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August 10, 2000

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
POWER AUTHORITY OF THE	)	
STATE OF NEW YORK and	)	
ENTERGY NUCLEAR FITZPATRICK LLC,	)	
ENTERGY NUCLEAR INDIAN POINT 3 LLC,	)	Docket Nos. 50-333-LT
and ENTERGY NUCLEAR	)	and 50-286-LT
OPERATIONS, INC.	)	
	)	
(James A. FitzPatrick Nuclear Power Plant	)	
and Indian Point Nuclear Generating	)	
Unit No. 3)	)	

ANSWER OF POWER AUTHORITY OF THE STATE OF NEW YORK, ENTERGY NUCLEAR FITZPATRICK LLC, ENTERGY NUCLEAR INDIAN POINT 3 LLC, AND ENTERGY NUCLEAR OPERATIONS, INC. TO CITIZENS AWARENESS NETWORK'S REQUEST FOR HEARING AND PETITION TO INTERVENE IN THE LICENSE TRANSFERS FOR FITZPATRICK AND INDIAN POINT 3 AND REQUEST FOR SUBPART G HEARING DUE TO SPECIAL CIRCUMSTANCES

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.1307(a), Applicants Entergy Nuclear FitzPatrick LLC ("ENF"), Entergy Nuclear Indian Point 3 LLC ("ENIP") and Entergy Nuclear Operations, Inc. ("ENO") (collectively "Entergy Applicants") and the Power Authority of the State of New York ("the Authority") (collectively "the Applicants") file this answer opposing the "Citizens Awareness Network's Request for Hearing and Petition to Intervene in the License Transfers for James A. FitzPatrick and Indian Point Unit 3 Nuclear Power Plants and Request for Subpart G Hearing Due to Special Circumstances" ("Petition") filed by

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the Citizens Awareness Network ("CAN") on July 31, 2000. Applicants also oppose the requests for a stay and for formal adjudicatory procedures included in CAN's Petition.

Applicants filed on May 11 and 12, 2000, applications (the "Applications") to transfer the facility operating license for the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick") from the Authority to ENF and ENO, and to transfer the facility operating license for the Indian Point Nuclear Generating Unit No. 3 ("IP3") from the Authority to ENIP and ENO. These transfers are being pursued by the Applicants under a Purchase and Sale Agreement ("PSA") between the Authority, ENF and ENIP. No physical or operational changes to either FitzPatrick or IP3 are being proposed in the applications. See 65 Fed. Reg. 39,953, 39,954 (2000) (FitzPatrick); 65 Fed. Reg. 39,954, 39,955 (2000) (IP3).

On June 28, 2000, the Commission issued a "Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing" concerning the Applications. 65 Fed. Reg. at 39,953 (FitzPatrick), 39,954 (IP3). On July 31, 2000, CAN petitioned to intervene in the license transfer proceedings and requested "a hearing on the pending application to transfer the operating licenses for [FitzPatrick] and [IP3]." Petition at 1.[1]

The Commission should deny CAN's request for hearing and petition to intervene, because CAN has failed to set forth at least one admissible issue and has not demonstrated standing. See 10 C.F.R. §§ 2.1306 and 2.1308; Niagara Mohawk Power

[1] Pursuant to a request filed by CAN on July 6, 2000, the Commission granted CAN an extension of time until July 31, 2000 to request a hearing on the Applications.

Corp. (Nine Mile Point, Units 1 and 2), CLI-99-30, 50 NRC 333, 340 (1999). Moreover, the issues that CAN seeks to raise are challenges to NRC regulations or relate to subjects that are clearly beyond the scope of this proceeding.[2]

CAN's requests for a stay and for the use of formal hearing procedures are equally deficient. CAN makes no showing of the factors that must be demonstrated for a stay to be granted, and bases its request solely on the fact that other agency approvals are necessary. Similarly, CAN makes no showing of special circumstances that would warrant applying the more formal adjudicatory procedures in Subpart G of 10 C.F.R. Part 2 instead of those of Subpart M.

II. CAN'S PROCEDURAL REQUESTS SHOULD BE DENIED

A. CAN's Request to Stay this Proceeding Should be Denied

CAN requests that the NRC stay its review of the Applications and postpone any hearing on them until the Internal Revenue Service ("IRS") resolves the taxation status of the decommissioning trust funds for FitzPatrick and IP3 and the New York State Department of Environmental Conservation ("NYDEC") resolves permitting requirements for those plants. Petition at 1-7. In support of its request for a stay, CAN avers that certain decisions by the IRS or the NYDEC could adversely affect the acquisition of FitzPatrick and IP3 by ENF and ENIP and, thus, eliminate the need for a license transfer.

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[2] In fact, much of CAN's Petition appears to be a "cut and paste" of its hearing request in the Vermont Yankee license transfer proceeding, belying the existence of genuine issues pertaining to Indian Point 3 and FitzPatrick. In a number of places, the Petition raises contentions pertaining only to Vermont Yankee, and even bears the date of the petition filed in the Vermont Yankee case. See, e.g., Petition at 5 n.3 (British Energy), 44-46 (British Energy and AmerGen), 46 (Vermont Yankee), 53 (VYNPS), 62 (AmerGen), 64 (VYNPS), 67 (Feb. 22, 2000 filing date from Vermont Yankee petition).

CAN's request should be denied because it runs counter to the Commission's stated policy against delay in license transfer proceedings under which "staff action on license transfer requests should not be delayed except for sound reasons." 63 Fed. Reg. 66,721, 6,725-26 (1998).[3] In accordance with this policy, Subpart M directs the NRC staff to "promptly issue approval or denial of license transfer requests." 10 C.F.R. § 2.1316(a).

CAN's request is also inconsistent with the NRC's statutory obligation to rule on issues within its jurisdiction notwithstanding the existence of simultaneous proceedings before other agencies. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884-85 (1984); Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), LBP-85-46, 22 NRC 830, 832 (1985).

Because the sale of a nuclear facility necessarily requires multiple regulatory approvals, simultaneous independent reviews by several federal and state agencies are not only efficient, but necessary in order to resolve issues in a timely manner. The Commission has rejected an essentially identical motion in the Nine Mile Point license transfer proceeding, stating:

> This multiforum situation is especially common in license transfer proceedings involving nuclear power plants. In these cases, the transfer is often the subject of simultaneous regulatory proceedings before one or more appropriate state public utility commissions, the FERC, the Securities and Exchange Commission, the Internal Revenue Service, the Department of Justice and/or Federal Trade Commission, and the NRC. . . 'it would be productive of little more than untoward delay were each regulatory agency to stay its hand simply because of the contingency that

[3] The Commission has a long-standing policy of avoiding unnecessary delay in its proceedings. See, e.g., Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 NRC 45, 52 (1998); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

> one of the others might eventually choose to withhold a necessary permit or approval.'

Nine Mile Point, CLI-99-30, 50 NRC at 343-44 (citations omitted).

For these reasons, CAN's request for a stay is contrary to Commission policy and practice, and should be denied.

B. CAN's Request to Hold a Joint Hearing Before the NRC, FERC, and NYDEC Should be Denied

Should the NRC reject its motion to stay the proceeding, CAN requests that the NRC hold a joint hearing on the Applications before NRC, the Federal Energy Regulatory Commission ("FERC"), and the NYDEC. In support of its request for a joint NRC/FERC/NYDEC license transfer hearing, CAN avers that such a hearing would ease the burden on participants in engaging in three separate fora to review the license transfer applications. Petition at 11.

Easing the burden on a participant is not a valid reason to deviate from Commission review procedures. As the Commission has stated:

> Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party from its hearing obligations.

Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981); endorsed, Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872 (1998). In addition, the regulations in Subpart M state that "[t]his subpart is to provide the only mechanism for requesting hearing on license transfer

requests, unless contrary case specific orders are issued by the Commission." 10 C.F.R. § 2.1300. Subpart M does not provide for joint hearings before NRC, FERC, and state environmental permitting agencies. See 10 C.F.R. §§ 2.1322, 2.1323. No contrary, case-specific order has ever been issued, and CAN has identified no compelling reasons for doing so here.

C. CAN's Request to Hold a Full Subpart G Hearing Should be Denied

CAN also asks that the NRC not use Subpart M's streamlined hearing process in reviewing the license transfer applications and, instead, conduct a full evidentiary hearing pursuant to Subpart G or, alternatively, specifically provide for such a procedure later. Petition at 9-11. This request is inconsistent with NRC's regulations and is unfounded.

The plain language of the regulations of Subpart M makes it clear that such relief is unavailable. 10 C.F.R. § 2.1322(d) states that "neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings."

While 10 C.F.R. § 2.1329 provides for waivers of the rules, "special circumstances" must exist which demonstrate that "application of a rule or regulation would not serve the purpose for which it was adopted." CAN attempts to address § 2.1329 by arguing that all of "the matters in this license transfer are not strictly 'financial in nature' as contemplated in the promulgation of Subpart M." Petition at 9. This argument, however, fails to justify waiving the Subpart M procedures, which are not limited to the airing of financial issues.

In promulgating Subpart M, the Commission contemplated that hearings under the Subpart might cover a full panoply of issues associated with matters such as transfer of ownership and operating authority; financial qualifications and decommissioning

funding; plant staffing and technical qualifications; and others. See, e.g., 63 Fed. Reg. at 66,722-23, 66,728-29.[4] The Subpart M hearing is an adequate vehicle for the litigation of the issues that CAN or others may raise. CAN is therefore mistaken in claiming that it cannot obtain a "full and fair hearing on license transfer on an expedited basis" using Subpart M procedures.

Finally, the Commission rejected a very similar claim in Nine Mile Point. In rejecting a petitioner's argument that Subpart M would not be adequate for the range of issues the petitioner sought to raise, the Commission stated:

> When promulgating Subpart M, we were well aware that most license transfer issues would be, like co-owners' issues, financial in nature. At this early stage of the proceeding, it is by no means clear that the informal Subpart M process will not suffice to resolve any issues that require litigation.

Nine Mile Point, CLI-99-30, 50 NRC at 345 (emphasis added).

In sum, Petitioner's motion to use Subpart G procedures is contrary to the Commission's regulations, and the Petitioner has not provided a basis to waive those regulations.

[4] In promulgating Subpart M, the Commission rejected the claim that "the Subpart M informal procedures . . . will not be adequate to deal with the complex inquiry that could arise in a license transfer proceeding," The Commission stated: "[The Subpart M procedures] provide ample opportunity for the parties to raise appropriate issues and build a sound evidentiary record for decision." 63 Fed. Reg. at 66,723.

III. CAN HAS FAILED TO RAISE ANY ADMISSIBLE ISSUES THAT WOULD GIVE IT STANDING TO PARTICIPATE IN THIS PROCEEDING

To intervene as of right in an NRC license transfer proceeding, a petitioner must first demonstrate that it has standing. See Atomic Energy Act § 189a, 42 U.S.C. § 2239(a). For a petitioner to demonstrate standing in a Subpart M license transfer proceeding, the petitioner must:

(1) identify an interest in the proceeding by
   (a) alleging a concrete and particularized injury (actual or threatened) that
   (b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and
   (c) is likely to be redressed by a favorable decision, and
   (d) lies arguably within the "zone of interests" protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202 (2000); see also 10 C.F.R. §§ 2.1306 and 2.1308.

CAN alleges interests which might arguably serve as the basis for standing to intervene in this proceeding.[5] However, CAN's Petition fails to raise issues that can be adjudicated in this proceeding and which are "fairly traceable" to and "may be affected by" the granting of the Applications. Most, if not all, of the issues proposed by CAN are

[5] CAN bases its claim of standing on the declarations of Jean Chambers, a CAN member "and local resident near FitzPatrick," and Marilyn Elie, a CAN member "and local resident near Indian Point 3." See Petition at 1, 22. In an effort to demonstrate how the interest of its members would be affected by the issues it propounds, CAN repeats a standing "mantra" at the end of the discussion of each issue. See id. at 22-23, 28-29, 34, 36, 40-41, 46-47, 50-51, 53-54, 55-56, 63-64, 65-66. In each case CAN alleges the two members "could ... suffer property damage due to increased electrical rates" and that CAN could assist the Commission in placing license conditions on the license transfer. Id.

not traceable to the license transfers, but rather are CAN's concerns with the physical condition and future operation of the two plants, or are requests for the Commission to modify its regulations addressing license transfers. Because the issues raised by CAN are not license transfer issues, or are matters excluded by the Commission's regulations, CAN's concerns cannot be heard or redressed in this proceeding. CAN thus fails the traceability and redressability prongs of NRC's standing test, and therefore does not have standing to intervene. See Oyster Creek, CLI-00-06, 51 NRC at 202.

IV. CAN'S ISSUES FAIL TO MEET NRC PLEADING REQUIREMENTS

A. Introduction

CAN raises multiple issues, sometimes repetitively, under sections bearing numbered, highlighted titles. The structure of Applicants' response below parallels the structure of the numbered sections in the Petition. To the extent that some of the material in one section of the Petition appears to pertain to, or be duplicative of, a different section, Applicants address such material in the section that appears most relevant.

B. Summary of Requirements for Admissible Issues in Subpart M Proceedings

CAN's Petition fails to set forth at least one admissible issue as required by the Commission's rules for license transfer proceedings. See 10 C.F.R. § 2.1306. To demonstrate that issues are admissible under Subpart M, a petitioner must:

(1) set forth the issues (factual and/or legal) that petitioner seeks to raise,

(2) demonstrate that those issues fall within the scope of the proceeding,

(3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,

(4) show that a genuine dispute exists with the applicant regarding the issues, and

(5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

Oyster Creek, CLI-00-06, 51 NRC at 203; 10 C.F.R. § 2.1306. Failure of an issue to comply with any one of these requirements is grounds for its dismissal.[6]

An issue sought to be admitted for consideration in a Subpart M proceeding must deal with subjects delineated by the hearing notice. Issues concerning matters that are not within that defined scope cannot be admitted. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-98-28, 48 NRC 279, 283 (1998). It is also well-established that an issue that "advocate[s] stricter requirements than those imposed by the regulations" will be rejected as "an impermissible collateral attack on the Commission's rules." See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1656 (1982); accord, Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998). See also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 410, aff'd in part and rev'd in part on other grounds, CLI-91-12, 34 NRC 149 (1991). Moreover, an issue will be found to lack

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[6] See 65 Fed. Reg. at 39,954 (FitzPatrick), 65 Fed. Reg. at 39,955 (IP3) ("requests [for a hearing] must comply with the requirements set forth in 10 CFR 2.1306"); 10 C.F.R. § 2.1306(b).

The requirements for admission of issues under Subpart M are essentially the same as the Subpart G requirements for the admission of contentions, see 10 C.F.R. § 2.714(b)(2) (NRC pleading requirements under Subpart G), and the Commission refers to precedent decided under Subpart G on the admissibility of contentions when reviewing the admissibility of issues under Subpart M. See, e.g., North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-27, 50 NRC 257, 263 n.5 (1999) (citing Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 1), CLI-83-25, 18 NRC 327 (1983)).

sufficient basis if it amounts to a petitioner's differing opinion with the NRC as to what the applicable regulations require. Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia.), LBP-95-6, 41 NRC 281, 302-03, vacated in part and remanded on other grounds, CLI-95-10, 42 NRC 1, aff'd in part, CLI-95-12, 42 NRC 111 (1995).

Subpart M requires a petitioner to "[p]rovide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact." 10 C.F.R. § 2.1306(b)(2)(iv). An issue that does not *directly* controvert a position taken in the application is subject to dismissal. Private Fuel Storage, LBP-98-7, 47 NRC at 181; see also Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Further, an allegation that some aspect of an application is "inadequate" or "deficient" must be supported by facts and a reasoned explanation of *why* the application is deficient and how the deficiency is material to the proceeding. Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 512 (1990); Georgia Institute of Technology, LBP-95-6, 41 NRC at 306; Private Fuel Storage, LBP-98-7, 47 NRC at 181.

As the following discussion makes clear, CAN fails to meet its burden under 10 C.F.R. § 2.1306 with respect to each of the issues it seeks to raise.

C. None of CAN's Seven Proposed Issues Satisfies the Commission's Pleading Requirements for an Admissible Issue

1. Issue 1 – Decommissioning

Issue 1 includes three subparts. Petition at 18-29. The first two subparts, Sections II.1.A and II.1.B, allege that the license transfer includes insufficient funding for

decommissioning. The third subpart, Section II.1.C, asserts that NRC must perform an environmental review for this license transfer request.

a. Issue 1.A – Inadequate Decommissioning Funding

In Section II.1.A of its Petition, CAN alleges:

> **The Application for license transfer should be denied because the Application does not provide sufficient assurance of adequate funding for the eventual and actual costs of decommissioning FitzPatrick and [IP3].**

Petition at 18. CAN alleges that the amounts in the decommissioning trust funds which will be available to decommission FitzPatrick and IP3 will be inadequate. Id. at 19. CAN bases its assertions on a General Accounting Office report which states that several power plants (apparently not including FitzPatrick or IP3) had not accumulated sufficient funds as of 1997, and on the report's suggestion that NRC consider revising its policies and regulations regarding decommissioning funding. Id. CAN, however, never mentions the amounts in ENF's and ENIP's decommissioning trust funds or discusses how they compare to the NRC's requirements. Nor does CAN identify the levels of funding that it claims should be deposited in the trusts. CAN asks that the NRC impose unspecified conditions on the license to "establish[] proper parameters for the handling and accumulating of adequate decommissioning funds ...." Id. at 22.

As the Applications explain, the prepaid amounts that will be held in trust for decommissioning FitzPatrick and IP3 not only meet NRC requirements in 10 C.F.R. § 50.75(c), but exceed minimum NRC requirements.[7] Where, as here, the decommissioning funding assurance exceeds NRC requirements, there can be no legitimate issue as to funding adequacy.[8] See North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201, 217-18 (1999).

CAN does not dispute any of this information. It provides no explanation why these arrangements, described in the Applications, are insufficient to satisfy the NRC decommissioning funding requirement. CAN appears to be seeking that the Commission impose greater funding requirements on the Applicants than those set by the Commission's regulations. Such an argument is an impermissible collateral attack on the regulations. Seabrook, CLI-99-06, 49 NRC at 219-20. See also Seabrook, LBP-82-106, 16 NRC at 1656.

The Commission addressed this same argument in the Oyster Creek license transfer proceeding, where it noted that there was no admissible issue where "the fair market value of the [nuclear plant] decommissioning fund at the time of transfer ... substantially exceeds our minimum requirements for decommissioning funding." Oyster Creek, CLI-00-06, 51 NRC at 204 n. 6.[9]

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[7] To satisfy NRC requirements, a transferee is only required to demonstrate that it has sufficient funds to cover the radiological decommissioning cost estimate calculated using the NRC formula in 10 C.F.R. § 50.75(c).

[8] In fact, CAN refers to the "abnormally large size of the FitzPatrick/IP3 decommissioning trust fund." Petition at 8 thereby implicitly recognizing the fund's adequacy.

[9] CAN also contests "Entergy's averment that it intends to make a profit on decommissioning trust funds and return that profit to its shareholders ...." Petition at 21, and Entergy's expectation that decommissioning cost reductions will ultimately provide a profit. Id. However, no such averments or representations have been made, and the Annual Report of Entergy Corp. cited by CAN contains no such statements. Even if Entergy expected to profit from its decommissioning activities, the Commission has held in Oyster Creek, CLI-00-06, 51 NRC at 211, that "[t]he disposition of any money

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Accordingly, the issues raised in Section II.1.A of the Petition are impermissible collateral attacks the Commission's regulations and lie outside the scope of this proceeding.

b. Issue 1.B – Off-Site Remediation Prior to Closing

In Section II.1.B of its Petition, CAN alleges:

> **The Applications should be denied because the License Transfer Applications, and the Purchase and Sale Agreement upon which they are based, make no provision for determining responsibility for off-site remediation under the decommissioning of FitzPatrick and [IP3].**

Petition at 23. CAN asserts that the PSA "seems to imply that Entergy will not assume responsibility under decommissioning" for off-site contamination that occurred prior to closing. Id. CAN is concerned that there is no provision that will hold the Authority accountable for such contamination. Id.

Nothing in the PSA relieves the Authority of responsibility for liabilities that are not being assumed by the Entergy Applicants. There is no ambiguity in the PSA on this issue: the Authority retains liability for off-site disposal, storage, etc. that occurred prior to closing.[10]

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remaining in the Trust Fund after completion of decommissioning is far beyond the scope of this proceeding." Therefore, these allegations are irrelevant.

[10] CAN's assertion of confusion regarding the terms of the PSA is not a valid basis for an admissible contention. Georgia Tech, LBP-95-6, 41 NRC at 300 (an imprecise reading cannot serve to generate an issue suitable for litigation). A plain reading of the relevant sections of the PSA provides a clear delineation of responsibility for "off-site remediation under the decommissioning of FitzPatrick and [IP3]." Petition at 23.

The PSA states that all environmental liabilities and remediations transfer to Entergy Applicants arising after the closing of the sale, with particular noted exceptions. PSA, §§ 2.3, 2.3(a). Further, the PSA, in § 2.4, "Liabilities Not Assumed," carves out certain environmental liabilities, which were incurred by the Authority prior to closing of the sale, that will be retained by the Seller, the Authority:

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CAN also expresses an unfounded concern that the Authority's retained liability could compromise the decommissioning funds for FitzPatrick and IP3. Petition at 24. The FitzPatrick and IP3 decommissioning trust funds are moneys set aside for decommissioning the plant sites, and cannot be used for remediation of other sites such as low level waste processing or disposal facilities where waste may have been transported in the past. In any event, CAN provides no information showing that there is any liability for material released or disposed of at other locations.

c. Issue 1.C – NRC Must Conduct an Environmental Impact Statement

In Section II.1.C of its Petition, CAN alleges:

> **The NRC must conduct an EIS to determine the level of contamination on and off the FitzPatrick and [IP3] sites to fully determine the level of contamination at FitzPatrick and IP3, and, in turn, to establish the appropriate level of funding necessary for Entergy to meet NRC site release criteria.**

Petition at 26 (footnote omitted). CAN requests NRC to prepare an Environmental Impact Statement ("EIS") for the Applications "in order to ascertain the extent of contamination at FitzPatrick and IP3 (and other reactors), and set realistic funding

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> Buyers [ENF and ENIP] shall not assume ... any Liabilities ... relating to off-Site disposal, storage, transportation, discharge, Release, recycling, or the arrangement of such activities, by Seller, of Hazardous Substances ... [that] occurred prior to closing.

Id. § 2.4(b). This is further reinforced by Section 5.13, "Remediation:"

> At its expense, Seller shall fully and successfully correct and complete the Remediation of any recognized material environmental concerns described in Schedule 5.13.

Id. § 5.13. Therefore, the Authority will retain all such liability for off-site disposal, storage, etc., that occurred prior to closing. There is no ambiguity in the PSA on this issue.

requirements to meet final site remediation costs due to the nature, location, and extent of such contamination." Id.[11]

NRC regulations categorically exclude environmental reviews for license transfers.[12] Categorical exclusions are the result of the NRC's determination that license transfers belong to a category of actions that "does not individually or cumulatively have a significant effect on the human environment." 10 C.F.R. § 51.22(a) (emphasis added).

The Commission has very recently rejected similar attempts to inject environmental issues in the license transfer proceeding:

> We reject these two issues because the Commission has made a generic determination that license transfers will not have a significant effect on the environment (see 10 C.F.R. § 51.22(c)(21)) and petitioners have given us no reason to determine otherwise in this proceeding. Consequently, NEPA issues are not germane to the proceeding.

Northern States Power Co. (Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 and 2; and Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, slip op. at 24 (Aug. 1, 2000). Thus, no environmental review of the license transfers for FitzPatrick and IP3 is required,[13] and CAN's arguments to the contrary constitute an impermissible attack on the Commission's regulations.

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[11] CAN appears to base its request for an EIS on the costs of decommissioning the Yankee Atomic reactor and the estimates for the eventual decommissioning of Oyster Creek. Petition at 26-27.

[12] "The following categories of actions are categorical exclusions:

* * *

Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license." 10 C.F.R. § 51.22(c)(21).

[13] CAN cites to Limerick Ecology Action, Inc. v. NRC, 869 F.2d 719 (3rd Cir. 1989), as supporting the proposition that "[f]inding that a license transfer may provide adequate protection of public health and safety under [the Atomic Energy Act] does not preclude the need for further consideration under NEPA ...." Petition at 26 n.24. However, CAN overlooks the holding in that case. The court in Limerick Ecology actually held that "[a]lthough NEPA requires the [NRC] to undertake 'careful consideration,' of environmental consequences, under Baltimore Gas it may issue a rulemaking to address and evaluate environmental impacts that are 'generic,' i.e., not plant-specific." 869 F.2d at 723

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Furthermore, CAN's allegations of existing contamination at FitzPatrick and IP3 have no bearing on the license transfers. Even if CAN's allegations of contamination are accepted *arguendo* as true, they are outside the scope of this proceeding.[14]

2. Issue 2

Issue 2 includes three subparts. Petition at 29-47. The first two subparts, Sections II.2.A and II.2.B, challenge the Entergy Applicants' technical qualifications to own and operate FitzPatrick and IP3, based on the age of the plants and alleged equipment and FSAR issues (Issue 2.A), and based on the technical qualifications of Entergy Corp. ("Entergy") to operate other nuclear plants and a rolling blackout experienced by an Entergy electricity distribution subsidiary in New Orleans and Texas a year ago (Issue 2.B). The third subpart, Section II.2.C, asserts that the Entergy Applicants may reduce the size of the FitzPatrick and IP3 plant staffs sometime in the future due to the pressures of deregulation, and that this will have an adverse impact on safety.

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(internal citations omitted). The Commission has carried out such a rulemaking with respect to license transfers.

[14] CAN argues that an independent environmental evaluation of FitzPatrick and IP3 is required in order to "preserve institutional memory of spills, contamination, and other decommissioning and site clean-up and related matters." Petition at 53. In so doing, CAN is challenging the adequacy of the documentation required by NRC's regulations at 10 C.F.R. § 50.75(g)(1), which require licensees to maintain records of any spills or contamination to allow for proper decommissioning. CAN provides no basis to suggest that this documentation is insufficient, or cites any grounds for imposing requirements beyond the regulations.

a. Issue 2.A – Existing Plant Conditions and Programs

In Section II.2.A of its Petition, CAN alleges:

> **Entergy lacks the ability to manage a fleet of aging reactors such as [FitzPatrick] and [IP3] – which lack will place CAN members at risk due to an accident at [FitzPatrick] or [IP3].**

Petition at 29. CAN asserts that ENF and ENIP's technical qualifications to own and operate FitzPatrick and IP3 are in question because of the age of the two plants and CAN's concerns with existing plant conditions.[15] Both of these issues are unrelated to the NRC's standards for license transfers and they are therefore outside of the scope of this proceeding.

CAN first questions the wisdom of Entergy's business strategy of purchasing "a fleet of latter-vintage reactors" and alleges that:

> The NRC must therefore take into consideration the effect of consolidating a large number of aging, mismanaged and otherwise troubled facilities under a single corporate umbrella, especially given the rigors of operating those facilities in a deregulated electricity market without the flexibility of returning to ratepayers to reimburse unexpected operating and maintenance costs.

Petition at 29-30. This license transfer proceeding, however, concerns only FitzPatrick and IP3. An inquiry into "the effect of consolidating a large number of aging, mismanaged and otherwise troubled facilities" is outside the scope of this proceeding.

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[15] In attacking the technical qualifications of ENF and ENIP, CAN overlooks that it is ENO who will have operations authority. In this response, we will address the sufficiency of ENO's qualifications, as if CAN had properly raised the issue with regard to ENO.

Second, the regulatory requirements for license transfers, set forth in 10 C.F.R. § 50.80, do not encompass any generalized inquiry into the "rigors of operating [a fleet of] facilities in a deregulated electricity market." See id.

Next, CAN asserts that ENF and ENIP are not technically qualified to own and operate FitzPatrick and IP3 because of concerns with existing plant facilities and licensed activities.[16] Petition at 30-34. However, the Applications explicitly state that "[n]o physical alterations to [IP3 and FitzPatrick] are being proposed as part of the license transfer process." Applications at 9. See also 65 Fed. Reg. at 39,954 (FitzPatrick); 65 Fed. Reg. at 39,955 (IP3). There is no nexus between the status of the facilities and licensed activities at FitzPatrick and IP3 and the scope of the proposed license transfer. See Trojan, ALAB-534, 9 NRC at 289 n.6; Millstone, LBP-98-28, 48 NRC at 279.

Nor do the issues raised in the Petition relate to the standards for license transfer. They pertain to neither the technical nor financial qualifications of ENF, ENIP or ENO. Nothing in 10 C.F.R. § 50.80 or the NRC's precedents in license transfer cases requires or permits review of the existing plant designs, facilities or activities, or allows a license transfer proceeding to be turned into a broad relicensing inquiry as CAN advocates. See Trojan, ALAB-534, 9 NRC at 289 n.6; Millstone, LBP-98-28, 48 NRC at 283.

Any concerns that CAN may have with respect to the existing facilities and programs at FitzPatrick and IP3 can be addressed through other processes, not as part of this license transfer proceeding. 10 C.F.R. § 2.206 is the exclusive remedy for a

[16] CAN alleges concerns with the existing leak detection equipment at FitzPatrick and IP3. Petition at 30-34. CAN also raises concerns with asserted deviations with the existing Updated Final Safety Analysis Report ("UFSAR") programs for FitzPatrick and IP3. Petition at 34-36. Neither of these allegations is within the scope of this proceeding.

petitioner who claims that a facility does not comply with any aspect of the NRC regulations, when the claims in question have no discernable relationship to the pending amendment proceeding. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-619, 12 NRC 558, 570 (1980).

Accordingly, the issues raised in Section II.2.A of the Petition are outside the scope of this proceeding and represent an impermissible collateral attack on the NRC's regulations governing license transfers.

b. Issue 2.B – ENF's and ENIP's Technical Qualifications

In Section II.2.B of its Petition, CAN alleges:

> **[ENF] and [ENIP] are newly formed corporations. Furthermore, Entergy's non-utility nuclear operations rely on an unprecedented and unproven model for managing a fleet of nuclear stations. We must therefore look at Entergy's operating record and relevant examples from elsewhere in the nuclear industry to assess ENF's and ENIP's qualifications to own and operate FitzPatrick, [IP3], and a fleet of nuclear generating stations. Entergy's record is not good enough to warrant license transfer without an in-depth investigation through a formal hearing process, and industry experience indicates that the conditions of operating in a deregulated market can be adverse to safety.**

Petition at 36. (As noted earlier, this issue should be read as challenging ENO's technical qualifications to operate FitzPatrick and IP3.) CAN asserts that the technical qualifications issue should be evaluated based on the qualifications of other Entergy-owned nuclear plants and Entergy's electricity distribution subsidiaries in New Orleans and Texas, rather than on the technical qualifications of the operating staffs at FitzPatrick and IP3. This is obviously incorrect.

CAN's attempt to challenge the qualifications of Entergy, the corporate parent of ENF and ENIP, is also irrelevant. The only issue before the Commission is whether ENO is technically qualified to operate FitzPatrick and IP3. Entergy is not seeking to be the licensee of FitzPatrick and IP3. The Applications for the license transfer of FitzPatrick and IP3 do not rely upon the experience of Entergy to establish the technical qualifications of ENO.[17] Therefore, any issue regarding the experience of Entergy is irrelevant and outside the scope of this proceeding.

The Applications state that after the transfer the plant staff at FitzPatrick and IP3, including senior managers, will be substantially unchanged.[18] This complies with the NRC requirements for license transfers.

Finally, CAN asserts that the Entergy Applicants are not technically qualified to operate FitzPatrick and IP3 because of July, 1999 rolling blackouts in New Orleans and Texas experienced by an Entergy electricity distribution subsidiary. Petition at 38-40. CAN provides no basis in fact to link these electricity distribution failures to the operation, by other companies, of two nuclear power generation plants thousands of miles away.

The issues raised in Section II.2.B of the Petition are contrary to the Commission's policy and practice, are outside the scope of this proceeding, and are without any basis. Therefore, these issues should be rejected.

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[17] CAN's assertion (Petition at 37) that ENO is relying on "its parent company ..." to establish its technical qualifications ignores the express text of the Applications and is erroneous. See Applications at 15-17.

[18] "Upon closing, all employees within the Authority's Nuclear Generation Department, and certain other employees supporting the Nuclear Generation Department, will become employees of ENO." Id. at 2.

c. Issue 2.C – Effect of Financial Pressures on Safety

In Section II.2.C of its Petition, CAN alleges:

> **Entergy's operation of FitzPatrick and [IP3] through its non-utility subsidiaries will subject the operation of the nuclear stations to pressures to reduce cost that constitute an unanalyzed condition, adverse to safety, that must be reviewed and resolved prior to transferring the operating licenses.**

Petition at 41. CAN asserts in this subpart that "[i]t is commonly accepted that utility deregulation will require nuclear operators to be [sic] reduce operating costs ... [and] [t]his will require reducing outage time ... and reducing the size of the workforce." Id. CAN asserts that "Consolidated Edison's operation of Indian Point 2" and the operation of "British Energy's nuclear stations in the United Kingdom" should be used as the basis to determine the Entergy Applicants' technical qualifications to operate FitzPatrick and IP3. CAN's reliance on the experience of other nuclear plants, owned and operated by other companies, some outside the United States, does not establish a valid basis for an admissible issue.

Similarly unsupported is CAN's speculation regarding the effects of deregulation on the size of the work force. CAN provides no basis for its claim that ENF or ENIP will subordinate safety to production goals or profits. It provides no explanation why the NRC's inspection and oversight programs will be insufficient to monitor the safety of FitzPatrick and IP3 operations. In essence, CAN argues that no nuclear plant should be permitted to operate in a competitive market. Such a position is inconsistent with the NRC's final policy statement that "economic deregulation does not preclude adequate protection of public health and safety." Final Policy Statement on the Restructuring and

Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,072 (1997).

CAN's speculation (Petition at 44) that "the workforce at FitzPatrick and IP3 [will] be reduced, potentially to levels adverse to safety" is wholly conjectural, without basis in fact, and inconsistent with the commitments made in the Applications. CAN's factual "support" for its workforce reduction issue is its allegations concerning British Energy "job cutting practices at nuclear stations in the UK and Scotland." Id. CAN provides no facts, references, documents, or expert opinions to connect British Energy's workforce practices in the United Kingdom to ENF's and ENIP's workforce practices at FitzPatrick and IP3.

The Commission has rejected a similar proposed issue speculating about future workforce size reductions in the Oyster Creek license transfer proceeding:

> For key positions necessary to operate a plant safely, the Commission has regulations requiring specific staffing levels and qualifications. *See* 10 C.F.R. § 50.54(m). Other than those specific positions, the licensee has a responsibility to ensure that it has adequate staff to meet the Commission's regulatory requirements. If a licensee's staff reductions or other cost-cutting decisions result in its being out of compliance with NRC regulations, then ... the agency can and will take the necessary enforcement action to ensure the public health and safety. The [license transfer] application does not on its face suggest any likelihood of a ... lapse in compliance with NRC safety rules.

Oyster Creek, CLI-00-06, 51 NRC at 209. The Commission reiterated that "our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff." Id. at 214. Therefore, the workforce reductions hypothesized by CAN would not violate any NRC policy or regulation and could not be the basis for an admissible issue.

3. Issue 3 – Environmental Impact Study is Required

In Section II.3 of its Petition, CAN alleges:

> **Given the historical problems at the FitzPatrick and [IP3] nuclear generating stations, CAN believes that an Environmental Impact Stuuy is warranted before license transfer application is approved to protect the health and safety of the workers and the public.**

Petition at 48. CAN's request for an "Environmental Impact Study" appears to be a recasting of its request in Section II.1.C for the NRC to conduct an EIS for this license transfer request. It is similarly contrary to the Commission's generic determination that license transfers will not have a significant effect on the environment, see 10 C.F.R. § 51.22(c)(21), and must be rejected as an impermissible collateral attack on the Commission's regulations. See, supra, Applicants' response to Issue 1.C.[19]

CAN also alleges that certain issues identified in 1996 during Entergy's due diligence review of FitzPatrick and IP3, including generalized issues regarding "organizational structure and accountabilities," may still exist. Petition at 48-49. These issues are not environmental in nature and do not pertain to NRC regulatory matters. Even if they did, they would be unrelated to the license transfer and thus outside of the

[19] CAN advances a host of disconnected allegations to support its assertion that an "Environmental Impact Study" is required. CAN maintains that the NRC should undertake the proposed Study "to understand Entergy's rationale for purchasing FitzPatrick and Indian Point 3." Petition at 49. The determinations required to approve a license transfer in 10 C.F.R. § 50.80 do not require such an inquiry. CAN also asserts that the NRC must investigate the corporate structure of Entergy Corporation, including "the Entergy Nuclear Investment Companies #1 and #2" because Entergy's corporate structure is unclear to CAN. Id. at 49-50. The structure and operation of Entergy's subsidiaries are also not before the NRC in this proceeding, nor is CAN's demand that the NRC "review the safety impact of [ENF and ENIP's] ... limited liability ownership structure ..." The NRC has made it clear that "[t]he Commission has issued reactor licenses to limited liability organizations for decades and [petitioner] has given us no reason to depart from that practice." Oyster Creek, CLI-00-06, 51 NRC at 208.

scope of this proceeding. CAN also provides no facts, references, documents, or expert opinion whatsoever to provide any basis that these 1996 concerns exist today.

4. Issue 4 – Historical Problems in NRC Region I

In Section II.4 of its Petition, CAN alleges the following:

> **Given the historical problems in NRC Region I, CAN contends that an independent evaluation of the [FitzPatrick] and [IP3] nuclear power plants is required before any license transfer applications can proceed.**

Petition at 51. CAN attempts to support its request for an independent evaluation with assertions that the NRC has had "miserable regulatory failures in its oversight" of other power plants in the Northeast, and because of "NRC Region I's abdication of regulatory oversight." Id. CAN, however, identifies no deficiency with the current management of Region I, identifies no deficiency in the Millstone lessons learned, and cites no alleged "miserable regulatory failures" at FitzPatrick or IP3.

This proposed issue is beyond the scope of this proceeding and should be rejected. Issues regarding the adequacy of NRC staff oversight do not fall within the scope of 10 C.F.R. § 50.80(c). Therefore, these issues should be rejected.

5. Issue 5 – Increased Supplemental Funding Required

In Section II.5 of its Petition, CAN alleges:

> **CAN contends that the license transfer should be denied until ENF and ENIP and their parent corporation establish baseline funding that is clearly defined and substantially increased over current levels to address the dangers to public health and safety inherent in permitting the controversial and risky endeavor in which they are engaged.**

Petition at 54. CAN states that "Entergy is only committing a total of $90 million to insure ENF's and ENIP's ownership of FitzPatrick and Indian Point 3." Id. CAN asserts that "Entergy must be required to commit more funding to support its new acquisitions." Id. CAN alleges that "maintenance outage costs for two reactors can easily exceed the $90 million available to FitzPatrick and IP3." Id. at 55. CAN provides no references, facts, documents or expert opinion whatsoever to support its assertions. CAN also claims to be uncertain regarding the operation of Entergy's financial commitments, including "the $50 million Letter of Credit from Entergy Global Investments, Inc., ... to support all of Entergy's nuclear acquisitions, including Pilgrim at this point, and potentially a half-dozen other nuclear stations in the Northeast." Id. at 54 (emphasis in original).[20]

CAN seems to suggest that "Entergy" (presumably, Energy Corp., as the parent of ENF and ENIP) should plan for lengthy, concurrent outages at plants with which it is involved, including FitzPatrick and IP3, and that the $90 million available is insufficient to cover "maintenance outage costs for two reactors." Petition at 55.

CAN's arguments are an attack on the Commission's regulations in 10 C.F.R. § 50.33(f)(2), which govern the financial qualifications of applicants. This section requires financial data for the first five years of operation. The Entergy Applicants' submission of information related to their financial qualifications (Applications at 6-8) fully complies with Section 50.33(f)(2) and the NRC's "Standard Review Plan on Power

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[20] The $50 million line of credit is part of the $90 million supplemental funding for operations discussed in the Applications. Applications at 8. Of the $90 million total, $50 million is in the form of a "line of credit from Entergy International Ltd. LLC, to meet the financial assurance requirements of both IP3 and FitzPatrick;" $20 million is "an established line of credit ... from ... Entergy Global Investments, Inc." for "working capital, if necessary, for the operation and maintenance of IP3" and the remaining $20 million is "an established line of credit ... from ... Entergy Global Investments, Inc." for "working capital, if necessary, for the operation and maintenance of FitzPatrick." Id.

Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Rev. 1.[21]

NRC regulations do not require a showing of financial capability to sustain lengthy simultaneous outages at multiple plants. Nor does CAN provide any evidence tending to show that lengthy simultaneous outages of FitzPatrick and IP3 are likely, or that the $90 million supplemental funding provided is inadequate. In any event, the Commission has recently held that availability of a particular amount of financial pledge by a parent or affiliated company is not part of the required financial qualifications case and a challenge to the adequacy of such backing, therefore, cannot constitute the basis for granting a hearing. Oyster Creek, CLI-00-06, 51 NRC at 205. In Oyster Creek, the Commission went on to reject a claim that "the combination of the [parent company's supplemental funding] guarantee and the operating revenue will be insufficient to cover Oyster Creek's major anticipated expenses," and stated:

> [Petitioner] has failed to provide us with data or analysis supporting its position and has given us no basis on which to question [applicant's] ability to pay for these expenses through its projected income. Consequently, we must reject this line of argument.
>
> We certainly stand ready to hold a hearing in license transfer cases where petitioners proffer plausible and fact-based claims that a new reactor owner or operator lacks sufficient financing to run the reactor safely. Here, however, [petitioner] has offered no tangible information, no experts, and no substantive affidavits. Instead, it has provided bare assertions and speculation. This is not enough to trigger an adversary hearing on [applicant's] financial qualifications.

Id. at 207-08 (citation omitted). The same applies to CAN's bald allegations here.

[21] The NRC has previously found that the same type of financial information submitted here was sufficient for it to make an informed and reasoned decision and find an applicant financially qualified to own and operate a nuclear facility. See, e.g., Pilgrim Order, 64 Fed. Reg. 24,426 (1999); Pilgrim Safety Evaluation (April 29, 1999).

6. Issue 6 –Antitrust Review Required

In Section II.6 of its Petition, CAN alleges:

> **NRC has not adequately examined the implications of Entergy's commitment to establish a fleet of nuclear power stations in the US in light of the serious anti-trust implications of such a fleet in the hands of what is, essentially, a single company. These implications include, but are not limited to: (a) regional, and even national, energy dependence on a single supplier, a matter potentially adverse to the national interest and national security, and (b) health and safety issues for workers and persons living in proximity to FitzPatrick, [IP3], or any of the facilities in the event that the single corporate holder is unable to maintain the necessary capital flow for operations, maintenance, repairs, and/or decommissioning.**

Petition at 56.

The Commission has determined, by rule, that antitrust reviews should not be conducted in connection with license transfers. 65 Fed. Reg. 44,649 (2000). The Commission's final rulemaking "makes clear that, consistent with [existing case law], no antitrust information is required to be submitted as part of any application for Commission approval of a post-operating license transfer" and that "antitrust review[s] ... of post-operating license transfer applications are not authorized or, if authorized, are not required and not warranted." Id. at 44,658.[22] CAN's request for an antitrust review is therefore a brazen attack on the Commission's regulations and should be rejected.

[22] In the rulemaking, the Commission specifically responded to comments made by CAN which are essentially identical to those CAN proposes here as issues for this proceeding, including CAN's assertion that the rulemaking was illegal, was a violation of NEPA, and failed to evaluate health and safety issues. See id. at 44,652-53, 44,657. The Commission disagreed with CAN's assertions and concluded that "[t]here is simply is no basis to believe that this rule could result in any of the consequences identifies by CAN." Id. at 44,657.

CAN also asserts that NRC must perform an antitrust review to ascertain that the FitzPatrick and IP3 operating licenses "do[] not go to a foreign power or foreign dominated corporation," Petition at 61, and to investigate "the national security implications of foreign domination of [the owners of FitzPatrick and IP3]." Id. at 63. CAN gives no basis for its concern about "foreign domination" of ENF and ENIP. Neither ENF nor ENIP have any foreign ownership of control. As the applications make clear, the Entergy Applicants are U.S. corporations, wholly owned subsidiaries of Entergy, an American-owned and controlled entity. Applications at 5.

7. Issue 7 – Post-Operating License Price-Anderson Coverage

In Section II.7 of its Petition, CAN alleges:

> **Entergy has committed to put up only $90 million to assure its non-utility nuclear subsidiaries have sufficient revenues to safely operate its fleet of reactors. The funds reasonably required to support an endeavor on the scale Entergy intends far exceed that amount. Given that: (a) many of Entergy's reactors will be in varying states of operation and decommissioning, (b) Price Anderson Act insurance does not cover decommissioning, and (c) decommissioning costs are always uncertain at best, it is plain that Entergy's generalized assurances are insufficient to permit license transfer.**

Petition at 64. CAN attempts to support its request through reference to a paragraph in the declaration of David Lochbaum speculating that "harmful amounts" of radioactive material could be left at a power plant site following NRC-approved decommissioning and license termination. Id. at 64-65 (citing Declaration of D. Lochbaum ¶ 9(b)). CAN maintains that "a special account should be created to hold the[] reserve assets" put forward by Entergy to assure safe operations during the period of the operating license. Id. at 64. According to CAN, the need for this NRC-established "special account" is

"due to the lack of adequate insurance coverage under Price Anderson to cover complete cleanup" of sites during decommissioning.

First, the claim that "harmful amounts" of radioactive material could be left after completion of NRC-approved decommissioning and license termination is untenable, as it constitutes a challenge to the NRC decommissioning process. Under 10 C.F.R. § 50.82(a)(11), the Part 50 license for a nuclear power reactor may not be terminated until "[t]he terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20, subpart E."

Second, it is apparent that CAN misapprehends the purposes of Price-Anderson coverage as opposed to property damage insurance, since it seeks that additional funding be provided by Entergy to make up for "the lack of adequate insurance under Price Anderson to cover complete cleanup." Petition at 64. Price-Anderson insurance does not cover the costs of plant decommissioning or cleanup, since it is third-party liability insurance; however, the protection provided by the Price-Anderson Act continues after the plant has ceased permanent operation, while it is engaged in decommissioning activities, and up until the time the operating license terminates.[23] At the same time,

[23] The NRC indemnification agreements required by Section 170(c) of the Atomic Energy Act, which cover all public liability arising from a nuclear incident, remain in effect until all radioactive material has been removed from the site. Article VII of the NRC indemnification agreements specifically states:

> The term of this agreement ... shall terminate at the time of expiration of that license ... provided that ... the term of this agreement shall not terminate until all the radioactive material has been removed from the location and transportation of radioactive material from the location has ended ....

See 10 C.F.R. § 140.92, Art. VII. Further, the indemnification agreements require licensees to maintain specified amounts of liability insurance (id. at Art. VIII), and the NRC has required licensees to obtain NRC approval before reducing this coverage. See, e.g., 60 Fed. Reg. 57,460 (1995) (exemption for Trojan Nuclear Plant).

licensees must maintain, as required by NRC regulations in 10 C.F.R. §50.54(w), adequate levels of insurance to cover post-accident cleanup activities.

In accordance with 10 C.F.R. § 140.92, Art. IV.2, the Entergy Applicants and the Authority will request approval of the assignment and transfer of the Price-Anderson Indemnity Agreement for FitzPatrick and IP3 from the Authority to ENF and ENIP, respectively, upon consent of the proposed license transfer and removal of the Authority from the related bond. See Applications at 20-22. The indemnity agreement that the Entergy Applicants must enter into with the NRC provides an NRC guarantee of the deferred premiums, subject to reimbursement or liens on the licensee property. 10 C.F.R. § 140.22, 10 C.F.R. § 140.92, Art. VIII. Further, prior to the license transfer, the Entergy Applicants will obtain all required nuclear property damage insurance pursuant to 10 C.F.R. § 50.54(w), and nuclear liability insurance pursuant to the Price-Anderson Act and 10 C.F.R. Part 140. Applications at 20, 22. Therefore, no basis exists for CAN's claim that "the inability [of the Entergy Applicants] to compensate persons harmed from an incomplete cleanup is a genuine concern." Petition at 65.

CAN provides no discussion whatsoever of this comprehensive set of requirements, coverage, and guarantees, and offers nothing to suggest that there is any material issue to be set for hearing. Thus, there is no basis for any issue pertaining to a "lack of adequate insurance coverage under Price-Anderson."

V. CONCLUSION

For the foregoing reasons, Applicants respectfully request the Commission to deny CAN's Petition for leave to intervene and reject its request for a hearing.

Respectfully submitted,

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Dated: August 10, 2000

August 10, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
POWER AUTHORITY OF THE	)	
STATE OF NEW YORK and	)	
ENTERGY NUCLEAR FITZPATRICK LLC,	)	
ENTERGY NUCLEAR INDIAN POINT 3 LLC,	)	Docket Nos. 50-333-LT
and ENTERGY NUCLEAR	)	and 50-286-LT
OPERATIONS, INC.	)	
	)	
(James A. FitzPatrick Nuclear Power Plant	)	
and Indian Point Nuclear Generating	)	
Unit No. 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "ANSWER OF POWER AUTHORITY OF THE STATE OF NEW YORK, ENTERGY NUCLEAR FITZPATRICK LLC, ENTERGY NUCLEAR INDIAN POINT 3 LLC, AND ENTERGY NUCLEAR OPERATIONS, INC. TO CITIZENS AWARENESS NETWORK'S REQUEST FOR HEARING AND PETITION TO INTERVENE IN THE LICESE TRANSFERS FOR FITZPATRICK AND INDIAN POINT 3 AND REQUEST FOR SUBPART G HEARING DUE TO SPECIAL CIRCUMSTANCES" were served on the persons listed below by electronic mail, this 10th day of August, 2000.

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