian Point nuclear generating complex, especially as 26 years have passed since the IP1 plant ceased operation and with more than four years having lapsed since the plan's approval, needs to be considered as the transfer approval will certainly have consequential impacts, intended or unintended, upon the decommissioning of IP1 and IP2, which have a direct impact upon the character, safety and health of Petitioners.

5. Given IP3's proximity to Petitioners; West Point Military Academy; Peekskill, NY; White Plains, NY; and New York City, the traditional scope of a Subpart M transfer review must be altered to take into consideration the ongoing license renewal business and activities of the Applicant's affiliates and the likelihood for the same to occur with respect to IP3's license. These activities will affect the expected decommissioning of IP1 and IP2 at the termination of IP2's current license, and will certainly raise health concerns with the on site storage of waste.
6. In light of the above metropolitan areas noted, it should also be noted that the area in close proximity to IP3 is a major attraction and travel area that draws significant populations to view football, basketball and baseball games, tennis and hockey matches, and other cultural events. Thus, unlike most other nuclear plant sites, there is a need for a more inclusive scope of review than that traditional afforded under Subpart M.

CONCLUSION

For the foregoing reasons, the Petitioners request that the Commission grant their petition for leave to intervene and grant their request for a hearing.

Respectfully submitted this 31st day of July 2000.



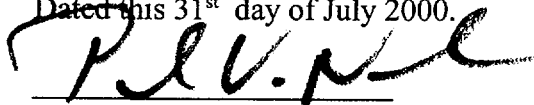
Paul V. Nolan, Esq.

Counsel to the Town of Cortlandt, New York and the
Hendrick Hudson School District

CERTIFICATE OF SERVICE

I, Paul V. Nolan, Esq., Counsel to the Town of Cortlandt, New York and the Hendrick Hudson School District, hereby certifies that on the 18th day of July 2000, service of the foregoing Petition for Additional Time, Leave to Intervene and Request for Hearing; was made by first class mail, with a fax copy provided to the Secretary, on this 31st day of July 2000 on the parties noted in the attached service list.

Dated this 31st day of July 2000.

A handwritten signature in black ink, appearing to read 'P.V. Nolan', written over a horizontal line.

Paul V. Nolan, Esq.

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**UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	
Power Authority of the State of New York, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc.)	Docket No. 50-286
)	
Indian Point 3 Nuclear Power Plant)	License No. DPR-64
)	
Transfer of Facility Operating License and Proposed License Amendment)	AFFIRMATION
)	

State of New York)
) ss:
County of Albany)

Peter Henner, being duly sworn, deposes and says:

- 1) I am the special counsel for the Town of Cortlandt for matters pertaining to the New York State State Environmental Quality Review Act, and I make this affidavit in support of the Town of Cortlandt's and the Hendrick Hudson School District's (respectively, "Cortlandt" and "School District") joint motion to intervene and to request a hearing in the above captioned proceeding involving the operating nuclear facility, Indian Point No. 3 ("IP3").

STANDING TO INTERVENE

- 2) IP3 is one of three nuclear facilities located in the Cortlandt and the School District, and in the Village of Buchanan, which is wholly contained within Cortlandt.
- 3) The IP3 unit and the Indian Point 1 ("IP1") and the Indian Point 2 ("IP2") units are located 24 miles north of New York City, in heavily populated Westchester

County. The nearest City is Peekskill (Pop. 20,000), approximately 2 miles to the northeast. Land use within a 5-mile radius is primarily residential, parks, and military reservations (Camp Smith and West Point are located 2 miles and 8 miles from the plants respectively). The IP3 operating license expires in 2015. The operating license for IP2 expires in 2013. IP1 has not been an operating facility since 1974, but has not yet been fully decommissioned.

- 4) Upon information and belief, the Power Authority of the State of New York ("PASNY"), the current owner and transferor of IP3, has committed itself to decommission the IP3 facility so that the plant's site is returned to unrestricted use. As described below, this commitment is consistent with existing plans to fully restore the sites for IP1 and IP2, and to insure that the sites of all three facilities are available for future use and benefit to the public's health and safety.
- 5) In particular, both Cortlandt and the School District have relied upon, and the public has been informed by, the Commission's actions, upon the representations of Consolidated Edison Company of New York, Inc. ("Con Ed") that IP1 and IP2 would be dismantled at the same time. The dismantling of IP1 and IP2 will include the removal of all residual radioactivity so that the properties could be "released for unrestricted use and both licenses terminated", *NRC Staff Order Approving Decommissioning Plan and Amendment of License for Indian Point Unit 1*, dated January 31, 1996. Copy of news release attached.
- 6) The financial inability of Entergy Nuclear Operations, Inc. ("ENO") and Entergy Nuclear Indian Point 3, LLC ("ENIP") ("Applicants"), to decommission IP3 soon after the expiration of its license to greenfield status, i.e., unrestricted use, will

have a direct and adverse impact upon the interests of Cortlandt and the School District. Any change in the decommissioning of IP3 will deny the full measure of benefits to Cortlandt and the School District associated with decommissioning of IP1, as well as IP2, to greenfield status. With the time for pre-decommissioning planning so near, the NRC Staff's assessment of financial ability must not be truncated. This assessment must include an assessment of the Applicants' ability to decommission the IP3 facility as currently licensed and/or as that license may be renewed or extended.

- 7) Hence, the renewal of the license for either IP2 or IP3 will delay the decommissioning of the entire Indian Point site(s) and thus delay and or jeopardize the full measure of benefits to the health and safety of Cortlandt and the School District associated with the expected decommissioning of IP1 and IP 2 soon after the expiration of IP2's license.
- 8) The licensees for IP2 and IP3 share common facilities. The transfer application at issue herein specifically addresses the use and acquisition of these shared facilities by ENIP. Moreover, the agreements contained in the application specifically address the possibility of ENIP, or an affiliate thereof, acquiring IP2, which is expected to be divested by Con Ed in the very near future. The assessment by NRC staff must consider the consequential impacts associated with both the transfer approval and the prospective acquisition of IP2 by ENIP or by an affiliated company.
- 9) Thus, at a minimum, the Commission must assess the present financial ability of ENIP: 1) to dismantle IP3 at the termination of its present license, and 2) to return

the site to unrestricted use consistent with the Commission's prior approval of the decommission plan for IP1.

- 10) It is respectfully submitted that a fair examination of the materials made available in the public record are insufficient for an assessment of ENIP's financial ability to operate under the issued license and to restore the IP3 site to greenfield status. It is also submitted that any inability of the Applicants' to fully decommission the IP3 must be assessed now because of the consequential impacts of the transfer's approval upon settled decommissioning plans for IP1 and IP2.
- 11) Similarly, the Commission must assess the financial ability of the Applicants to cease operations at the end of the present license's operating term, or the potential for renewal or extension of the IP3 license, as any delay in decommissioning will impact the health and public safety interests of Cortlandt and the School District. These interests will be impacted, not only by the continued operation of IP3, but also by the possible continued operations of IP2, and by the postponement of the decommissioning of IP2 and/or IP1.
- 12) Furthermore, the Commission must also assess: 1) the financial ability of the Applicants to permanently remove spent fuel rods from the site upon decommissioning, without the necessity of utilizing dry cask storage and whether the Applicants will need to store additional nuclear wastes on-site, as a result of a renewal or extension of the IP3 license.
- 13) Any utilization of dry cask storage, and/or any storage of additional waste as a result of the extension or renewal of the license for the of the IP3 plant beyond its

current term, will impact the health and public safety interests of Cortlandt and the School District.

- 14) The Commission must also assess the impact of the various agreements that PASNY has made, or is proposing to make, with ENIP and Entergy Nuclear Fitzpatrick ("ENF"), making both entities jointly and severally liable for their obligations to PASNY. There is nothing in the record to indicate that ENIP will continue to be able to meet its obligations under the IP3 license in the event that ENIP is required to assume the liability for ENF's obligations under the agreements with PASNY imposing joint and several liability. These agreements include a Promissory Facilities Payment Note in the amount of \$586,005,000 (Exhibit A to Purchase and Sale Agreement) and a Promissory Fuel Payment Note in the amount of \$170,835,000 (Exhibit B to Purchase and Sale Agreement).
- 15) ENIP has committed itself, pursuant to the Purchase and Sale Agreement, to sell its entire electricity output to PASNY, for 3.6 cents per kilowatt-hour through December 31, 2004. As a result of this commitment, ENIP will, at best, have enough money to cover its operating costs, and will not have any additional money to satisfy any obligation that may arise as a result of the activities of ENF.
- 16) ENIP's joint and several liability will have a direct impact upon its financial ability to operate and maintain the IP3 plant in accordance with its issued license and the decommissioning plan approved for IP1 and expected to be approved for both IP2 and IP3.
- 17) The problem of joint and several liability is exacerbated by the failure to allocate payments for the combined fuel assets of the IP3 and the ENF facilities. Even

though the two facilities are separate, there is no allocation of how much of the monies that will be paid should be charged to each of the two companies or facilities.

- 18) Cortlandt and the School District are not required to meet the Commission requirements pertaining to organizational standing¹ because the Commission's regulations specifically permit Cortlandt and the School District, as political entities, to participate as a "person:"

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

- 19) "Under current agency case law, the Commission may also allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted." See Rules and Regulations, Nuclear Regulatory Commission, 10 CFR Parts 2 and 51, Streamlined Hearing Process for NRC Approval of License Transfers, 63 FR 66721, (December 3, 1998).

¹ The Commission's regulations require an organization to: 1) demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), 2) identify that member by name and address, and 3) show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member.

20) "Although other requirements of the Commission's licensing provisions may also be addressed to the extent relevant to the particular transfer action, typical NRC staff review of such applications consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations. These financial capabilities are important over the long term, but have no direct or immediate impact on the requirements for day-to-day operations at a licensed facility. The same is generally true of applications involving the transfer of materials licenses."

Id. at 66,721.

21) Moreover, "[u]nder current agency case law, the Commission may also allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted. Id. at 66,724. The interests represented by Cortlandt and the School District ensure that they will make a valuable contribution.

22) Cortlandt and the School District will be affected by the proposed transfer of the IP3 facility to ENIP and ENO because: 1) the transfer of the facility to private ownership will have a direct impact upon the timing and scope of the decommissioning of the facility, and the extent to which the site is restored, 2) the transfer of the facility will impact the future operation of the facility and may result in an extension of the license, and 3) the transfer of the facility to private

ownership may result in the storage of larger quantities of spent nuclear fuel on site, and such nuclear waste will be stored for longer periods of time.

23) Furthermore, the transfer of the facility to private ownership will result in a loss of the public's ability to monitor the operations of the facility through the New York State Freedom of Information Law and the Open Meetings Law (New York State Public Officers Law, Articles 6 and 7), and to have input into the operations of the facility through the political process. As a result, the public will lose the opportunity to participate in decisions pertaining to the operations at the plant, including operations pertaining to discharges and intake of water, handling of non-nuclear waste, as well as issues pertaining to the decommissioning and restoration of the facility, and pertaining to the storage of spent nuclear fuel.

24) The identified injuries are within the zone of interests protected by the Atomic Energy Act because the Act protects public health and safety from radiologically-caused injury, and thereby requires that licensees demonstrate financial qualifications to afford this protection (10 CFR 50.80(b)). The lack of these qualifications leads to the injury described.

25) Upon information and belief, the statements in ¶¶ 2-23 above are sufficient to establish standing (see Georgia Power Company, CLI-92-16, 38 NRC 25 (1993), standing established on basis of regular residence near the facility and assertion of increased risk of radiological injury; see also GPU Nuclear, Inc., et al., (Oyster Creek Nuclear Generating Station), CLI-00-06, __NRC__, May 3, 2000, (standing established on the basis of allegations that a transfer of a facility will

threaten the health and safety of individuals living within one to two miles of the plant, and that the transferee is inexperienced and inadequately funded).

ADMISSIBILITY OF ISSUES

25) Cortlandt and the School District request a hearing to raise the following issues in the pending proceeding:

- a) The changes in the decommissioning of the facility and whether the site will be restored to greenfield status, as had been the intention of the present owner, the PASNY, but which may or may not be the intention of and more importantly the financial ability of the transferee, ENIP.
- b) Transfer of the facility may result in a license extension with the further result that Cortlandt and the School District will be subject to increased radiological exposure as a result of the continued operations of the plant and the continued storage of spent nuclear fuel on the site by ENIP. ENIP's parent company, Entergy Corporation, and/or its subsidiaries are actively involved in the renewal of several nuclear plants already, e.g., Arkansas Nuclear One. Thus as a result of the transfer of ownership of IP 3 to ENIP, there is a greater likelihood that an application to renew the license will be made.
- c) There is a danger that the IP3 facility will be utilized as a temporary repository for spent nuclear fuel from other facilities owned by or affiliated with ENIP, or from facilities owned by ENIP's parent company, Entergy Corporation or by its subsidiaries.

- d) Programs that have previously been run by the transferor, PASNY, pertaining to emergency warning, preparedness training, and health and safety, will be discontinued as a result of the transfer.
 - e) ENIP, i.e., Entergy Indian Point 3, LLC, as a limited liability corporation, may not have the resources to adequately protect the environment and to meet its legal/contractual and regulatory obligations to: 1) employees who worked at the facility, 2) fulfill the assurances that it has made as part of the purchase and sale, and/or 3) people who may be injured or for property damage, in the event of an accident either at IP3 or JAF (due to joint and several liability).
- 26) These issues all pertain to the transfer of the license to operate IP3, and are within the scope of the pending proceeding.
- 27) Furthermore, in order to grant the license transfer application, it will be necessary for the Commission to determine whether the transfer will adversely affect public health and/or safety, or whether the transfer will have a negative impact upon the environment.
- 28) The issues listed in ¶25 above obviously pertain to possible environmental consequences that will result from the change to private ownership of the facility. Therefore, these issues are relevant and material to the Commission's determination with respect to the pending license transfer application.
- 29) Cortlandt and the School District are challenging PASNY's legal authority to sell Indian Point No. 3 to Entergy Indian Point 3, LLC. in a lawsuit pending in New York State Supreme Court captioned: Town of Cortlandt, et.al. v. Power Authority of the State of New York, et.al., Westchester County Index No. 11084-

00. In this proceeding, the Cortlandt and the School District are seeking to stop the transfer of the IP3 nuclear facility to ENIP and ENO because: 1) PASNY has failed to consider the environmental impacts of the proposed transfer as is specifically required by the New York State Environmental Quality Review Act, ("SEQRA") Environmental Conservation Law §8-0101 et. seq., and 2) the sale contravenes the policy of the State of New York (A copy of the petition is attached.)

DECOMMISSIONING AND GREENFIELDING OF THE SITE

- 30) PASNY has owned and operated the Indian Point facility since 1974, and has a statutory obligation to operate the plant to generate electric power, at cost, for the sale of power to governmental entities in the greater New York City metropolitan area.
- 31) PASNY has committed to restore the Indian Point site to "greenfield" conditions after the plant is decommissioned.
- 32) The plant's current operating license expires in 2015. Cortlandt and the School District have been promised that the plant will be restored to greenfield conditions when it is decommissioned in fifteen years.
- 33) The plant is located immediately adjacent to the Hudson River in an area that would otherwise be a prime area for either residential/commercial development or the creation of recreational resources for the Town and/or School District.
- 34) Furthermore, the greenfielding of the site would end the risk of continued radiological exposure that will result from the continued storage of spent nuclear fuel on-site or from the continued use of the site as a generating facility.

- 35) The transfer to private ownership removes the commitment of PASNY to the local community to restore the site to greenfield conditions. The transfer documents do not commit ENIP to greenfield decommissioning even though the planning for greenfield decommissioning must commence in the near future, if it is to be achieved.
- 36) Furthermore, ENIP, as a private for-profit entity that has a fiduciary obligation to its investors, is unlikely to spend more than the minimum possible amount for decommissioning. ENIP is also likely to delay decommissioning to keep operating the facility for as long as possible, so that it can continue to generate revenue.
- 37) Furthermore, because the site will now be owned by a private entity, Cortlandt and the School District will lose the opportunity to be heard with respect to the important issue as to whether or not the owner of the facility should decommission the facility at the expiration of its current license in 2015, or whether the owner should apply for a license extension.
- 38) Even though an application to renew the license will be a separate NRC proceeding, Cortlandt and the School District have an environmental interest in the question of whether that license application, if it is ever to be made, is made by a public entity or by a private entity.
- 39) Therefore, the current application to transfer the license will affect whether and by whom, a future application for a license renewal is ultimately made. The Commission must consider the prospective, and consequential, impacts of the current application upon the question of IP3's future operation, including the

impact of the current application upon the prospective renewal or extension of its license.

- 40) The interest of Cortlandt and the School District in future developments pertaining to either a license renewal application and/or the decommissioning of the facility is even stronger because PASNY has committed itself to go above and beyond the requirements that may be imposed by the NRC with respect to decommissioning. Furthermore, PASNY, as a public entity, is likely to be responsive to public concerns with respect to the continued generation of electrical power versus the need to restore the site. In contrast, a private company, with no responsibility except to its shareholders, will only be interested in the question of generating additional power for financial profit.
- 41) At the present time, the record does not provide any indication of ENIP's intentions as to whether it intends to apply for a license renewal in 2015, or, more importantly, whether it will restore the site to greenfield conditions when it ultimately decommissions the facility.
- 42) Entergy has also expressed an interest in purchasing the IP2 facility from Con Ed, an investor-owned utility that is expected to sell Indian Point No. 2, pursuant to a divestiture plan similar to that previously approved by the New York State Public Service Commission for the divestiture of Consolidated Edison's non-nuclear plants.
- 43) Indian Point Nos. 3 and 2 are immediately adjacent to the Indian Point No. 1 facility, the first commercial nuclear power plant in the United States, which was taken off line in 1974 because its emergency core cooling system did not meet

then current operating requirements. However despite the passage of 26 years, Indian Point No. 1 has never been decommissioned fully because its decommissioning to greenfield status has been postponed until such time as Indian Point No. 2 is decommissioned, so that the two facilities can be decommissioned at the same time. Given the plans to decommission IP1 and IP2 to unrestricted use, i.e., greenfield, the decommissioning of all three sites are inextricably intertwined.

- 44) The financial inability of ENIP to commit now, at the time of its proposed acquisition of IP3, to restore IP3 to greenfield status, jeopardizes and endangers the public benefits to safety and health which have previously been guaranteed by the commitment to greenfield the IP1 and IP2 sites.
- 45) Furthermore, approval of the transfer application may delay, perhaps indefinitely, the already approved decommissioning of IP1 and the anticipated decommissioning of IP2, until such time as all three facilities can be decommissioned and the entire site(s) remediated to a greenfield status.
- 46) Therefore, the Commission should evaluate the cumulative impacts of ENIP's proposed purchase of IP3, including the prospective impacts of ENIP's (or an affiliate thereof) plans to purchase IP2, and the possible resulting further delay in the long-deferred decommissioning of IP1.
- 47) Because there is nothing in the record with respect to the prospective impacts of the transfer of the facility to private ownership, it is impossible for the NRC to make a determination of what impacts, including consequential impacts, may occur as a result of the transfer of the license.

- 48) New York state law, and, in particular, SEQRA, specifically requires consideration of the consequential impacts of actions, such as the sale of power plants, which may affect the environment.
- 49) For example, 6 NYCRR 617.2(b)(2) defines an “action” for the purposes of SEQRA as “agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.”
- 50) Under SEQRA, “environmental” conditions are defined to include “existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.” (New York State Environmental Conservation Law §8-0105(6)).
- 51) Furthermore, New York courts have recognized that the transfer of a facility that provides public benefits, including a power plant, is an action that has important consequential impacts that must be considered. In a case involving the transfer of the ownership of a public water supply system, a New York state appellate court rejected a claim “that there would be no discernible difference in environmental impact regardless of which entity holds title. The different entities have different levels of political accountability. . . .In the event of major capital expenses. . . it is not so clear that the City's continuing operational obligation to maintain and repaired the system equates with continuing responsibility for capital additions or replacements. The respective responsibilities and strategies to meet such capital needs would more appropriately be analyzed in an environmental impact statement. Nor is the transfer of title between public entities a mere paper transaction relieving the transferor of the obligation to fully analyze

environmental consequences of the transfer.” Giuliani v. Hevesi, 228 A.D.2d 348, 352-353 (1st Dept. 1996), aff’d as modified 90 N.Y.2d 27(1997) see also Niagara Mohawk Power Corporation v. Green Island Power Authority, 265 A.D.2d 711 (3d Dept. 1999), app. dismissed 94 N.Y.2d 891(mem.)(2000) (holding that a negative declaration did not satisfy obligation to “fully analyze the environmental consequences” of the transfer of a hydroelectric generating facility).

52) If their petition is granted, the Town and School District intends to present evidence, both documentary and in the form of live testimony, as to the past intentions of PASNY with respect to decommissioning and greenfielding of the site. Cortlandt and the School District respectfully maintain that more information should be required with respect to ENIP’s plans and financial resources, and a determination, on the ensuing factual record, should be made as to whether there will be any changes in the timing and scope of the decommissioning which will ultimately be undertaken as a result of the license transfer.

LIMITED LIABILITY CORPORATIONS

53) Under the terms of the proposed transfer, the IP3 facility will be transferred to a limited liability corporation, which has just recently been formed for the specific purpose of owning the IP3 facility. It should be noted that this limited liability corporation, Entergy Nuclear Indian Point 3, LLC (“ENIP”), does not have an operating history inasmuch as it has just been formed. At the very least, this LLC should be treated as a newly formed entity subject to the stricter financial requirements of 10 C.F.R. §50.33(f)(3) and (4). Thus, the financial ability of this

- 58) The GPU proceeding, like the instant proceeding, involves a transfer of a license of an existing nuclear facility. In both cases, the transfer applicant has alleged that there will be no change in the physical operations at the facility, because the issue is merely a license transfer.
- 59) It should be noted that the issues in the instant case are factually distinguishable from GPU Nuclear inasmuch as the transferor in the instant case is a public entity, while the transferor in GPU Nuclear was an investor owned utility.
- 60) In the instant case, there are significant environmental impacts, as discussed above, and discussed at greater length in the attached petition in the pending New York State Supreme Court case, as a result of the change from public to private ownership.
- 61) Most notably, in the instant case, the proposed transfer is likely to impact the ultimate plans for decommissioning and greenfielding on the site, and on the length of time that spent nuclear fuel will be stored on site.
- 62) However, it should also be noted that the Cortlandt and the School District, with all respect to the Commission, believes that GPU Nuclear was wrongfully decided, and that the decision creates the very “fortress to deny intervention” that the Commission has repeatedly said that it would not establish in making determinations with respect to proposed intervenors.
- 63) Furthermore, in the instant case, the proposed intervenors, the Town of Cortlandt and the Hendrick Hudson School District, are the host community for the nuclear facility, and have a clear and vital interest in all present and future operations and related activities, e.g., decommissioning, at the IP3 facility.

64) The Commission has, both in its formal rules, 10 C.F.R. 2.715 and in its case law, utilized a liberal standard in determining whether a host governmental entity may intervene in its proceedings.

65) Finally, the decision by the Commission denying a hearing with respect to this application will preclude any review of the important implications of the transfer of the IP3 facility to private ownership. Because, as noted above, this transfer will have serious far-reaching impacts upon the surrounding community, the Commission should permit a hearing upon these issues.

WHEREFORE, your deponent respectfully urges the Commission to grant the Town of Cortlandt and the Hendrick Hudson School District permission to intervene in the pending application for license transfer, and to order that a hearing be conducted with respect to the issues raised in the instant motion.

Peter Henner

Sworn to before me this
31st day of July, 2000

Notary Public – State of New York

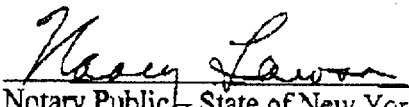
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WHEREFORE, your deponent respectfully urges the Commission to grant the Town of Cortlandt and the Hendrick Hudson School District permission to intervene in the pending application for license transfer, and to order that a hearing be conducted with respect to the issues raised in the instant motion.


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Sworn to before me this
31st day of July, 2000


Notary Public State of New York

NANCY LAWSON
Notary Public, State of New York
No. 01LA5059881
Qualified in Albany County
Commission Expires May 6, 2002

United States Nuclear Regulatory Commission
Office of Public Affairs
Washington, DC 20555
Phone 301-415-8200 Fax 301-415-2234
Internet: opa@nrc.gov

No. 96-22

FOR IMMEDIATE RELEASE
(Thursday, February 1, 1996)

**NRC STAFF APPROVES DECOMMISSIONING PLAN
FOR INDIAN POINT NUCLEAR UNIT 1**

The Nuclear Regulatory Commission staff has issued an order approving Consolidated Edison Company's **decommissioning plan** for its **Indian Point 1** nuclear power plant near Buchanan, New York.

The plant, first licensed in March 1962, was permanently shut down on October 31, 1974, because its emergency core cooling system did not meet the then current regulatory requirements. Since January 1976, all fuel from the reactor has been stored in the plant's on site spent fuel pool, where the fuel is expected to remain until a Federal repository is available to receive it.

Under the **decommissioning plan** submitted by Consolidated Edison, Unit 1 will be kept in safe storage until **Indian Point 2**, also owned by the utility, ceases to operate, after which both units will be dismantled at the same time. The utility must submit a detailed dismantling plan for NRC approval before the start of major dismantlement activities.

Under safe storage, the facility is left intact, but all fuel is removed from the reactor core, and radioactive fluids and wastes must be removed from the site. The facility subsequently is decontaminated to levels that permit release of the property for unrestricted use.

In reviewing the **decommissioning plan**, the NRC staff concluded that there is reasonable assurance that the health and safety of the public will not be endangered and that maintaining the facility in safe storage will not cause any significant environmental effects. Consolidated Edison first filed its **decommissioning plan** in 1980, and periodically revised it in response to NRC questions, most recently this past July.

Further details on the **decommissioning plan** and the staff's action are available for public inspection at the NRC Public Document Room, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room for **Indian Point 1** at the White Plains Public Library, 100 Martine Avenue, White Plains, N.Y.

#

Return to NRC News Release Listing.

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Lancaster, NH 03584-3322

July 28, 2000

Paul V. Nolan, Esq.
5515 N. 17th Street
Arlington, VA 22205**RE: Review of Indian Point 3 License Transfer Application
(U.S. Nuclear Regulatory Commission Docket No. 50-286)**

Dear Mr. Nolan:

At your request we have reviewed the redacted version of the May 11, 2000 application for a transfer of the nuclear operating license no. DPR-64 for the Indian Point Nuclear Generating Unit No. 3 ("IP3") in Cortlandt, NY, from the Power Authority of the State of New York ("PASNY") to a subsidiary of Entergy Corporation simultaneously with the transfer of ownership of the James A. FitzPatrick nuclear generating plant ("JAF") from PASNY to yet another subsidiary of Entergy. We have a number of concerns relative to the application (and the underlying sales), most of which are complicated by the fact that we do not have access to critical financial information that has been redacted from the public record.

Issues that we believe should be addressed prior to approving the license transfer are listed and discussed below. (References to Entergy are to the subsidiary owner unless otherwise specified. Exhibits referred to are those attached to the application unless otherwise indicated.) The issues are as follows:

1. Financial capacity of Entergy to operate at IP3

The sale is structured so that Entergy will make a stream of payments to PASNY for:

- a) purchase of the facility (over 7 years)¹

¹ Purchase & Sale Agreement), ¶ 2.5(a), p. 9.

Paul Nolan
July 29, 2000
Page 2

- b) purchase of fuel (over 7 years)²
- c) commissions on either purchasing all or part of IP2 or Nine Mile Point Units 1 and/or 2 or being awarded operating contracts for any or all of those plants.³

Entergy will sell energy to PASNY at or below market rates for four years and be entitled to some payments if market prices exceed a forecasted amount.⁴

From the information supplied it is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. A particular problem is that the fuel payment stream cited in the application is for the combined fuel assets of IP3 and James A. Fitzpatrick Nuclear Generating Station and does not allocate the portion of payments assigned to each site.⁵

The application indicates a summer capacity of 970 MW and a winter capacity of 985 MW for IP3. The Power Purchase Agreement revolves around a capacity factor of 85% which, with an average capacity of 977 MW, produces 7,274,472 MWh of energy annually. This energy at \$36 per MWh⁶ yields \$261.9 million operating revenue. Historic New York nuclear plant data indicates that \$23 per MWh is a typical variable O&M cost, which would mean a \$167.3 million annual operating expense not including depreciation or capital replacements. The resulting net operating income of \$94.6 million is not enough to cover the facility and fuel payments of \$108.1 million (if all of the fuel payment is assigned to IP3) for the first seven years.

² *ibid.*

³ Purchase & Sale Agreement, Exhibit L.

⁴ Purchase & Sale Agreement, Exhibit K, p. 11.

⁵ Purchase & Sale Agreement, p. 14.

⁶ Purchase & Sale Agreement, Exhibit K, p. 11.

Paul Nolan
July 29, 2000
Page 3

2. Decommissioning Fund adequacy

For the reasons mentioned above, it is not possible to estimate the ability of Entergy to fund required payments to the Decommissioning Fund.

3. Combined operations

The application contains provisions⁷ for Entergy to pay commissions or "signing bonuses" in the event Entergy succeeds in purchasing IP2 or Nine Mile Units 1 or 2, or is awarded operating contracts resulting in efficiencies realized from the joint operation of the plants. Payments for efficiency improvements are dependent on those efficiencies being realized, but the underlying commission is subject to the same questions as in item number 1 above.

4. Return of excess PASNY decommissioning funds

PASNY appears to be retaining decommissioning funds in excess of the amount required.⁸ Assuming that ultimately there will be excess money remaining after decommissioning, the application is silent on the distribution of that money. Assuming PASNY retains its portion of the decommissioning funds and undertakes decommissioning, the application is silent about the situation in which IP3's license is extended beyond its current end date.

5. License extension implications

IP3 (as well as IP2) is clearly a candidate for an operating license extension. The license should address the kind, quantity and location of spent fuel storage for the plant complex.

⁷ Purchase & Sale Agreement, pp. 5-6.

⁸ Purchase & Sale Agreement, Exhibit O-2.

Paul Nolan
July 29, 2000
Page 4

6. **Final decommissioning status**

It is the understanding of the community that the Indian Point site will eventually be restored to a Greenfield condition. The license transfer is silent on how this will be achieved in the face of the possibility that the Federal Government will not provide the statutory final disposal site.

We hope that the identification of these issues will be helpful to you in your intervention with the Nuclear Regulatory Commission. If you have any questions, please do not hesitate to contact us.

Very truly yours,

George E. Sansoucy/PLM
George E. Sansoucy, P.E.

GCW/wjk

STATE OF NEW YORK
COUNTY OF WESTCHESTER SUPREME COURT

In the matter of the application of the

TOWN OF CORTLANDT and the HENDRICK HUDSON
CENTRAL SCHOOL DISTRICT,

Petitioners,

for judgment pursuant to Article 78 of the CPLR

-against-

THE POWER AUTHORITY OF THE STATE OF NEW
YORK, ENTERGY NUCLEAR INDIAN POINT 3, LLC,
and ENTERGY NUCLEAR OPERATIONS, INC.,

Respondents.

NOTICE OF
PETITION

Index No.: 11084-00
RJI No.:

RECEIVED
JUL 26 2000
LEONARD N. SPANO
COUNTY CLERK
COUNTY OF WESTCHESTER

PLEASE TAKE NOTICE that upon the annexed petition, verified on July 26, 2000, an application will be made to this Court at a special term thereof, to be held in the Westchester County Courthouse, White Plains, New York, on September 29, 2000, at 9:30 o'clock in the forenoon of that day, or soon thereafter as counsel may be heard, for an order and judgment:

- 1) Enjoining the Power Authority of the State of New York from taking any action to implement or consummate the sale of the Indian Point No.3 nuclear facility or the transfer of said facility to either Entergy Nuclear Indian Point No.3, LLC or to Entergy Nuclear Operations, Inc.
- 2) Alternatively, enjoining the Power Authority of the State of New York from proceeding with the sale of either the Indian Point No. 3 nuclear facility until such time as the Power Authority has fully complied with the provisions of the New York State Environmental Quality Review Act, and retaining jurisdiction over this action until the Power Authority achieves such compliance;

STATE OF NEW YORK
COUNTY OF WESCHESTER SUPREME COURT

In the matter of the application of the

TOWN OF CORTLANDT, and the HENDRICK HUDSON
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THE POWER AUTHORITY OF THE STATE OF NEW
YORK, ENTERGY NUCLEAR INDIAN POINT 3, LLC,
and ENTERGY NUCLEAR OPERATIONS, INC.,

Respondents.

Petitioners respectfully allege as follows.

VERIFIED
PETITION

Index No.: 11084-00

RJI No.:

RECEIVED
JUL 26 2000
LEONARD N. SPANO
COUNTY CLERK
COUNTY OF WESTCHESTER

INTRODUCTION

- 1) This is a proceeding pursuant to Article 78 of the CPLR seeking to: 1) invalidate the action of the Power Authority of the State of New York ("PASNY" or the "Authority") of selling Indian Point No. 3 Nuclear Electric Generating Facility ("Indian Point") to Entergy Nuclear Indian Point 3, LLC, ("ENIP"), and 2) enjoin the transfer of operation and control of Indian Point to either ENIP or Entergy Nuclear Operations, Inc. ("ENO") on the grounds that:
 - a. The determination to sell Indian Point is arbitrary, capricious and an abuse of discretion, because this determination is contrary to the expressed legislative declaration and findings regarding the promotion and protection of the public interest, and
 - b. PASNY has failed to comply with the provisions of the New York State Environmental Quality Review Act, "SEQRA" (ECL §8-0801 et. seq.).

STATE OF NEW YORK
COUNTY OF WESCHESTER SUPREME COURT

In the matter of the application of the

TOWN OF CORTLANDT, and the HENDRICK HUDSON
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VERIFIED
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INTRODUCTION

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 - a. The determination to sell Indian Point is arbitrary, capricious and an abuse of discretion, because this determination is contrary to the expressed legislative declaration and findings regarding the promotion and protection of the public interest, and
 - b. PASNY has failed to comply with the provisions of the New York State Environmental Quality Review Act, "SEQRA" (ECL §8-0801 et. seq.).

- 2) The Indian Point facility was acquired by PASNY pursuant to the authority of §1001-a of the Public Authorities Law ("PAL"), "Emergency Provisions for the Metropolitan Area of the City of New York," which was enacted pursuant to §2 of chapter 369 of the Laws of 1974. The Legislature authorized the purchase of "not more than one...generating facility in each of New York City and Westchester County..." (Amendment to §1005, PAL, L.1974, c.370, §1) to implement its finding "that there is a shortage of dependable power capacity in the southeastern part of the state and that the public interest requires that the authority assist in alleviating such shortage by providing such base load generating facilities as may be necessary..." (language added to PAL §1001 by L.1972, c.489). PASNY's sale of Indian Point without a determination that the legislatively recognized need has been addressed is an abuse of discretion. (First Cause of Action)
- 3) Petitioners maintain that PASNY has failed to comply with SEQRA because it:
 - a. Did not make a determination of significance under SEQRA and issue a Negative Declaration until after it had determined to: 1) to sell the Indian Point facility and the James A. Fitzpatrick ("Fitzpatrick") nuclear plant, located in the Town of Scriba, Oswego County, New York, and 2) to sell the power plants to Entergy controlled corporations (Second Cause of Action),
 - b. Improperly issued a negative declaration, rather than prepare a full environmental impact statement (Third Cause of Action),
 - c. Failed to take a hard look at the prospective environmental impacts of its proposed action (Fourth Cause of Action),
 - d. Failed to consider the environmental implications of selling a publicly owned power plant to a non-regulated, for-profit entity (Fifth Cause of Action), and

- e. Improperly delegated its obligations under SEQRA (Sixth Cause of Action),
- 4) Petitioners also maintain that PASNY violated the provisions of §1007(10) of the PAL because it did not offer Consolidated Edison the first opportunity to purchase the portion of the Indian Point facility that was taken by appropriation. (Seventh Cause of Action).

JURISDICTION AND VENUE

- 5) On March 28, 2000, PASNY, by a vote of its Board of Trustees, adopted a resolution approving the sale of two nuclear facilities, the James A. Fitzpatrick Nuclear facility in Scriba, New York and the Indian Point No. 3 facility, to two subsidiaries of Entergy Corporation (Entergy Nuclear Indian Point No. 3, LLC and Entergy Nuclear Fitzpatrick, L.P.). (A copy of the resolution is annexed hereto as Exhibit A.)
- 6) The March 28, 2000 resolution, *inter alia*: 1) declared PASNY to be the lead agency for the purposes of SEQRA, 2) determined that the proposed action (the sale of the two nuclear facilities) would “not have a significant effect on the environment and that an Environmental Impact Statement need not be proposed”, 3) directed the “prepar[ation] fil[ing] and publish[ing] of a Negative Declaration. (A copy of the negative declaration, dated March 31, 2000, three days after the resolution was adopted and the sale consummated, including the long-form Environmental Assessment Form and the Addendum attached to it, is annexed hereto as Exhibit B.), and 4) determined that it was “neither practicable nor reasonable” to offer property acquired by appropriation to Consolidated Edison, the previous owner.
- 7) Petitioners allege that the determination to proceed with the sale was arbitrary, capricious, an abuse of discretion, and was made in violation of lawful procedure, and PASNY should therefore be enjoined from proceeding with this sale pursuant to CPLR 7803(3).

- 8) The instant action is commenced prior to July 28, 2000, the applicable deadline established by the four-month statute of limitations to commence an Article 78 proceeding (CPLR 217).
- 9) Venue is properly laid in Westchester County pursuant to CPLR 505(a), which specifies the place of trial of an action against a public authority as the county where the authority has its principal office or where it has facilities involved in the action, because the Indian Point facility is located in Westchester County.

PARTIES

- 10) The Town of Cortlandt is a municipal corporation that has the specific power to institute a special proceeding pursuant to §65 of the Town Law. It purchases power from PASNY that is generated by the Indian Point facility.
- 11) The Hendrick Hudson Central School District is a central school district that has the specific power to institute a court proceeding pursuant to §1804 of the Education Law. It purchases power from PASNY that is generated by the Indian Point facility.
- 12) The Indian Point facility is located in both the Town of Cortlandt and the Village of Buchanan. The entire facility is located within the geographic boundary of the Hendrick Hudson Central School District.
- 13) Residents and taxpayers of the Town of Cortlandt and the Hendrick Hudson Central School District have environmental interests that will be adversely affected by the sale of the Indian Point facility because: 1) the decommissioning and eventual greenfielding of the Indian Point site may be delayed or even prevented by the sale, 2) residents will be subjected to increased risks and hazards pertaining to the storage of spent nuclear fuel, 3) the public will lose the ability to monitor, observe, and participate in the relevant decisions

made pertaining to the operation of Indian Point because it will no longer be owned by an entity subject to governmental access laws, 4) local communities, including petitioners, will lose the benefits of the emergency planning and health impact training programs which have been conducted by PASNY, 5) public facilities will suffer diminished access to electrical energy resources, and 6) the Town of Cortlandt and the Hendrick Hudson Central School District, both customers of PASNY, will be subject to higher costs for power since they will have to purchase electricity at market rates.

- 14) The Town of Cortlandt, by resolution dated July 18, 2000, has expressed its concern about:
 - 1) environmental conditions at the Indian Point site, 2) the diminution of its ability to review the environmental implications of actions taken with respect to the Indian Point facility as a result of its transfer to private ownership, 3) the loss of the emergency planning and health impact programs that have been conducted by PASNY, and 4) the potential loss of access to electrical energy from the Indian Point facility. (A copy of this resolution is annexed hereto as Exhibit C.)
- 15) The Power Authority of the State of New York is a “corporate municipal instrumentality of the State...capable of suing and being sued...” (PAL §1002).
- 16) Entergy Nuclear Indian Point No. 3, LLC (“ENIP”) is the purchaser of the Indian Point facility and is named as a respondent because it “ought to be [a] part[y] if complete relief is to be accorded between the persons who are parties to the action or [if it may] be inequitably affected by a judgment...” (CPLR 1001(a)).
- 17) Entergy Nuclear Operations, Inc. (“ENO”) is the corporation that, upon information and belief, will have the responsibility of operating Indian Point, and is named as a respondent because it “ought to be [a] part[y] if complete relief is to be accorded between the persons

who are parties to the action or [if it may] be inequitably affected by a judgment..." (CPLR 1001(a)).

HISTORY OF PASNY'S NUCLEAR POWER PLANTS

- 18) The Power Authority of the State of New York was created pursuant to the Power Authority Act in 1931. When the Power Authority was first created, its primary purpose was the development of hydroelectric power along the Niagara and St. Lawrence Rivers.
- 19) In 1968, PASNY was empowered, for the first time, to construct and operate a nuclear power plant (L.1968, c.294, §3).
- 20) In 1974, the Legislature specifically authorized PASNY to acquire a power plant in Westchester County (L.1974, c.369, §§2,3,13,14, amended by L.1974, c.370). In particular, §1001-a, "Emergency Provisions for the Metropolitan Area of the City of New York", was added to the Public Authorities Law. This section authorized PASNY to "acquire completed or partially completed generation, transmission, and related facilities, and fuel contracts" because of a legislative declaration "that extraordinary circumstances including excessive costs, shortages of supply threaten the capacity to provide utility service essential to the continued health and prosperity of the people of the metropolitan area of the City of New York, and, by reason of the interconnection and interdependence of electric facilities, the reliability of such service throughout the state and require emergency action by the State and its agencies."
- 21) Pursuant to its statutory authority, PASNY and Consolidated Edison negotiated an agreement by which the Indian Point 3 Nuclear Power Plant, as well as a fossil fuel facility formerly known as "Astoria 6" and renamed the "Charles Poletti Power Plant" by PASNY, was sold to PASNY. The New York State Court of Appeals has noted that New York City

and public benefit corporations in the New York City metropolitan area were “third party beneficiaries” of this sale (Koch v. Consolidated Edison, 62 N.Y.2d 548, 559 (1984)).

- 22) PASNY acquired Indian Point No. 3 from Consolidated Edison in 1975, and commenced commercial operation of the plant in August 1976. PASNY has operated Indian Point No. 3 from 1976 to the present.
- 23) Indian Point No. 3 is the principal power source for 111 governmental customers in New York City and Westchester County, including the Town of Cortlandt and the Hendrick Hudson Central School District (EAF Addendum, pg.5). These public entities utilize the electricity generated by Indian Point for a variety of public purposes, including buildings, transportation facilities, street lighting, and various other purposes.
- 24) In 1999, PASNY commenced the consideration of the sale of the Indian Point and Fitzpatrick facilities.
- 25) On November 3, 1999, PASNY and Entergy Nuclear Corporation announced that they were engaged in exclusive negotiations for the potential sale of the Indian Point and Fitzpatrick facilities.
- 26) According to the Addendum to the Environmental Assessment prepared by PASNY in late March, 2000 (attached to the Negative Declaration, Exhibit B), the environmental review process did not commence until “November 1999 and proceeded concurrently with the sale negotiations” (pg. 1).
- 27) The Environmental Assessment Form itself was apparently completed on January 6, 2000, and was transmitted to “various involved and interested agencies along with the Authority’s indication of intent” to become lead agency for the purposes of SEQRA.

- 28) In its Addendum to the EAF, PASNY states that Westchester County did not object to PASNY assuming the role of lead agency, but did raise concerns with respect to “safe plant operations, public safety, impacts on local communities, impacts on existing contracts, the Decommissioning Fund, [and] spent fuel storage and greenfielding” (pg. 1).
- 29) Although Westchester County did not formally object to PASNY’s assertion of lead agency, Westchester County Executive Andrew Spano, in a letter co-signed by Putnam County Executive Robert Bondi, sharply criticized PASNY for failure to supply sufficient information to address the relevant questions pertaining to the SEQRA review of the proposed transfer. In particular, the letter from Mr. Spano and Mr. Bondi stated:

“This action, though having significant potential impacts on the communities and residents of Westchester and Putnam Counties is being undertaken without discussion with representatives of our respective counties....

Now that you have admitted to having a potential purchaser, you still have not addressed our concerns for the continued safe operation of the plant, nor have you provided any information to us concerning the potential owner’s qualifications in running a nuclear power plant. There are numerous other questions that must be answered in order for us, the duly elected local officials, to satisfy ourselves that the safety of the public will not be compromised, that the local communities will be treated fairly, that employment will not be adversely affected, that NYPA customers will benefit from the low-cost power that this plant was supposed to provide, and that this transaction is beneficial to our residents....

We need to know how the potential purchaser will cooperate with existing emergency preparedness plans, local preparedness resources, and the Four County Notification System. What is their record in dealing with those municipalities that surround their other plants? Presently, we have experience and a history with the present operators of the Indian Point facilities, but we have not been provided with any information about the proposed operator. Unfortunately, NYPA has decided not to inform those most affected by its decision of its proposed actions....

The SEQRA review must deal not only with the immediate issues such as the safe operation of the plant, public safety, impacts on local communities, the ramifications for contracts to provide implications, including plans for the eventual decommissioning of these facilities, the disposal and long term storage of spent fuel, and the restoration of the site to greenfield condition. The manner in which NYPA has conducted itself to date in this matter, forces us to question how the SEQRA process will be handled.

These are just a few of the many aspects to this transfer of ownership that must be discussed publicly. We look forward to hearing from you on this matter."

(A copy of the letter from the two county executives is annexed hereto as Exhibit D).

- 30) Upon information and belief, PASNY never responded to the concerns which were raised by the Westchester and Putnam County Executives, nor did PASNY make any of the information requested by the County Executives available for public comment and debate prior to the formal issuance of the negative declaration on March 31, 2000.
- 31) Instead, PASNY, together with Entergy, announced, by press release dated January 31, 2000, that they had agreed to extend the period for exclusive negotiations, and did not plan to make any further public announcements on the negotiations during the extension period.
(A copy of this press release is annexed hereto as Exhibit E.)
- 32) On February 14, 2000, PASNY and Entergy jointly announced that they had reached agreement on the sale of the Indian Point and Fitzpatrick power plants, and issued: 1) a press release, 2) a "Goals Fact Sheet" and 3) a two-page document titled "NYPA-Entergy Power Purchase Agreement". (Copies of these documents are annexed hereto as Exhibit F.)
- 33) PASNY conducted a community information briefing regarding the proposed sale of Indian Point in Village of Buchanan, New York on February 23, 2000. The Village of Buchanan is within the geographical boundaries of the Hendrick Hudson Central School District and is contained within the Town of Cortlandt.
- 34) PASNY subsequently considered, and ultimately rejected, a competing proposal for the purchase of the Indian Point and Fitzpatrick facilities from Dominion Resources, Inc. A summary of the proposals of both Entergy and Dominion, as well as a summary of the selection process, is contained in the President's Memorandum to the Trustees, dated

March 28, 2000, recommending the sale of the two facilities to Entergy. (A copy of this memorandum is annexed hereto as Exhibit G).

- 35) The Indian Point facility is located along the Hudson River shore line in Westchester County, in an area that the Westchester County Planning Department has classified as a critical environmental area pursuant to 6 NYCRR 617.14(h) (formerly 6 NYCRR 617.4(h)).
- 36) The Indian Point facility is located on approximately 102 acres of land and the Fitzpatrick facility is located on approximately 720 acres of land. Therefore, the sale of either of these facilities by PASNY constitutes the sale of 100 or more acres of land by a State agency and, for the purposes of SEQRA, this sale is a "Type I action" within the meaning of 6 NYCRR 617.4(b)(4).

ENVIRONMENTAL IMPACTS FROM THE SALE OF THE POWER PLANTS

A. Decommissioning and Greenfielding

- 37) The Nuclear Regulatory Commission license for the Indian Point facility is scheduled to expire in 2015.
- 38) After the expiration of the license, the plant is scheduled to be decommissioned and restored to a "greenfield condition."
- 39) The facility is adjacent to the Hudson River, on land that would be highly desirable for residential real estate, recreational facilities, or other development.
- 40) As a result of the decommissioning and greenfielding of the Indian Point site, the operator of Indian Point, regardless of whether it is PASNY or a private owner, will be liable for the costs of restoring the site.

- 41) According to PASNY, "It is estimated that at the time of license expiration, the [Decommissioning Trust Fund] will have approximately \$1.9 billion available for decommissioning and greenfielding" (EAF Addendum, pg. 8). These monies will need to be used for both the Indian Point and the Fitzpatrick facilities.
- 42) PASNY states that "analysis indicated that this amount would be sufficient to decommission, including greenfielding, the facilities at licensing expiration." (EAF Addendum, pg. 8).
- 43) However, PASNY does not include this "analysis" in its environmental review, nor does PASNY include any information to support its conclusion that this sum will be adequate for the restoration of the two sites.
- 44) ENIP, as the private owner and operator of, will have an interest in extending the useful life of the Indian Point No.3 facility as long as possible, both to continue to generate revenue from the sale of electric power, and to postpone the payment of decommissioning and greenfielding costs.
- 45) As a result of the transfer of the Indian Point facility to a private developer, it is highly likely that the Indian Point facility will continue to operate longer than it would have operated had the plant continued to be owned by PASNY.
- 46) It is possible, if not probable, that a private developer such as ENIP is more likely than a publicly owned authority to apply for an extension of the license to operate Indian Point beyond 2015.
- 47) Possible environmental impacts, including: 1) shortfalls of funding for the restoration of the site, 2) an extension of the license as a result of the transfer of the facility to private

ownership, and 3) delays in the restoration of the site, were never considered by PASNY in the course of its "environmental review" for the proposed sale of the Indian Point facility.

- 48) Furthermore, PASNY did not consider the possible impact of future federal income tax rulings, which would not have affected a public authority, but might affect the ability and/or willingness of a private entity to decommission the facility and fully restore the site.

B. Energy Supplies

- 49) PASNY initially acquired Indian Point because of the need, specifically recognized by the State Legislature, to respond to a shortage of electricity in southeastern New York and in the New York City metropolitan area.

- 50) The Legislature has not indicated that this shortage of electricity has ceased.

- 51) PASNY claims, on its web site, that it supplies power to over 10,000 public facilities.

Indian Point itself is described as "powering subway and commuter rail lines, water and sewage treatment facilities, libraries, hospitals, schools, police stations and other public sites."

- 52) PASNY, as a result of the sale of Indian Point, may not be able to fulfill its continuing responsibilities and/or its statutory mandates to provide power to customers.

- 53) For example, it is unclear whether the Authority will continue to purchase electricity from Entergy after December 31, 2004, and there is nothing in either the EAF or the Addendum which indicates that PASNY has considered the question of how it will obtain the power to fulfill its contractual obligations after that date.

- 54) The ability of public benefit corporations to purchase power, and the cost of such power, will necessarily have environmental implications. The cost and availability of electric power will affect the viability of public transportation, the use of electricity versus fossil

fuels in heating systems in public buildings, and the ability of public entities to operate on a basic level. These issues were never considered by PASNY in its environmental review of the proposed sale of the two facilities.

- 55) PASNY's environmental review did not consider the prospective impacts of the possible loss of this power as a result of the sale of the Indian Point facility, nor did PASNY consider the prospective impacts of possible changes in costs and/or allocations of power as a result of the transfer of the facility to private ownership.
- 56) PASNY apparently believes, even though it did not articulate its belief in its environmental analysis, that there will be no adverse impact upon PASNY's customers because they will be able to purchase power in a fully competitive market for the same cost or less than they presently receive power from PASNY.
- 57) However, PASNY generates and sells power at cost, without making a profit. Power generated at the Indian Point facility, or generated any place else, by a private developer will necessarily be sold at a profit. Therefore, the sale of Indian Point to a private developer is likely to reduce the availability of low-cost power for the public facilities that are PASNY's customers.
- 58) As a result of the sale of Indian Point, PASNY's municipal customers in the New York City metropolitan area will no longer be able to purchase power from PASNY at the cost of production, but will instead be at the mercy of market forces; either because PASNY's cost of purchasing power will be passed on to its customers, or because the municipalities will have to purchase power directly on the open market.

C. Public Oversight Over Facility

- 59) Although PASNY may be correct in saying that there will be no change in the physical operation of the plants as a result of the change in ownership, the sale may have the impact of reducing the ability of the public to oversee the operations at the plants.
- 60) PASNY, as a state agency, is subject to the provisions of the Freedom of Information Law, "FOIL" (Article 6 of the Public Officers Law) and the Open Meetings Law, "OML" (Article 7 of the Public Officers Law). Both of these laws, as well as the full panoply of statutes, rules and regulations pertaining to state agencies, provide Petitioners and their constituents with important tools to insure that facilities operated by State agencies are run in the most environmentally conscientious manner. These statutes provide opportunities for public oversight and input with respect to any concerns that may arise.
- 61) As a result of the transfer of ownership, both of these plants will be operated by private entities. The records of private entities are not subject to FOIL, nor are meetings with respect to corporate governing bodies subject to the OML.
- 62) Even though the operations of the plants, including, for example, air emissions, discharges of pollutants to water bodies, and other prospective impacts, will continue to be supervised by federal and state regulatory bodies, the public will lose the ability to observe and participate in decisions that may need to be made with respect to these operations.
- 63) For example, both the Indian Point and Fitzpatrick facilities have limitations on thermal discharges contained in their State Pollutant Discharge Elimination System (SPDES) permits. Under the terms of these permits, the facilities are restricted in the temperature of the water that is discharged. Although state and federal regulatory agencies may have the same responsibility to enforce permits issued to Entergy that they have with respect to

PASNY's current permits, there may be determinations that may need to be made as to changes to the water discharge system. If the changes will not result in the violation of the SPDES permits, there is no basis for regulatory agencies to act. However, if the facilities are owned by PASNY, Petitioners would have an opportunity to review the relevant documents pertaining to these changes, attend meetings of the Board of Trustees where changes might be discussed, and to voice their opinions about the relevant technical issues. In contrast, if the facilities are privately owned, the public will be limited to only reviewing the final discharge records that are submitted to the regulatory agencies.

- 64) The public will also lose the opportunity to review and comment on actions that might be taken with respect to the production of power. A decision to increase or decrease the production of power may have significant environmental impacts, both with respect to the availability of power, and with respect to concomitant impacts on water usage and discharge, air emissions, and solid waste. The public's ability to review and comment on such prospective changes will be lost if the facilities are transferred to private ownership.

D. Nuclear Waste

- 65) The concern for public input is even more important with respect to the impacts on public health and safety.
- 66) As noted in the Addendum to the EAF (pgs. 9-11), there are significant questions that are likely to arise with respect to the storage of spent nuclear fuel at the site of both facilities. The spent nuclear fuel may be stored in above-ground dry casks on-site for more than twenty years.
- 67) Even though the problems of storage and ultimate disposal of spent nuclear fuel, as well as the problem of decommissioning a nuclear power plant, will exist regardless of whether the

facilities are owned by PASNY or by a private entity, the public will have a significantly greater ability to comment, participate, and criticize actions taken with respect to the storage and disposal of nuclear fuel and decommissioning of a plant if it continues to be owned by PASNY.

- 68) Furthermore, the problem of storage and disposal of nuclear fuel may be exacerbated in the event that a private owner seeks to renew or extend the license to operate the Indian Point facility, since continued operations will result in additional spent nuclear fuel.
- 69) PASNY notes that the Nuclear Regulatory Commission has “made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least thirty years beyond the licensed life” of a nuclear facility (EAF Addendum, pg. 11). In the case of Indian Point, this would mean that such waste could be stored on-site until 2045, or even longer if the license is renewed or extended (extension or renewal of the license will also mean additional nuclear waste will be generated and stored on-site). Although the NRC may be willing to permit such storage, residents of the surrounding neighborhood have an obvious environmental interest in seeking to have such fuel removed as quickly as possible.
- 70) It is far more likely that the spent nuclear fuel will be removed if the facilities are owned by a state agency, which must respond to the concerns of the public, rather than by a private facility, which has no responsibility except to its stockholders.
- 71) Furthermore, there is an additional possibility that was never considered by PASNY: ENIP, as a subsidiary of ENO, may seek to store spent nuclear fuel at the Indian Point site which was generated from other nuclear facilities, including nuclear facilities such as Fitzpatrick, that are owned by ENO or by Entergy Corporation.

E. Issues Pertaining to Limited Liability Corporations

- 72) Although Entergy Corporation is a large organization that owns several nuclear power plants, PASNY proposes to sell Indian Point to a limited liability corporation to be known as Entergy Nuclear Indian Point No. 3, LLC, and to sell Fitzpatrick to Entergy Nuclear Fitzpatrick, L.P.
- 73) The determination to have the Indian Point facility owned by a LLC, whose major, if not sole asset, will be the nuclear generating facility itself, raises serious questions about the ability of the public to be compensated for any damages, including environmental damages, that may occur: 1) through improper operation of a nuclear power plant, 2) as a result of the storage of nuclear waste, or 3) as the result of unexpected additional costs involved in the decommissioning of the facility and the ultimate restoration of the site.
- 74) PASNY never considered the implications of selling the Indian Point and Fitzpatrick facilities to a Limited Liability Corporation and Limited Partnership, rather than to a large organization. For example, PASNY does not offer any discussion of whether ENO and/or Entergy Corporation will be jointly and severally liable, nor does PASNY ever address the question of ENIP's financial ability to take responsibility for any events that may occur.
- 75) Although the Negative Declaration, issued three days after the sale was consummated, describes the action as the sale of the two facilities to "indirectly wholly-owned subsidiaries of the Entergy Corporation of New Orleans", neither the environmental assessment form dated January 6, 2000, nor the joint press release issued on February 14, 2000, announcing the "agreement in principle" (Exhibit F), make any reference to the fact that the facilities would be sold to subsidiary entities with limited liabilities, rather than to the parent corporation.

F. Impacts on Employees

- 76) PASNY claims that the sale of the two facilities "minimize the disruption in employment" for the more than 1650 employees working at the two nuclear facilities EAF Addendum, pg. 13).
- 77) However, both at the time of the sale and at the current time, PASNY has failed to reach a new collective bargaining agreement with the Utility Workers Union of America, AFL-CIO, Local 1-2 the union that represents these employees. On July 17, 2000, the union moved to intervene in the proceeding presently pending before the Nuclear Regulatory Commission because it was concerned about the prospective impacts of the transfer of the two nuclear facilities to private ownership. A copy of this motion is annexed hereto as Exhibit L.
- 78) Furthermore, as a result of the transfer to private ownership, those PASNY employees working at the two facilities will lose their right to membership of the New York State Employees Retirement System. This loss of membership could have devastating consequences, especially for senior employees who are close to retirement.
- 79) PASNY never considered the prospective impacts upon these employees' retirement benefits, nor did PASNY consider any impacts associated with selling facilities at a time when it had not concluded its collective bargaining negotiations with the union that represents the employees who worked at these facilities.

G. Public Services

- 80) PASNY also claims that there will be no impact on local communities as a result of the sale of the facilities.

- 81) However, PASNY itself notes that it provides a variety of public services to the communities where these facilities are located.
- 82) PASNY states, without providing any basis for its conclusion, that such funding, pertaining to the payment of the State Emergency Management Office, bus driver training and reception centers, public education programs, including emergency planning, and radiological training and medical drills, is “expected” to continue (pg. 15).
- 83) However, the Addendum to the EAF also notes that the sales agreement provides for the transfer of all of PASNY’s assets used to provide emergency warning systems, and all rights that PASNY has with respect to emergency preparedness issues (pg. 14).
- 84) Neither the EAF nor the Addendum provide any analysis of whether funding for community interests will actually continue, whether Entergy will be required or expected to pay for some portion of these programs, or even whether or not these programs are likely to continue. Instead, the EAF merely states, without any basis, that no change is “expected.”
- 85) Similarly, PASNY provides no basis for its assertion that “the power purchase provisions of the Power Purchase Agreement” will permit PASNY to continue its programs pertaining to conservation, renewable energy, and energy efficiency. The Addendum merely states that it is “expected” that the money used for the sales will be used “in part, to enhance and expand” these programs.

H. No-Action and Other Alternatives

- 86) PASNY recognizes, of course, that SEQRA requires a consideration of alternatives, including the so called “no action alternative” (see EAF Addendum pg. 15).
- 87) Other alternatives that PASNY should have considered, but did not, are: 1) the shut down of the facility, either immediately, or in 2015, the expiration date of the current license, 2)

the conversion of the Indian Point facility to fossil fuel, 3) extension or renewal of the plant's operating license, or 4) the building of a new generating facility to replace Indian Point.

- 88) However, neither the Negative Declaration, the EAF, nor the EAF Addendum, provide any basis for a conclusion that: 1) the sale of the facilities will provide any environmental benefits, or 2) there are any benefits that may result from the sale which will justify any adverse environmental impacts.
- 89) According to PASNY "there are no significantly measurable differences in the environmental or safety impacts associated with these alternatives. In essence, the alternatives differ only in their financial impacts on the Authority, and, as noted in item A-7 of the President's Memorandum, analysis 'showed the sale of the plants to either Buyer was substantially superior to continued ownership.'" (EAF Addendum, pg. 16).
- 90) However, this "analysis" that allegedly demonstrates that the sale of the nuclear facilities is superior to PASNY's continued ownership is not included in either the EAF or in the Addendum. Therefore, there is no basis in the record to justify the conclusion, stated in the Negative Declaration, that the determination to sell the plants will minimize the environmental impacts to the maximum extent practicable.
- 91) Moreover, the President's Memorandum (Exhibit G) does not contain any such analysis. This memorandum does contain a section captioned "Trends in the Nuclear Industry" (page 3), comprised of three conclusory paragraphs claiming that "the large specialized nuclear organizations . . . are best positioned to achieve success in the operation of nuclear power plants in the new deregulated environment." However, this conclusion is not supported by

any analysis. More importantly, there is no discussion of whether the sale of the Indian Point facility is a better option than continued ownership by PASNY.

- 92) According to PASNY, “the biggest factor which will affect long-term future operation is the competitive market system” and the uncertainty of the future of that system applies equally to all of the alternatives (EAF Addendum, pg. 15).
- 93) However, PASNY failed to consider the implications of removing itself as a potential source of power from this “competitive market.” PASNY was created, and, with respect to its acquisition and operation of the Indian Point facility, was specifically authorized, to sell electric power because of the “shortage of dependable power capacity in the southeastern part of the state, and . . . [because] the public interest requires that the Authority assist in alleviating such shortage...” (Declaration of Policy, Public Authorities Law, §1001).
- 94) Even assuming, as PASNY asserts, that the future is uncertain, PASNY still has a responsibility, under SEQRA, to evaluate and assess various uncertainties, and to make a reasoned determination as to whether the sale of the Indian Point facility would provide an environmental benefit. If there are any adverse environmental impacts, PASNY has an obligation to make a determination that these impacts have been mitigated to the maximum extent practicable, and that the benefits of the proposed action outweigh the environmental harms.

**AS AND FOR A FIRST CAUSE OF ACTION
(PASNY’s Action is an Abuse of Discretion)**

- 95) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.

- 96) §1001-a and the sections of 1005 pertaining to the acquisition of facilities to generate power for southeastern New York were added to the Public Authorities Law by chapters 369 and 370 of the Laws of 1974.
- 97) These sections of law were designed to implement a 1972 legislative declaration pertaining to the “shortage of dependable power capacity of the southeastern part of the state” and to address a finding “that the public interest requires that the authority assist in alleviating such shortage by providing such base load generating facilities as may be necessary or desirable...” (Third unnumbered paragraph of §1005, see also introductory paragraph of §1001-a).
- 98) The 1974 amendment to §1005 specifically authorized the acquisition of “completed or partially completed facilities in New York City or Westchester County, and directed that the energy and power generated by such facilities was to be used for the benefit of electric consumers in New York City or Westchester County” (Third unnumbered paragraph, §1005).
- 99) PASNY acquired Indian Point No. 3 pursuant to chapters 369 and 370 of the Laws of 1974.
- 100) The New York State Legislature has explicitly recognized the need for PASNY to acquire power plants for the purposes of supplying power to the New York City metropolitan area in general, and to meet the needs of public entities providing critical services to the public.
- 101) PASNY did not consider whether the transfer of the Indian Point facility to private ownership would affect its ability to meet its legislatively mandated goals.
- 102) The sale of the Indian Point facility is in contravention of a clear legislative intent to address the critical need to supply electricity to the metropolitan New York City area, and, in particular, to meet the need for “the maintenance of an adequate and dependable supply

of electricity for..." a number of municipal authorities and public benefit corporations which provide important public services (§1005, third unnumbered paragraph).

- 103) Because of the clear legislative intent that PASNY acquire the Indian Point facility to address identified public needs, PASNY's determination to sell these plants without the specific authority of the Legislature constitutes an action that is arbitrary, capricious, and an abuse of discretion.

**AS AND FOR A SECOND CAUSE OF ACTION
(Failure to Comply with SEQRA Procedures by Taking Action Before
Making a Determination of Significance)**

- 104) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 105) 6 NYCRR 617.2(b)(2) defines an "action" for the purposes of SEQRA as "agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions."
- 106) § 8-0109(4) of the Environmental Conservation Law provides "as early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination whether an environmental impact statement need be prepared for the action (i.e. make a positive or negative declaration).
- 107) According to PASNY, it commenced consideration of the sale of the Indian Point and Fitzpatrick facilities in 1999, commenced exclusive negotiations with Entergy Corporation on November 3, 1999, and "finalized" the general terms of its proposed transaction with Entergy Corporation on February 14, 2000 (see ¶¶ 25-27, 31-32 and attached Exhibit F).

- 108) After the general terms of the sale to Entergy were announced, PASNY then considered an unsolicited offer by another corporation, Dominion Resources, Inc., and agreed to accept further bids.
- 109) After determining that there were no other bidders, the proposed transaction was described in a "President's Memorandum to the Trustees" dated March 28, 2000 (Exhibit G).
- 110) The contract, between PASNY and the two Entergy companies, was signed on March 28, 2000.
- 111) It was not until March 31, 2000, three days after the final consummation of the sale that PASNY made its determination of significance, by retroactively issuing a negative declaration that there was no significant environmental impact, and that no environmental impact statement need be prepared.
- 112) Here, PASNY has: 1) initially commenced "exclusive" negotiations with the ultimate purchaser, 2) substantially negotiated the terms of an agreement, 3) sought other bids, 4) had the president make a determination that such a sale was preferable to continued ownership, 5) decided, without any discussion of the consequences, to sell the plants to subsidiary corporations with limited liabilities rather than to the parent company (see ¶¶ 72-75 above) 6) prepared a seventy-five page, single spaced contract, with attached exhibits and schedules ready for signing, 7) resolved to approve the contract of sale, and 8) signed the contract, prior to the consideration of potential environmental impacts and the issuance of the negative declaration.
- 113) The above chronology illustrates that PASNY's determinations: 1) to sell the facilities, and 2) to sell them to a particular buyer, Entergy, were made before PASNY made the determination of significance required by SEQRA.

- 114) The failure of PASNY to make a determination of significance until after a purchaser had been selected and after the terms of sale had been agreed upon constitutes a failure to comply with the procedural requirements of SEQRA.

**AS AND FOR A THIRD CAUSE OF ACTION
(Issuance of Negative Declaration)**

- 115) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 116) Before making a determination to issue a negative declaration and that an "EIS will not be required for an action, [PASNY] must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant." 6 NYCRR 617.7(a)(2). "Environmental" conditions are defined, by statute, to include "existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character." (Environmental Conservation Law §8-0105(6)).
- 117) In a case involving the transfer of the ownership of a public water supply system, the court rejected a claim "that there would be no discernible difference in environmental impact regardless of which entity holds title. The different entities have different levels of political accountability. . . . In the event of major capital expenses. . . it is not so clear that the City's continuing operational obligation to maintain and repaired the system equates with continuing responsibility for capital additions or replacements. The respective responsibilities and strategies to meet such capital needs would more appropriately be analyzed in an environmental impact statement. Nor is the transfer of title between public entities a mere paper transaction relieving the transferor of the obligation to fully analyze environmental consequences of the transfer." Giuliani v. Hevesi, 228 A.D.2d 348, 352-353 (1st Dept. 1996), *aff'd* as modified 90 N.Y.2d 27(1997).

118) In particular, in making its determination of significance, and in issuing a Negative

Declaration, PASNY failed to consider whether the proposed sale of Indian Point would:

- a. Create a material conflict with the plans or goals of any community as a result of the change in power supplies, especially after December 31, 2004, when PASNY's contractual rights to the energy output from the Indian Point facility expires, and PASNY's municipal customers face an uncertain future (6 NYCRR 617.7(c)(1)(iv)),
- b. Constitute a major change in the quantity or type of energy which would be supplied (6 NYCRR 617.7(c)(1)(vi)),
- c. Create a demand for other actions that would have environmental impacts (6 NYCRR 617.7(c)(1)(x)), and
- d. Considered cumulatively, have a substantial adverse impact on the environment (6 NYCRR 617.7(c)(1)(xi)).

119) Furthermore, as noted in ¶¶ 59-64 above, the transfer of Indian Point to private ownership will deprive the public of important rights that it has with respect to reviewing and commenting on operations at the two nuclear facilities.

120) The loss of the public's right to review and comment on the operations of the facilities may have important environmental implications, but these potential impacts were never discussed or considered by PASNY in the course of its environmental review of the proposed sale of the facilities.

121) The determination to issue a negative declaration rather than to require the preparation of an environmental impact statement constitutes a failure to comply with the procedural requirements of SEQRA.

AS AND FOR A FOURTH CAUSE OF ACTION
(Failure to Take a “Hard Look”)

- 122) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 123) It is well-established that an agency, before undertaking an action, must take a “hard look” at the relevant areas of environmental concern, H.O.M.E.S. v. NYS Urban Development Corporation, 69 A.D.2d 222, 232 (4th Dept. 1979).
- 124) SEQRA requires that “appropriate weight” be given to social and economic considerations during the agency decision-making process. “Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.” ECL §8-0103.
- 125) In this case, PASNY itself describes the proposed action as “the largest privatization of state assets in New York history”, for a sale price of almost \$1 billion. (A copy of the March 28, 2000 press release announcing the sale is annexed hereto as Exhibit H.) An action of this magnitude should be subject to especially careful environmental review before an agency determines to undertake it.
- 126) PASNY has not identified any positive benefits associated with the sale of the Indian Point facility.
- 127) For example, PASNY has not even specified a use for the money that it received from the sale of Indian Point. We do not know if the money will be utilized to purchase another facility, to subsidize electric rates for PASNY's customers, or even if the money will be utilized for any specified public purpose.
- 128) On the other hand, PASNY has failed to identify, let alone take a “hard look” at the prospective environmental costs of this sale. These potential adverse impacts include, as discussed above:

- a. The decommissioning of Indian Point, and the restoration of the site to greenfield conditions,
 - b. The possible lack of supply of electric power to public entities that provide crucial services,
 - c. Increased future costs to PASNY customers, with resultant impacts upon public services such as mass transportation, public safety, and other municipal services,
 - d. Loss of public oversight and control over the operations of nuclear facilities,
 - e. Implications pertaining to the storage of nuclear waste (spent nuclear fuel), including the possibility of long-term on-site storage of such waste, and the possibility that waste from other nuclear facilities may be stored at the Indian Point site,
 - f. Loss of funding for community services, including critical public safety services such as radiological training and emergency warning systems.
- 129) PASNY's failure to identify any benefits of its proposed sale, while failing to recognize the potential adverse environmental impacts, indicates that PASNY did not satisfy the "hard look" test set forth in H.O.M.E.S. v. NYS Urban Development Corporation, and the sale should therefore be nullified and enjoined because of the failure to substantively comply with the provisions of the New York State Environmental Quality Review Act and its implementing regulations.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Failure to Consider Alternatives)**

- 130) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 131) The requirement that an agency consider "reasonable alternatives to the action" is included in the statutory requirements for an environmental impact statement. ECL §8-0109.

132) There are number of alternatives to PASNY's action of selling its two nuclear facilities which could and should have been considered. These alternatives include: 1) the shut down of the facility, either immediately, or in 2015, the expiration date of the current license, 2) the conversion of the Indian Point facility to fossil fuel, 3) extension or renewal of the plant's operating license, or 4) the building of a new generating facility to replace Indian Point.

133) PASNY's environmental review did not discuss, or even mention, any of these alternatives.

134) Another alternative that must always be considered is the "no-action alternative",

(6 NYCRR 617.9(b)(5)(v)).

135) In the instant proceeding, the no-action alternative would be for PASNY to retain ownership of the Indian Point facility, rather than to sell them to Entergy. In PASNY's 1998 Annual Report, it describes its contractual arrangements with customers of the Indian Point and Fitzpatrick facilities as follows:

"During 1998, the Authority negotiated modifications to existing power sales arrangements with 87 business customers served by the James A. Fitzpatrick (JAF) Nuclear Power Plant, as augmented by other Authority resources, which would extend the customers' purchases of Authority power and energy to either 2005 or 2007. In prior years, the Authority signed agreements with substantially all of its SENY governmental customers, resulting in existing power sales agreements with such customers extending to either 2004 or 2005, depending upon the agreement. These contracts will help to stabilize the Authority's revenue base in the future. The contracts and contract modifications represent approximately 44 percent of the Authority's 1998 operating revenues (excluding wheeling charges)."

(A copy of the financial report for 1998, included in the 1998 Annual Report of the Power Authority of the State of New York is annexed hereto as Exhibit I.)

136) Nevertheless, in 1999, PASNY contemplates selling these facilities despite the fact that they represented 44 percent of PASNY's 1998 operating revenues, and that PASNY needed

the power generated from these facilities to fulfill its contractual and statutory obligations because the sale would “stabilize the Authority’s revenue base in the future.”

137) Furthermore, the 1998 Annual Report advises that the contracts with the governmental customers in southeastern New York State extend to 2004 or 2005, and the power contracts for the Fitzpatrick plant extend to either 2005 or 2007. Nevertheless, PASNY, as part of the sale of the plants to Entergy, only has a binding agreement through December 31, 2004 for the purchase of the power from these facilities.

138) The 1999 Annual Report describes the sale of the Indian Point and Fitzpatrick facilities.

According to this Report:

“The objectives of this nuclear plant sale include (1) ensuring safe and economic operation of the plants; (2) obtaining a sales price that accurately reflects the economic value of the plants; (3) ensuring employment and career opportunities for all Authority nuclear division employees; and (4) obtaining a power purchase agreement which will enable the Authority to continue to serve the needs of its customers. Management believes that the agreements with Entergy achieve each of these objectives. In addition, management believes that the nuclear plant divestiture will strengthen the Authority’s financial position and, ultimately, reduce costs. As a result, the Authority will be in a better position to maintain its role as a low cost provider of electricity to its customers in New York State.”

(A copy of the financial report for 1999, included in the 1999 Annual Report of the Power Authority of the State of New York is annexed hereto as Exhibit J.)

139) According to the 1999 Annual Report, the Indian Point and Fitzpatrick plants “achieved a record combined generation level (13.8 kWh) in 1999, exceeding the previous high, in 1998, by 10 percent (1999 Financial Report, pg. 20, Exhibit J). This increase offset decreases in hydroelectric and fossil fuel net generation (Id. pg. 21).

140) Thus, it is reasonable to believe that the sale of power from the Indian Point and Fitzpatrick facilities would have constituted an even greater percentage of the operating revenues in 1999 than the 44 percent of operating revenues that it constituted in 1998.

- 141) Furthermore, there is no explanation in the Annual Reports, the EAF or its attachments, or anywhere else, of how or why it can be less expensive to purchase power from a profit-making entity than it would be for PASNY to continue to generate power itself. It would seem self-evident that PASNY, which sells power from Indian Point at cost to public entities, can sell power cheaper than a private entity, which must include a profit component in its sale price.
- 142) There is no reason to believe that the power that ENIP will generate from Indian Point or even remain in New York State after December 31, 2004. PASNY has failed to consider the possibility that ENIP will sell such power to a high out-of-state bidder, and has also failed to consider the prospective impacts upon PASNY's present governmental customers of being forced to compete with such a bidder.
- 143) Nevertheless, PASNY did not discuss the possible no-action alternative of maintaining its ownership of the two facilities in its environmental review.
- 144) One of the purposes of PASNY is to provide electrical power, especially to governmental entities, at a price competitive with the prices charged by investor owned utilities.
- 145) In PASNY's motion to intervene in a collateral proceeding before the Federal Energy Regulatory Commission pertaining to the transfer of the Indian Point transmission facilities, PASNY states "the transaction and requested authorization will also increase competition in the New York power market by reducing the amount of generation under NYPA's control and transferring such generation to an entity, which together with its affiliates currently own no generation in New York State." (A copy of this motion to intervene is annexed hereto as Exhibit K).

- 146) However, there is no explanation, either in the motion to intervene in the FERC proceeding, or more importantly, in the documents pertaining to the review that PASNY purports to have conducted in compliance with SEQRA, of how reducing the amount of generation owned by PASNY will increase competition, especially in the state of New York.
- 147) Petitioners respectfully maintain that a reduction in power plants owned by PASNY may decrease competition because: 1) the public will lose the opportunity of purchasing power from a publicly owned source that is statutorily required to sell power at the lowest possible cost, and 2) private companies will no longer have to compete against a publicly owned generating facility.
- 148) Furthermore, a publicly owned power source can be relied upon to make power available for purposes that support governmental needs and interests. The removal of such a source of power will leave governmental entities with no alternative source of power besides large privately owned companies that are seeking to obtain the maximum profit, regardless of social needs and priorities.
- 149) For example, a privately owned company, in fulfillment of its obligation to its shareholders and bondholders, will sell power to the highest bidder, even if it means selling power outside of New York State.
- 150) Furthermore, there is nothing to indicate whether or not the four stated objectives of the nuclear plant sale could be better achieved by the "no-action alternative." Certainly, if PASNY retained ownership of the plants, it would have the ability of ensuring the safe and economic operation of the plants, ensuring the employment and career opportunities for PASNY nuclear division employees, and could continue to control the power that will be

generated by the plants. The only objective that would not be met by the no-action alternative is the obtaining of a sales price that accurately reflects the economic values of the plants, and meeting that objective has no environmental impacts, either positive or negative.

- 151) Nothing in the environmental review, either in the EAF or in the Addendum to the EAF, addresses the issue of the no-action alternative. Nor is there any explanation of why the sale of the Indian Point facility is superior to the no-action alternative of having Indian Point remain under the jurisdiction and ownership of PASNY.
- 152) Consequently, PASNY has failed to comply with the substantive provisions of SEQRA pertaining to the consideration of alternatives, particularly the no-action alternative.

AS AND FOR A SIXTH CAUSE OF ACTION (Delegation of SEQRA Authority)

- 153) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 154) It is a well-established principle of SEQRA that a lead agency has the full responsibility for making the requisite environmental determination under SEQRA, and that this responsibility cannot be delegated to another agency, Coca-Cola Bottling Co. v. City of New York, 72 N.Y.2d 674 (1988).
- 155) In determining to issue a negative declaration, PASNY noted that the Indian Point and Fitzpatrick facilities “once under new ownership, will be required to continue to comply with these and other applicable laws and regulations. The State’s economic, social, and environmental interests will, therefore, be safeguarded” (Negative Declaration, p.1, Exhibit B).

- 156) Upon information and belief, PASNY, in this Negative Declaration, made an assumption that the environmental impacts would be handled by other entities such as the Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, and the New York State Department of Environmental Conservation.
- 157) Upon information and belief, PASNY's determination, in its Negative Declaration, that the environmental impacts will be addressed because of the new owners will be required to comply with laws and regulations which are enforced by other agencies, constitutes an impermissible delegation of its responsibilities under SEQRA.

**AS AND FOR A SEVENTH CAUSE OF ACTION
(Obligation to Offer Land to Con Edison)**

- 158) Petitioners repeat and reallege each and every paragraph set forth above with the same force and effect as if set forth in full herein.
- 159) §1007(10) of the PAL authorizes PASNY to sell or exchange property that it has acquired by appropriation, but requires that PASNY, if it is "practicable and reasonable", to give the former owners "the first opportunity to purchase such property at its fair market value."
- 160) "The Indian Point 3 site consists of approximately 102 acres, approximately 77 of which were purchased in the name of the Authority, and the remaining 25 acres of which were appropriated in the name of the State of New York. With respect to the 25 acre parcel, the Authority must determine that it is not reasonable and practical to offer it back to the parties from whom it was appropriated, Con Edison." (President's Memorandum to the Trustees, pg. 7, Exhibit G).
- 161) There is nothing in the negative declaration, any of the Addenda or attachments to the negative declaration, or, with the exception of the two sentences quoted in ¶ 160 above, anything in the President's Memorandum, which pertains to the question of whether it

would be reasonable and practical to offer the 25 acres which were appropriated back to Consolidated Edison.

- 162) Furthermore, it is impossible to ascertain, from any of the documents relied upon by PASNY, what was the purpose of the 25 acres which were taken by appropriation, and why this land was taken by appropriation rather than purchased with the rest of the site. We do not know from the record whether these 25 acres were the location of the power plant itself, any auxiliary structures, or simply constitute vacant land.
- 163) Upon information and belief, PASNY never considered the possibility of offering this 25 acre parcel to Consolidated Edison.
- 164) PASNY determined "that it is neither practicable nor reasonable to offer such property for sale to the former owner thereof, or such former owners' successors or assigns."
(Resolution No. 5, Exhibit A).
- 165) There is no basis for PASNY's finding and determination regarding the practicability or the reasonableness of giving Consolidated Edison the first opportunity to purchase the 25 acres which were originally taken by appropriation.
- 166) The determination that it is neither practical nor reasonable to offer the 25 acres taken by appropriation to Consolidated Edison is arbitrary, capricious, and constitutes an abuse of discretion.

WHEREFORE, petitioners respectfully demand judgment pursuant to Article 78 of the Civil Practice Law and Rules, ordering, adjudging and decreeing:

- 1) Enjoining the Power Authority of the State of New York from taking any action to implement or consummate the sale of the Indian Point No.3 nuclear facility or the transfer

of said facility to either Entergy Nuclear Indian Point No.3, LLC or to Entergy Nuclear Operations, Inc.

- 2) Alternatively, enjoining the Power Authority of the State of New York from proceeding with the sale of either the Indian Point No. 3 nuclear facility until such time as the Power Authority has fully complied with the provisions of the New York State Environmental Quality Review Act, and retaining jurisdiction over this action until the Power Authority achieves such compliance;
- 3) Declaring the action of the Power Authority of the State of New York purporting to sell the Indian Point No. 3 nuclear facility null and void;
- 4) Declaring that the Power Authority of the State of New York has failed to comply with both the substantive and procedural requirements of the New York State Environmental Quality Review Act;
- 5) Requiring the Power Authority of the State of New York to offer Consolidated Edison the first opportunity to purchase the 25 acres of land on the Indian Point site that were originally taken by appropriation;
- 6) Granting petitioners the costs and disbursements of this proceeding; and
- 7) Such other relief, which to this court, may seem just proper and equitable.

Dated: July 26, 2000
Clarksville, New York

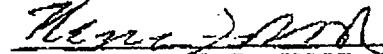
Thomas F. Wood
Cortlandt Town Attorney
Peter Henner, Esq., Of Counsel
Attorneys for the Petitioners
P.O. Box 326
Clarksville, N.Y. 12041
(518) 768-8232

VERIFICATION

County of Westchester
State of New York ss.:

THOMAS F. WOOD, being duly sworn, deposes and says:

That I am the Town Attorney of the Town of Cortlandt, and I have read the foregoing Petition and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters deponent believes it to be true.


THOMAS F. WOOD

Sworn to before me
this 26th day of July, 2000


NOTARY PUBLIC

JENI SCITNICK
Notary Public, State of New York
No. 4643169
Qualified in Westchester County
Term Expires May 31, 2001
2001