RAS 2108

DOCKETED
August 17, 2000

'00 AUG 21 P4:37

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 OPERATIONS, INC.	)	and 50-286-LT
	)	
(James A. FitzPatrick Nuclear Power Plant) and Indian Point Nuclear Generating Unit No. 3	)	

REPLY OF CITIZENS AWARENESS NETWORK, INC., TO POWER AUTHORITY OF THE STATE OF NEW YORK, ET AL, ANSWER TO CAN'S REQUEST FOR HEARING AND PETITION TO INTERVENE IN THE LICENSE TRANSFER PROCEEDINGS FOR FITZPATRICK AND INDIAN POINT 3 AND REQUEST FOR SUBPART G HEARING DUE TO SPECIAL CIRCUMSTANCES

I. Introduction

The Citizens Awareness Network, Inc. ["CAN"], sought relief under Subpart M in its Request for Hearing and Petition to Intervene (July 31, 2000) in the review of the license transfer applications for the James A. FitzPatrick ["FitzPatrick"] and Indian Point Unit 3 ["IP3"] nuclear generating stations, submitted by the Power Authority of the State of New York ["NYPA"], Entergy Nuclear FitzPatrick LLC ["ENF"], Entergy Nuclear Indian Point 3 LLC ["ENIP"], and Entergy Nuclear Operations, Inc. ["ENO"]. The request for relief is not an attack on the Commission's regulations as NYPA, ENF, ENIP, and ENO generally allege. The regulations CAN cites in its pleading plainly afford the relief CAN seeks. See generally, 10 CFR §2 Subpart M, and compare the subpart's requirements with CAN's Hearing Request and Motions and Declarations of Jean Chambers, Marilyn Elie and David Lochbaum attached thereto. Despite the additional allegations made by the Applicants, CAN and its

 Template = SECY-037

SECY-02

representative members meet the Commission's requirements for organizational standing and satisfy the requirements promulated under 10 CFR §§ 2.1306 and 2.1308. CAN makes the following reply to the Applicants' answer as permitted under 10 CFR § 2.1307:

II. CAN's Arguments in Reply to NYPA, ENF, ENIP, ENO's Reply:

A. CAN Is Entitled to the Procedural Relief Requested

The Applicants attempt to characterize Subpart M as requiring the NRC to sacrifice its statutory responsibilities under the Atomic Energy Act ["AEA"] to protect occupational and public health and safety and national security, and ensure meaningful opportunities for public participation in license transfer proceedings, by elevating a speedy process for the licensee over the AEA's substantive requirements of due process and rational consideration of the issues presented in a particular application. See, e.g., AEA § 189a, 42 U.S.C. 2239. The congressional delegation of authority to the Commission requires that the Commission respond to the latter, substantive considerations over the merely formal ones exalted in the NYPA/ENF/ENIP/ENO Answer. After all, in license proceedings of any kind, the would-be licensee is seeking a special benefit from The People of the United States. In serving this "special interest," the Commission, with no greater authority than the Congress which created it, and, in fact, with far less authority, may not elevate that private interest over the interests and rights of The People of the United States.

Congress authorizes license proceedings upon substantive findings and assurance of specific protections of the interests of The People. These interests include assurance of occupational and public health and safety, protection of individual property interests under requisite findings of adequate insurance coverage, protection of the human and natural environment (insofar as the

National Environmental Policy Act must be "read into" the Atomic Energy Act), and safeguarding national security (which includes, but is not limited to protection of nuclear secrets, assurances that a single entity is not in control of the U.S. nuclear electric generating capacity, and assurance that no single entity will dominate or control all the electric generating capacity in a region through its nuclear power licenses). Moreover, a request for a hearing on a license transfer is all the more poignant today as the Commission has indicated its desire to meet the nuclear industry's demands for lessened regulation, the elimination or curtailment of formal adjudication, and has indicated that it intends to relinquish antitrust reviews required under the AEA.

It is noteworthy that while the Commission seems to be bending over backward to accommodate the nuclear industry's "initiatives" for hands off regulating, there has been no corresponding attempt to make it easier for the public to participate in the new, streamlined, informal hearings. Apparently, the Commission believes that it can make the hearings less formal and more streamlined for the special interests who receive privileged (licenses) from representatives of The People of the United States while keeping the barriers to public participation high through standing and other intervention requirements that plainly favor participation of nuclear industry interests over antinuclear interests. These actions mask a more general dispute over the proper future of commercial nuclear power production at a time when it is at the most significant crossroads in its history. CAN contends that the Commission has an obligation under AEA § 189a to facilitate public participation in meaningful, adjudicatory processes, and that failure or avoidance of this charge is an abdication of statutory duty.

Thus, in this case, under the very laws which created the Commission and set forth its power, limitations, and duties, CAN is entitled to a hearing in which

the congressionally mandated subjects outlined above may be adequately explored in the context of the license transfer at issue, utilizing the twin engines of truth seeking: subpoena power to compel witnesses and evidence and cross examination of witnesses under oath (or affirmation).

The Atomic Energy Act at § 189(a) requires NRC assure the public ample opportunity for substantive, meaningful participation in proceedings of interest to the public. In the AEA, Congress recognized the need for public participation and has declined numerous attempts to limit the kind of public participation the AEA requires. Moreover, in terms of the NRC's new approach to limiting the public's right to a hearing and substituting "streamlined" nuclear industry-favored proceedings for meaningful, adjudicatory process, it is important to note that, with few exceptions, some of the finest jurists of the last century have viewed with suspicion the NRC's idea of what constitutes a Congressionally mandated hearing. CAN's own experience in this regard, *Citizens Awareness Network, Inc. v. U.S. NRC*, 59 F.3d 284 (1st Cir. 1995) is instructive. Therein, generally and throughout the opinion, including approving citations to the prior lower court case which compared the NRC's attempt to thwart the public's right to an adjudicatory hearing with Dickens's proverbial "Department of Circumlocution," the United State Court of Appeals for the First Circuit found that the Commission's view of hearings failed to meet the minimum requirements for such proceedings under the AEA § 189a or any rational view of the meaning of "hearing."

Request for Stay of the Proceeding Pending IRS Tax Status Determination and Resolution of DEC Permit Review

Although Entergy argues that a stay should be denied based on the NRC's ruling in the Niagara Mohawk license transfer case, the NRC denied relief from the burden of simultaneously litigating in multiple forums. However, in this case CAN is not

asking for such relief. Rather, CAN is requesting a stay due to the pre-emptive nature of rulings by other agencies and the deficiency of the Applications. In this case, the NRC [Woton] would conserve adjudicatory resources by preserving its jurisdiction and temporarily staying the proceedings until the tax status of the decommissioning funds and New York State Department of Environmental Conservation ["DEC"] permitting requirements are resolved. Under the very agreements which the Applicants have placed before the Commission in their joint applications, it is plain that were the DEC to fail to provide a favorable ruling, the agreement would be void (or voidable). Applications at ??.[1] The unresolved tax status of the Decommissioning Trust creates unanalyzed conditions adverse to the public health and safety, which in itself would warrant a more formal review. Furthermore, should the Applicants receive an unfavorable determination on tax status, ENF and ENIP have not indicated whether they could complete the sale. The license transfer applications are mute on this question, and the Applicants' response fails to answer CAN's contention that such a large capital gains tax obligation could obstruct the Entergy subsidiaries' ability to own and operate the reactors. See Hearing Request and Motions at 2-4.

CAN merely asks that the NRC do what is rational, and in its best interest. A temporary stay would have the affect of conserving agency resources. On the one hand, unfavorable rulings by the DEC and/or IRS could moot a prior NRC review of the licnense transfer applications. And on the other hand, the fallout from an unfavorable IRS ruling and litigation years down the road could create a regulatory quagmire and consume NRC resources, all of which could be avoided by either: 1) requiring the tax status to be resolved -- and the fate of the fund under the most adverse circumstances clarified -- prior to reviewing the license transfer applications; or 2) conducting a thorough public review pursuant to

---

1

Subpart M (or Subpart G) to determine clearly the implications of the proposed arrangements and their outcomes.

The Applicants cite a stated Commission policy against delay in license transfer proceedings "under which 'staff action on license transfer requests should not be delayed **except for sound reasons**'" (emphasis added). The Applicants further refer to the NRC's "statutory obligation" to rule on issues within its jurisdiction notwithstanding the existence of simultaneous proceedings before other agencies, and cites a ruling in the Nine Mile Point license transfer proceeding as precedent for denying a stay of the license transfer proceeding pending the resolution of other regulatory issues. CAN's request for stay is based on sound reasons deriving from the special circumstances of the case, none of which the Applicants deny, or so much as address, in their reply. Furthermore, the Nine Mile Point license transfer proceeding ultimately was stayed pending the resolution of Rochester Gas & Electric's case for a Right of First Refusal, notwithstanding the ruling cited by the Applicants made earlier in the same proceeding. To wit, the license transfer proceeding was eventually mooted based on the withdrawal of the Purchase and Sale agreement between Niagara Mohawk, New York State Electric & Gas, and AmerGen Energy Co. LLC. Clearly, the question of whether a stay may be granted remains open and depends on "sound reasons" -- the circumstances of the transfer at hand and the merits of the request for stay. Since the Applicants do not dispute the special circumstances and significant effects described in CAN's request, and the regulations afford the relief requested, a Commission ruling granting the stay would be justified.

Request for a Joint Hearing with FERC and New York State DEC.

Similarly, CAN's request for a joint hearing with the Federal Energy Regulatory Commission ["FERC"] and DEC should be considered. The Applicants contend that

conducting such a joint hearing is unpredented and that the rules of conduct for license transfer proceedings are limited exclusively to the procedures described Subpart M. However, 2.1329 clearly provides the Commission the option of instituting alternative hearing procedures, based on the special circumstances of the case. CAN's request clearly outlines the special circumstances of the instant case which would warrant instituting a joint hearing process, and the regulations plainly afford the Commission the authority to accomodate such a hearing.

A joint hearing process would conserve agency resources, both by expediting the review process and eliminating the possibility that NRC rulings would be mooted by the outcome of subsequent agencies' decisions. The Applicants cite the NRC's[2] *Statement of Policy on Conduct of Licensing Proceedings* to argue that "[e]asing the burden" on a participant is not a valid reason to deviate from Commission review procedures. Reply at 5. However, the request for a joint hearing is based on the special circumstances of the instant case and the potential *waste* of resources if the proceeding were limited strictly to the procedures under Subpart M. The passage from the Statement of Policy cited by the Applicants plainly allows for such circumstances:

> "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 other to devote to the proceeding does not relieve that party from its hearing obligations." [Emphasis added.]

Clearly, when the special circumstances pertain to the case itself, and when there are clear benefits to instituting an alternative hearing process, the Commission has the authority to grant the relief requested.

---

[2]*Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 12 NRC 452, 454 (1981); *endorsed, Policy on Conduct of Adjudicatory Proceedings, Policy Statement*, 63 Fed. Reg. 41,872 (1998).

Request for Subpart G Hearing

Applicants argue that (1) Subpart G hearing relief is "inconsistent with NRC's regulations and is unfounded," (2) Subpart M is sufficient for resolving CAN's concerns, and (3) a Commission ruling in the Nine Mile Point license transfer set precedent against instituting the more formal hearing procedures under Subpart G. Applicants misunderstand CAN's request and their arguments against instituting Subpart G are inconsistent with each other. Furthermore, Applicants' representation of the Commission decision cited from the Nine Mile Point decision is incomplete and misrepresents the nature of the decision.

In the "Hearing Request and Motions" CAN submits that, based on the special circumstances of the case, the deficiency of the Applications, and the unprecedented nature of the Applicants' request a Subpart G hearing would benefit the Commission's ability to review the Applications. In the alternative, the "Hearing Request and Motions" recommends initiating a Subpart M hearing with the possibility of converting to a Subpart G hearing at a later date. Hearing Request and Motions at ??. CAN recognizes that the latter circumstance would be the more likely, and the Commission decision in the Nine Mile Point proceeding cited by the Applicants plainly affords that possibility:

> 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. [Emphasis added.]

CAN recognizes that the ruling allowed the Commission to retain authority to institute a more formal hearing process could be instituted.

The motions, hearing request, intervention petition, declaration in support of standing and declaration of technical, expert information CAN has placed before the Commission were not answered by the Applicants. All of the legalistic

argument merely supports CAN's contention that there are genuine issues of dispute in this matter that are beyond the intended purpose of Subpart M, hence warranting a special hearing, a full Subpart G hearing as the rules provide for in just such special circumstances.

B. CAN's Issues Satisfy NRC Standards for Admissibility and Standing

In their reply to CAN, the Applicants acknowledge that CAN's interests in the license transfer proceeding are worthy of the Commission's consideration for the requested relief. NYPA, et al, Reply at 8. The Applicants make a generic argument against standing and the admissibility of any of CAN's issues based on a narrow interpretation of the scope of Subpart M procedures and criteria for admissibility and standing. The Applicants argue that CAN "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." Ibid. As demonstrated below, CAN's issues all relate to harms CAN and its representative members could suffer as a result of granting the transfer of operating licenses for FitzPatrick and Indian Point 3. Furthermore, CAN's Request for Hearing and Petition to Intervene clearly identifies how each of the issues raised could be resolved through the relief requested, satisfying the redressability criterion. Where the Applicants raise specific concerns over the redressability of CAN issues, clarification is offered herein below. Therefore, CAN's issues satisfy the standards for admissibility set forth under Subpart M.

The Applicants' contention that CAN's issues cannot be adjudicated under Subpart M plainly contradicts their argument against CAN's request for a Subpart G hearing, in which they argue that the Commission intended for Subpart M to accomodate review of a "full panoply of issues" related to license transfers:

> The Subpart M hearing is an adequate vehicle for the litigation of the issues 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 bases" using Subpart M procedures.

NYPA, et al, Reply at 7. Clearly, if CAN has raised issues that "arguably serve as the basis for standing to intervene,"[3] either those issues can be accomodated under Subpart M, or they serve as valid grounds for instituting a more thorough and formal hearing process, for instance under Subpart G. The Applicants' arguments are specious on these counts, and they rely on a liberal flexibility of illogic that belies Applicants' intention to avoid public scrutiny by a narrow interpretations of the Commission's rules and decisions. If accepted, these representations of the Commission's rules and standards under Subpart M would set a precedent for locking the public out of the license transfer process through imposing a kind of Catch-22, in which the public may only have a voice if they agree not to speak.

III. CAN's Issues Satisfy NRC Pleading Requirements

A. Introduction

In their Answer, NYPA and the Entergy Subsidiaries consistently misconstrue CAN's issues in order to demonstrate that they do not meet NRC pleading requirements as established in 10 CFR § 2.1306. CAN does not dispute the Commission's pleading requirements as promulgated under Subpart M. CAN's issues satisfy those requirements, as supported by the Commmission's regulations and the reasoning, evidence, testimony and exhibits presented in CAN's Request for Hearing and Petition to Intervene. Where specific contentions by the Applicants need to be addressed or clarification of CAN's issues is needed, they are set forth below.

---

[3]Reply at 8.

Applicants characterize many of CAN's issues as advocating "stricter requirements than those imposed by the regulations" and argue that they should therefore be rejected as "impermissible collateral attack[s] on the Commission's rules." Where applicable, specific instances are addressed below. However, it must be generally noted that the consolidation of ownership of the US's nuclear generation capacity, of which the proposed license transfers represent a unique and precedent-setting case, remains unchartered waters for both the nuclear industry and nuclear regulation in the US. In many areas, the Commission's rules have not yet caught up with the rapid and acclerating process of industry restructuring and utility deregulation. CAN's Request for Hearing and Petition to Intervene clearly identifies these special circumstances, the significant effects thereof, and how both circumstances and effects relate to the granting of the Applications. CAN maintains that a full evidentiary hearing to review the Applications would afford the Commission the opportunity to examine these circumstances more thoroughly and analyze their potential effects, and that CAN's participation in the proceeding could help the Commission create more effective regulation on license transfers, the creation of monolithic nuclear corporations, and the restructuring of nuclear reactor operations under utility deregulation.

B. CAN's Issues Satisfy the Commission's Pleading Requirements for Admissible Issues

1. Adequate Assurance of Funding for the Eventual and Actual Costs of Decommissioning

Applicants misconstrue CAN's concerns with respect to decommissioning funding in Sections II.1.A and II.1.B of the Hearing Request and Petition to Intervene, stating the sections "allege that the license transfer includes insufficient funding for decommissioning." Applicants' entire response to sections II.1.A and

II.1.B rest on demonstrating that CAN disputes that the current value of the Decommissioning Trust is insufficient to perform decommissioning. The Applicants plainly misconstrue CAN's issues.

CAN's issue, rather, is that the "Applications do not provide sufficient assurance of adequate funding for the eventual and actual costs of decommissioning FitzPatrick and Indian Point 3." The Applications commit the Entergy subsidiaries to paying for the actual costs of decommissioning above and beyond the value of the Decommissioning Trust in the event that the actual costs of decommissioning FitzPatrick and IP3 surpass that amount. The Applications must address the possibility of decommissioning cost overruns, both because of NRC licensing requirements and because industry experience is that the actual cost of decommissioning has greatly exceeded the estimates on which the rate of decommissioning fund accrual has been based. Furthermore, in the instant case, the transfer of FitzPatrick and IP3 to unregulated Limited Liability Corporations would precludes the Entergy Subsidiaries, under deregulation, from returning to ratepayers to subsidize cost overruns in decommissioning. Thus, there must be adequate financial assurance that the Entergy subsidiaries will be able to obtain such funding, or the public health and safety are jeopardized and could lead to harm to CAN and its representative members, Jean Chambers and Marilyn Elie.

2. Determination of Responsibility for Off-Site Remediation

In response to Section II.1.B, Applicants state that "Nothing in the PSA relieves the Authority of responsibility for liabilities that are not being assumed by the Entergy Applicants" and that "There is no ambiguity in the PSA on this issue." CAN's concern is not that the PSA does not require NYPA to assume responsibility for remediation of off-site contamination as a result of its operation of FitzPatrick and IP3 or its illegal dumping of radiological materials off-site. Rather, CAN's

concern is that, if the license transfer applications are granted, NRC will have no licensing authority to require NYPA to conduct remediation under decommissioning. If the Applications are granted, NYPA will no longer be responsible or accountable to the Commission's regulatory authority under decommissioning. Furthermore, because NYPA will no longer be conducting licensed decommissioning activities and since decommissioning is a licensed NRC activity, NYPA will no longer have access to the Decommissioning Trust Fund for remediation for which NYPA is responsible. Section II.1.B explains how these concerns relate to the Applications' insufficient assurance of funding for decommissioning.

3. The NRC should conduct an Environmental Impact Study to determine the level of contamination on and off the FitzPatrick and Indian Point 3 sites.

Applicants aver that CAN's request for an EIS to determine the level of contamination on and off the FitzPatrick and IP3 is based on the costs of decommissioning of Yankee Rowe and the decommissioning cost estimates of Oyster Creek, and argue that the NRC's regulations categorically exclude environmental reviews for license transfers. However, CAN's request is based on the special circumstances of the instant case, including but not limited to: insufficient assurance of adequate funding for decommissioning in the Applications; the Entergy Applicants' inability to return to ratepayers to subsidize unanticipated costs of decommissioning over and above the value of the decommissioning fund, under utility deregulation; and the lack of regulatory authority to ensure NYPA will remediate off-site contamination and lack of access to decommissioning funds. The Applicants' answer does not address CAN's actual arguments for the EIS, and the request is admissible on the basis of special

circumstances and the potential harm to CAN and its representative members arising from the insufficient assurance of adequate funding for decommissioning and the inability of NRC to require NYPA to conduct off-site remediation.

4. Entergy lacks the ability to manage a fleet of aging reactors such as FitzPatrick and IP3

Applicants object to CAN's request for a thorough review of Entergy's ability to operate FitzPatrick and IP3 and an increasingly large fleet of nuclear power reactors. Applicants maintain that such a review lies outside the scope of the proceeding, that "there is no nexus between the status of the facilities and licensed activities at FitzPatrick and IP3 and the scope of the proposed licensed transfer," and that the issues raised do not relate to the technical or financial qualifications of ENF, ENIP or ENO.

CAN disagrees. CAN's request is not a "broad relicensing inquiry" as the Applicants aver, and Entergy's technical and financial qualifications are specifically addressed in the immediately subsequent sections of the Hearing Request and Petition to Intervene. The request in Section II.2.A follows upon the arguments made in the procedural requests in Section I of the petition, and the grounds for the request are established in this response in Section II.A above.

5. The Entergy Applicants' Technical Qualifications

The Applicants object to CAN's request for a full hearing on the Applications to review ENF's, ENIP's, and ENO's technical qualifications to operate FitzPatrick and IP3. The Applicants aver that it is not the record of Entergy and other Entergy subsidiaries that establishes Entergy Applicants' technical qualifications, but rather the technical qualifications of the operating staffs at FitzPatrick and IP3 -- which the Entergy Applicants are assumed to inherit under

the terms of the PSA. The Applicants arguments are specious and attempt to avoid public scrutiny of Entergy's record and qualifications, and questions about Entergy's corporate culture which will clearly impact the continued safe operation of FitzPatrick and IP3. Notwithstanding questions about the qualifications of the existing NYPA staff raised in Section II.2, or the possibility that much of the existing staff will be depleted and/or need to be replaced if and when Entergy assumes operation of the facilities (see Exhibit 10, "Nuke Workers worried about jobs, safety"), ENF, ENIP, and ENO would be responsible for directing the operations of FitzPatrick and IP3. Furthtermore, as referenced in the Request for Hearing and Petition to Intervene, the majority of officers for ENF, ENIP, and ENO also hold high-level positions in Entergy and other Entergy subsidiaries. Therefore, the records of Entergy and other Entergy subsidiaries are directly relevant to establishing Etnergy's technical qualifications, as are the questions of corporate culture raised in the Texas Department of Public Utilities ruling (Exhibit 9.3) and reinforced by the 1999 rolling blackouts in Entergy's four-state service territory. Therefore, the issues raised in Section II.2.B are relevant and admissible to the review of the license transfer applications.

6. Financial pressures on ENF's, ENIP's and ENO's operation of FitzPatrick and IP3 constitute an unanalyzed condition, adverse to safety

Applicants aver that CAN's request in Section II.2.C is based on the records of Consolidated Edison at Indian Point 2 and British Energy's nuclear stations in the United Kingdom, and argues that CAN's request is invalid on that basis. Applicants misrepresent CAN's request, which refer to the records at IP2 and British Energy's facilities as recent examples that question the adequacy of the Commission's 1997 generic determination, cited by the Applicants, that the pressures of market competition under deregulation do not warrant case-specific

review and do not present conditions adverse to nuclear safety. Furthermore, the corroborating evidence of public safety problems resulting from economic decisions by other Entergy subsidiaries (Exhibit 9) warrant a thorough review of the potential public health and safety implications of financial pressures on ENF's, ENIP's and ENO's ownership and operation of the FitzPatrick and IP3 nuclear generating facilities.

CAN does not argue in Section II.2.C that no nuclear facilities should be permitted to operate in a competitive market (as Applicants aver), but rather that the special circumstances in the instant case and the potential for harm to CAN and its representative members, Jean Chambers and Marilyn Elie, warrant thorough review by the Commission through a full hearing process. These concerns are corroborated by statements by the Nuclear Generation Employees Association, which represent non-union workers at NYPA's nuclear facilities (Exhibit 10).

7. An Environmental Impact Study is required to protect the health and safety of workers and the public.

The Applicants maintain that CAN's request for an EIS in Section II.3 of the Request for Hearing and Petition to Intervene is simply a recasting of the request for a decommissioning EIS in Section II.1.C. Applicants argue against this request on the same basis: "the Commission's generic determination that license transfers will not have a significant effect on the environment." Applicants further argue that the evidence CAN cites in support of its request, including but not limited to Entergy's 1996 due diligence report on FitzPatrick and Indian Point 3, is not environmental in nature, do not pertain to NRC regulatory matters, are unrelated to the license transer, and are outside the scope of the Subpart M proceeding.

CAN's request in Section II.3 is for an EIS on the **continued operation** of FitzPatrick and Indian Point 3 to determine the potential health and safety impacts

of granting the Applications. This request is distinct from the request for an EIS on the levels of contamination on and off the FitzPatrick and IP3 sites. The evidence CAN cites relates to potential safety problems deriving from the material conditions of the reactors, the compliance of the reactors with their operating licenses, ENO's plans for operating FitzPatrick and IP3 along with a fleet of other reactors, and the operations history the Entergy Applicants are inheriting in their commitment to maintain the current FitzPatrick and IP3 staffs. Potential safety problems are manifestly environmental issues, and insofar as they present special circumstances related to the proposed license transfers, CAN's request is admissible under the rules of Subpart M.

8. Increased Supplemental Funding Required

The NRC itself has questioned the adequacy of supplemental funding in license transfer proceedings. See, e.g., Airozo, Dave, *"NRC Questions Funding, Citizenship of Chairman of New TMI Owner,"* 21 Inside NRC 2 (January 4, 1999). The Application describes the levels and sources of supplemental funding to support the operation of FitzPatrick and IP3, but these levels are substantially lower than those NRC has approved for AmerGen's acquisitions. The situation could be even worse in the instant case since critical portions of the Applications are excluded from public view at this time. For instance, the public has no ability to compare the anticipated operating costs to ENF and ENIP's projected revenues to assess the ability of the Entergy Applicants to plan for maintenance outages or build up sufficient funds for unexpected outages. There is a clear dispute over the adequacy of the financial assurances in the application, which cannot be resolved without the opportunity of a hearing.

9. Antitrust Review Required

The Commission has made a grave mistake in viewing antitrust review initiated at the initial licensing stage as all that Congress intended. In a case such as this, given the vast change in corporate structure since the AEA was last amended, the NRC's failure to consider the implications of a giant multinational conglomerate acquiring a fleet of nuclear stations runs counter to the very charge Congress gave the Commission under the AEA. No conglomerate of this magnitude (i.e., one spanning the globe and, significantly, including foreign partners) was contemplated by the AEA as being able to acquire U.S. reactors. As CAN stated in its petition, the NRC has a Congressionally mandated oversight duty on antitrust matters in license transfer proceedings under Atomic Energy Act of 1946, as amended 1954, et seq [AEA]. ßß105, 184; 42 USC ßß 2135(c), 2234, and related portions concerning the licensing of nuclear facilities and the NRC's oversight authorities for such licensees. See also, NUREG-1574, Standard Review Plan For Antitrust Reviews.

Congress intended that the Commission evaluate the antitrust implications implicit in U.S. companies owning large numbers of nuclear powered electric generating facilities. So much is plain in the AEA, at least for the initial licensing stage. In interpreting the act, it is arbitrary, capricious, and not in accordance with law for the NRC to take the position that Congress intended giant global power corporations to escape antitrust scrutiny merely because their take-over occurs after issuance of the original license.

Entergy's recently proposed merger with FPL Group (July 31, 2000), creating the largest utility in the US and placing 10 reactors under the same corporate umbrella (and potentially 12 if the instant case is favorably resolved), make the requested review all the more relevant and timely and create a special circumstance worthy of review by the Commission through a formal hearing

process to understand the implications of granting the applications for license transfer.

III. CONCLUSION

CAN has standing to be in the license transfer proceeding. It has demonstrated that there are issues in this proceeding that are beyond the merely administrative and financial considerations for which Subpart M was intended. Moreover, as the Applicants' Answer shows, and as CAN illustrated above, there are genuine issues in dispute in this matter which concern occupational and public health and safety -- as well as national security.

For the reasons set forth above and in its petition and motion, CAN respectfully requests that the Commission accept its petition and grant the motions in this matter.

Respectfully submitted on this August 17, 2000:

CITIZENS AWARENESS NETWORK, INC.

BY: _____

Timothy L. Judson, for CAN *pro se*
162 Cambridge St.
(315) 475-1203

CERTIFICATE OF SERVICE

I, Timothy L. Judson, on behalf of the Citizens Awareness Network, Inc., hereby certify that copies of the Citizens Awareness Network's Reply to the Applicants Answer were served upon the persons listd below by e-mail and with a conforming opy deposited in the U.S. mail, first class, postage prepaid, this 17th day of August, 2000.

Timothy L. Judson

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington DC 20555-0001
secy@nrc.gov

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001
ogclt@nrc.gov

Mr. Gerald Goldstein
Asst. General Counsel
New York Power Authority
1633 Broadway
New York, NY 10019-6756
goldstein.g@nypa.gov

Mr. Douglas Levanway
Wise, Carter, Child and Caraway
PO Box 651
Jackson, MS 39205
del@wisecarter.com

Jay E. Silberg
Matias F. Travieso-Diaz
William R. Hollaway
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037-1128
jay.silberg@shawpittman.com