

February 8, 2001

01 FEB 13 P1:44

Administrative Judge Charles Bechhoefer
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OFFICE OF SECRETARY
REGULATIONS AND
ADJUDICATIONS STAFF

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

Dear Judge Bechhoefer,

Enclosed for filing is the REDACTED VERSION of the Citizens Awareness Network, Inc.'s **Reply to NYPA/Entergy Companies' Response** to CAN's Revised Contention on Financial Qualifications (January 31, 2001). All proprietary information has been omitted from this version of the document and it is suitable for public distribution.

As a point of clarification with regard to the information about the Power Purchase Agreement in the capacity factor issue at Section II.A (pp. 9-10). It was CAN's understanding at the time this document was originally filed that the Applicants' Power Purchase Agreement and all other exhibits to the Purchase & Sale Agreement (Enclosure 4 of the license transfer applications) were classified as proprietary information. However, via phone conversation on February 1, 2001, Applicants' counsel, Mr. Silberg, notified CAN that all Exhibits to the Purchase and Sale Agreement – including the Power Purchase Agreement – are publicly available documents.

CAN maintains that its capacity factor issue should be considered timely, because although Exhibits to the Purchase and Sale Agreement may have been publicly available, they were not sent to CAN with the publicly available versions of the applications in July, 2000. It was CAN's understanding that the Exhibits to the PSA were considered proprietary, and CAN was not able to review them until the proprietary versions of the license transfer applications were made available to CAN pursuant to the Commission's Memorandum & Order CLI-00-22 (November 27, 2000). If CAN had had access to the documents prior to the Commission's Memorandum & Order, we would certainly have raised them in our initial Hearing Request, filed July 31, 2000.

Sincerely,



Timothy L. Judson
Citizens Awareness Network, Inc.

[REDACTED VERSION]

Before the
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

01 FEB 13 P1:44

Atomic Safety and Licensing Board

Before Administrative Judge:
Charles Bechhoefer,
Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

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

**Docket Nos. 50-333-LT
and 50-286-LT
(consolidated)**

ASLBP No. 01-785-02-LT

**(James A. FitzPatrick Nuclear Power
Plant and Indian Point Nuclear
Generating Unit No. 3)**

January 31, 2001

**CITIZENS AWARENESS NETWORK, INC.'S REPLY TO NYPA/ENTERGY COMPANIES'
RESPONSE TO CAN'S REVISED CONTENTION ON FINANCIAL QUALIFICATIONS**

On January 10, 2001, the Citizens Awareness Network, Inc. [CAN] filed a revised contention on the financial qualifications of Entergy Nuclear FitzPatrick, LLC ["ENF"], Entergy Nuclear Indian Point, LLC ["ENIP"], and Entergy Nuclear Operations, Inc. ["ENO"; collectively "the Entergy companies"] to safely operate the James A. FitzPatrick ["FitzPatrick"] and Indian Point Unit 3 ["Indian Point 3" or "IP3"] nuclear reactors, on the basis of proprietary information provided to CAN per Commission Memorandum & Order CLI-00-22 ["M&O"]. *Citizens Awareness Network, Inc.'s Revised Contention on Financial Qualifications Issue in the License*

**NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY
SHADED AREAS SURROUNDED BY BRACKETS**

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS

Transfers for James A. FitzPatrick and Indian Point Unit 3 Nuclear Power Stations per Commission Memorandum and Order, November 27, 2000 [“CAN’s Revised Contention”].

On January 24, 2001, the New York Power Authority [“NYPA”] and the Entergy companies [collectively, “the Applicants”] filed a Response to CAN’s revised contention. *NYPA/Entergy Companies’ Response to Citizens Awareness Network, Inc.’s Revised Contention on Financial Qualifications [“Applicants’ Response”]*. The Applicants argue that CAN’s contention should not be admitted because they believe the financial qualifications issues raised by CAN (1) are outside the scope of the Commission’s M&O permitting the revised contention, (2) were not submitted in a timely fashion, or (3) fail to meet the Commission’s requirements for admission of issues. In support of their arguments, the Applicants also submitted an Affidavit by Mr. Barrett E. Green, a financial planning document relating to estimates of property tax expenses, and balance sheets and financial information for two Entergy Corporation subsidiaries (Entergy Global Investments, LLC [“EGI”] and Entergy International Limited [“EIL”]) which have agreed to provide supplemental funding to the Entergy applicants.

Per 10 CFR § 1307(c), and as supported by the attached Declaration of Edward A. Smeloff [“Smeloff Reply Declaration”], CAN hereby replies to the Applicants’ Response as follows:

LPRELIMINARY ARGUMENTS

A. 10 CFR § 2.1306 (c)(3) Is the Appropriate Rule for Reviewing CAN's Revised Contention. However, CAN's Issues in the Revised Contention Also Satisfy the Commission's Late-filing Standards per § 2.1308(b)(2).

Many of Applicants arguments' against the admissibility of CAN's revised contention are based on an interpretation that the Commission's order admitting CAN to submit a revised contention was limited strictly to issues pertaining directly to the proprietary information redacted from the publicly available versions of the applications.¹ From this interpretation, the Applicants derive two principle assertions against the admissibility of CAN's revised contention:

- I. That CAN was not permitted to raise issues that are not based strictly on proprietary data; and
- II. That those issues, as submitted by CAN, also do not meet the Commission's admissibility requirements for late-filed contentions, and should therefore be rejected.

CAN also addressed these issue directly in its Revised Contention, through a "Request that CAN's Revised Contention Be Treated According to 10 CFR § 2.1306 (c)(3)." *See* CAN Revised Contention *at pages 19-22*. In that section, CAN acknowledges the unusual circumstances under which the filing was permitted, developed and submitted, and anticipates the arguments set forth by the Applicants. CAN directly addresses the circumstance that the criteria for late-filed contentions is applied, and explains why CAN's issues satisfy those criteria. *Id. at pages 19-21*. The issues CAN raised which were not based directly on proprietary information

NOTE: THIS DOCUMENT OMTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS

were pertinent either (1) because their full significance could not be ascertained independently of the proprietary information that was only recently provided to CAN and its supporting expert, Edward A. Smeloff; or (2) because the non-proprietary information is necessary to understand whether the proprietary information provides reasonable financial assurance to warrant approval of the applications. (Where necessary, CAN clarifies how these circumstances apply to specific issues below.) Also, CAN addressed the Commission's other criteria for admissibility of late-filed contentions, namely: on the one hand, the unavailability of other means by which CAN can protect its interests and the lack on another party who could represent CAN's interests; and, on the other hand, although admission of CAN's contention may lengthen the proceeding somewhat, that concern must be weighed against the fact that "the new issue is based on documents that were unavailable to CAN until very recently" and "due solely to the Applicants' and staff's delay in producing information." *Id. at pages 20-21*. Under these considerations, CAN argued that its statutory right to a hearing under the Atomic Energy Act outweighed the application of the element of the late-filing standard described at § 2.1308(b)(2).

However, CAN specifically requested that the issues raised in the Revised Contention not be treated as late-filed contentions, but instead be treated according the Commission's usual criteria for filing contentions, per § 2.1306 (c)(3). *Id. at pages 21-22*. CAN's request on this point was based on the letter of the Commission's M&O, which only contemplated applying the "usual specificity requirements" and stated, "it is appropriate to defer ruling ... until the petitioner has had an opportunity to review [the redacted] information and submit a properly documented issue." *See M&O at page 24*. CAN only raised issues based on nonproprietary

¹ See NYPA/Entergy companies' Response, etc., at pages 4-6, 10, 15-16, 18-19, 23, and 24.

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS

information insofar as they were pertinent to determining whether the cost-revenue projections supplied by the Applicants establish the financial qualifications of the Entergy companies for the relief requested. As supported by Mr. Smeloff's declaration, the full meaning of the Entergy companies' revenue projections, supplemental funding agreements, and wholesale market participation only become meaningful to this proceeding in lieu of the cost projections and other proprietary data provided to CAN.²

Although the Applicants set forth arguments that CAN's issues should be rejected on the basis of being late-filed and outside the scope of the order issued by the Commission, nowhere do they respond directly to CAN's own arguments on this point, nor do they so much as acknowledge their existence. CAN believes that the Applicants have failed to raise a genuine dispute with CAN on the application of standards for timely or untimely filings, and the scope of issues admissible under the Commission's M&O. Therefore, Applicants' generic arguments against the admissibility of CAN's Revised Contention based on these questions should be rejected. Per its Request, CAN maintains that § 2.1306(c)(3) should be the applicable rule for determining admissibility. However, CAN addresses the late-filing standards below insofar as it is relevant to specific issues as raised by the Applicants in their Response.

² See Smeloff Declaration at paragraphs 10, 12, 14, 17 and 20.

NOTE: THIS DOCUMENT OMTS PROPRIETARY INFORMATION NOTATED BY SHADED AREAS SURROUNDED BY BRACKETS.

B. The Entergy Companies' Five-Year Financial Projections Filings Must Demonstrate Reasonable Assurance that They Possess the Ability to Acquire Sufficient Funds to Cover Projected Operating Costs for the Period of the License, per 10 CFR § 50.33(f)(2).

In their Response to CAN's Revised Contention, the Applicants object to CAN's interpretation of the scope of the Commission's financial qualifications requirements, as set forth in 10 CFR § 50.33(f)(2). CAN's Revised Contention challenges the Entergy companies' financial qualifications on the basis that ENF and ENIP's market revenue projections do not "demonstrate the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license," as the regulation explicitly states. The Applicants misrepresent CAN's argument on this point, claiming that "CAN would require the Entergy Companies to demonstrate financial assurance for the entire period of the license"; if CAN had argued that the Applicants should be required to provide financial projections for the full periods of the FitzPatrick and IP3 licenses, CAN's arguments would have been impermissible as the Applicants claim. However, CAN did not request that the Commission's usual filing requirements be changed for this proceeding. CAN merely argued that the projections the Entergy companies filed in support of the applications do not meet the standards established in the Commission's rules and rulemakings.

The critical point in this argument is that § 50.33(f)(2) sets two thresholds the Applicants must pass to demonstrate financial qualifications. To meet the lower threshold, license transfer applicants must file certain documents with their applications:

The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs.

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

The Applicants in this proceeding crossed this threshold by submitting cost-and-revenue projections with the applications. The primary threshold is that the applicant's five-year projections, upon review by the Commission, must "demonstrate the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs *for the period of the license*" (emphasis added). CAN's argument is that the Applicants' filings are not sufficient to cross this primary threshold of § 50.33(f)(2). As a result, the Entergy companies have not satisfied the NRC's financial assurance requirements.

In the Revised Conention, CAN cites a previous license transfer case in which the Commission supported this interpretation of the financial qualifications rule in admitting an intervention petition for hearing under Subpart M. *See CAN Revised Contention at page 13.* In answering CAN, the Applicants cite the same statement by the Commission, emphasizing the standards by which the Commission would, "in particular circumstances, [and] on a case by case basis," evaluate arguments that an applicant's five-year projections do not provide adequate assurance of financial qualifications. Intervenors would need to raise "'plausible and adequately supported claims' that the five-year projections are inaccurate or otherwise do not provide adequate assurance of financial qualifications." *See Applicants' Response at page 22.* The Applicants claim that "CAN has give no reasons why the Entergy Companies must be established beyond five years." *Id.* As set forth herein below, the Applicants' arguments against the admissibility of CAN's issues challenging ENF's and ENIP's financial qualifications are admissible, timely, and within the scope of the proceeding. Thus, to the extent that the Applicants' arguments against CAN's § 50.33(f)(2) arguments are based on a misinterpretation,

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

the Applicants' Response is incorrect and CAN's Revised Contention should be admitted for hearing.

II. CAN'S ISSUES DEMONSTRATE ADMISSIBILITY OF CAN'S REVISED FINANCIAL QUALIFICATIONS CONTENTION

A. CAN's Capacity Factor Issue Is Admissible

The Entergy companies rely on revenue projections from the sale of electricity generated by FitzPatrick and IP3 to demonstrate financial assurance of the ability to cover the estimated costs of owning and maintaining the reactors. These revenue projections are based on the Entergy companies' ability to operate FitzPatrick and IP3 at an average annual capacity factors of 85%. As supported by information on the operating histories of FitzPatrick and IP3 and the Smeloff Declaration, CAN argued that the Applicants have not demonstrated that these projections are realistic, and that it would be reasonable to assume that ENF's and ENIP's actual revenues may be substantially lower than estimated. In their response to CAN's Revised Contention, the Applicants argue that the information cited by CAN is publicly available. The Applicants apply their late-filing and scope-of-the-issue arguments to claim that CAN's concern should be rejected as a late-filed contention because "CAN has not demonstrated good cause for failing to raise it in a timely manner." *See Applicants' Response at page 9.*

The Applicants' argument on this point is based on a misrepresentation of CAN's issue. Per the Declaration of Edward Smeloff, the most critical issue in determining whether the applications demonstrate reasonable financial assurance of ENF's and ENIP's ability to pay the projected operating costs and operate FitzPatrick and IP3 safely is the capacity factor. CAN

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

raises the capacity factor issue in this context because it is pertinent to whether the Entergy companies can provide the necessary funds for the operation and maintenance of the reactors. ENF's and ENIP's inability to justify these capacity factor projections creates significant uncertainty for the future business outlooks of these newly formed, non-utility entities.

Applicants' assertion that "There is also nothing in the proprietary financial information made available by the Entergy Companies that addresses the capacity factor issue" is untrue. Exhibit K to Enclosure 4 of the License Transfer Applications is the "Agreement Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Power Marketing Corp. and the Power Authority of the State of New York for the Purchase of Products and Services from the James A. FitzPatrick and Indian Point No. 3 Nuclear Power Plants" ["the Power Purchase Agreement," or "PPA"]. The PPA was not included with the publicly available versions of the applications. However, it describes ENF and ENIP's commitment to provide electricity to NYPA in exchange for NYPA's commitment to purchase the electricity. This agreement provides the basis for ENF and ENIP's 5-year cost-and-revenue projections. Appendix C to the PPA describes the "Installed Capacity Requirement and True-Up Calculation." This appendix defines ENIP's and ENF's commitments to provide a minimum supply of energy to NYPA from each of the reactors during the period of the PPA. Section I(a) and (b) describes that ENF and ENIP must provide an average amount of electricity during the period of the PPA equal to 85% of the generation capacity of each reactor. This commitment amounts to a requirement that the Entergy companies operate FitzPatrick and IP3 each at an average capacity factor of 85%. If ENF and/or ENIP do not meet these production goals,

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

Appendix C, Section IV requires ENF and/or ENIP to pay NYPA for the cost of replacement power.

Thus, the proprietary PPA *requires* ENF and ENIP to operate FitzPatrick and IP3 at 85% average capacity or face financial penalties. Applicants represent their capacity factor projections solely as a reflection of FitzPatrick and IP3's performance record. However, the capacity factors also constitute contractual commitments. Thus if the Applicants overestimate the capacity factors, this is not just a matter of making an error in projections about productivity. The Entergy companies face financial pressure and possible contractual penalties for not living up to capacity projections. The possibility of sustaining these additional liabilities and financial penalties would place additional pressure on the Entergy companies to postpone shutting down FitzPatrick and IP3 for maintenance to avoid a downward financial spiral. This situation could not only compounds the financial uncertainties facing ENF and ENIP, but could endanger the material condition of the reactors and nuclear safety as well. This information on the Entergy companies' capacity factor requirements was redacted from the publicly available applications and was only available to CAN subsequent to the Commission's M&O.

Furthermore, the Applicants' Response to CAN only addresses the procedural questions of timeliness and the scope of the Commission's order. The Applicants do not challenge the substance of CAN's capacity factor issue, which questions the reasonableness of the Entergy companies' projections. Thus, there is no dispute with CAN on this issue. If the Presiding Officer determines that the issue satisfies the applicable timeliness criteria and lies within the scope of the Commission's M&O, the issue should be admitted for hearing.

B. CAN's Challenge to Applicants' Cost-and-Revenue Projections Is Admissible.

In its Revised Contention, CAN also argued that "[A]pplicants' projections must be analyzed for both increased operating expenses and decreased capacity factors, particularly since it is reasonable to expect that these two conditions could go hand in hand." This assertion was based on the declaration of Mr. Smeloff, who stated that "the projections of future operation and maintenance costs at the plants are [REDACTED]." In support of this view, Mr. Smeloff cites his experience as a participant in an analysis of the Salem Nuclear Generating Station, where the O&M costs averaged [REDACTED] than estimated for IP3 and [REDACTED] than for FitzPatrick during the five-year period 1992-1996. See Smeloff Declaration at paragraph 14.

Applicants' arguments in this section are predicated upon a barrage of misrepresentations and irresponsible arguments aimed at attacking the credibility of CAN and Mr. Smeloff. The Applicants object to CAN's contention and Mr. Smeloff's declaration, claiming that they are "based purely on unsupported speculation" and that "Mr. Smeloff does not provide any basis for his claim that future operation and maintenance expenses could increase by fifteen percent a year for FitzPatrick and Indian Point 3." See Applicants' Response at page 11. However, this point is clearly untrue. Mr. Smeloff offers his analysis on the basis of his experience as a Director of the utility which operated the Rancho Seco Nuclear Generating Station and his participation in the Salem Station analysis referred to above. Also, the Applicants mischaracterize Mr. Smeloff's Declaration, stating that he does not provide "any specific basis for his prediction that future operating costs at these plants will increase at a fifteen percent

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

annual rate.” *Id* (emphasis added). Mr. Smeloff, or CAN for that matter, does not claim or predict that operating costs *will* increase over the Applicants projections. Mr. Smeloff simply indicates that, in order to determine whether the applications demonstrate reasonable financial assurance of ENF and ENIP’s ability to safely operate the reactors, one should conduct a sensitivity analysis using a reasonable increase in projected O&M costs. The Applicants also criticize Mr. Smeloff for not analyzing “the historical performance of either plant in terms of operating costs.” *Id*. The latter criticism is specious and irresponsible, since the Applicants must know that CAN and Mr. Smeloff have not had the opportunity to review NYPA’s historical cost information to be able to offer such an analysis. That information was not provided in the license transfer application and is not publicly available.

The Applicants do not provide any evidence that the substance of CAN’s and Mr. Smeloff’s assertions is inaccurate. Instead, they attempt to cast doubt on the relevance of Mr. Smeloff’s experience with the Salem Station analysis by referring tangentially to some of the circumstances facing Salem during the period. However, the sensitivity analysis proposed by Mr. Smeloff is actually quite conservative. For instance, during the 26-month outage at Rancho Seco, annual O&M costs for a single reactor (~\$189 million) were [REDACTED] ENF and ENIP’s combined annual O&M costs [REDACTED]. Similarly, according to a press release issued by British Energy upon announcing its potential acquisition of the Clinton Station, monthly O&M costs had averaged \$18 million between January 1998 and April 1999 – [REDACTED] the per reactor costs estimated by ENF and ENIP. See Exhibit #2, “AmerGen Announces Third Potential US Acquisition.” Although the Rancho Seco and Clinton cases involved reactors experiencing extended maintenance outages, this emphasizes that Mr. Smeloff’s choice of the

NOTE: THIS DOCUMENT OMTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

Salem Station and the use of a 15% O&M increase in the sensitivity analysis is actually conservative and reasonable. *See Smeloff Declaration at paragraph 15.*

The Applicants also argue that CAN's concern about nuclear safety with regard to the reasonableness of the cost-and-revenue projection "is not within the scope of the financial qualifications issue that CAN was authorized to propose, so it is not a legitimate basis for a contention." This is another specious argument. Without the ability to cover necessary operation and maintenance costs, the effect on nuclear safety comes into question. In fact, a document cited in the Applicants' Response, NUREG-1577³, indicates that the financial qualifications review of license transferees is necessary "to determine the adequacy of funds for safe operation." *See NUREG-1577 § III.1.e.* Applicants' argument that this issue lies outside the scope of the proceeding therefore constitutes an impermissible collateral attack on the Commission's rules and should be rejected.

The Applicants also misrepresent CAN's arguments on the application of 10 CFR § 50.33(f)(2). Applicants state, "To the extent that CAN is claiming that the Entergy Companies' five year operation and maintenance cost projections are intrinsically insufficient, such a claim amounts to an impermissible attack on NRC regulations." *See Applicants' Response at page 13 (emphasis added).* However, CAN makes no such claim in its Revised Contention. Rather, it suggests the projections be tested for a reasonable margin of error to determine whether they demonstrate the Entergy companies are financially qualified to own and operate the reactors. *See CAN Revised Contention at pages 8-9.* As set forth at section I.B. above, in addition to requiring

³ "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance."

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS

five-year projections, § 50.33(f)(2) clearly requires that a license transfer applicant must show it “possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license” (emphasis added). There is no ambiguity on this issue.

Furthermore, in a footnote, the Applicants claim that CAN’s request for greater scrutiny of the financial qualifications issue is unsupported and that ENF, ENIP, and ENO’s status as newly formed entities is irrelevant. *See Applicants’ Response at pages 13-14, note #39.* This argument ignores CAN’s assertion, as supported by the Smeloff Declaration, that the Applicants’ cost-and-revenue projections do not provide adequate assurance of their ability to withstand reasonable uncertainties in their business projections. *See CAN Revised Contention at pages 8-9; see Smeloff Declaration at paragraphs 13-14.* Furthermore, the Commission’s regulations specifically indicate that a license transferee’s status as a newly-formed entity may constitute a special circumstance requiring greater scrutiny, or indeed additional measures to demonstrate financial qualifications. *See § 50.33(f)(3).* In fact the Entergy applicants seem to have recognized this regulation’s applicability to them by providing evidence of supplemental funding. Thus, Applicants’ argument against CAN’s contention is not only an impermissible attack on the Commission’s rules, but it is disingenuous as well.

C. CAN’s Supplemental Funding Issue Is Admissible.

10 CFR § 50.33 (f) describes the NRC’s filing requirements and financial qualifications standards for license transfer applications, with particular attention to newly-formed entities and applicants that are not electrical utilities. On the basis of these regulations and the Declaration of

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

Edward A. Smeloff, CAN's Revised Contention challenges the adequacy of the supplemental funding ENF and ENIP have included in the applications demonstrate financial assurance of the safe operation of FitzPatrick and IP3. Based on the Entergy companies' projected O&M costs, the lines of credit provided by Entergy Global Investments, LLC ["EGI"] and Entergy International Limited ["EIL"] would only be able to ensure a [REDACTED] outage at one of the reactors, or [REDACTED] outages at both reactors, assuming the O&M costs remained constant at the levels projected. Furthermore, the uncertainties in ENF and ENIP's cost-and-revenues projections create a reasonable possibility that they would be unable to repay on the lines of credit once they were used, thereby undermining the assurance that supplemental funding would be available if needed in the future. Also, Mr. Smeloff's evaluation of the financial information provided in the applications reveals that the applications have provided insufficient evidence that the EGI's and EIL's assets are adequately liquid to demonstrate that funding will be available in a timely fashion when needed. Although the Entergy companies satisfied the NRC's *filing* requirements for new-formed, non-utility applicants, CAN's contention argues that the filings themselves do not provide adequate financial assurance of the safe operation of FitzPatrick and IP3 and require further NRC review. CAN also cites an NRC M&O in a similar Subpart M proceeding in which the Commission supported this interpretation of their rules under § 50.33 (f).

In their Response to CAN's Revised Contention, the Applicants claim that these arguments should be rejected as untimely and inappropriate.

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

1. CAN's Supplemental Funding Issue Satisfies NRC's Standards for Timely Filings and Late-filed Contention

In the Revised Contention, CAN only raises the issue of supplemental funding in the context of the Entergy companies' ability to demonstrate they are financially qualified to ensure the safe operation of FitzPatrick and IP3, per 10 CFR § 50.33(f). CAN does not challenge the amount of supplemental funding in itself, but only with regard to proprietary information previously unavailable to CAN, namely ENF and ENIP's cost projections and EGI and EIL's financial statements. Also, the critical point in assessing the adequacy of supplemental funding for meeting the requirements of § 50.33(f) is evaluating the maximum outage time it would provide for. Because one must know the estimated fixed costs of operation in order to make that calculation, CAN could not evaluate the supplemental funding with the required specificity without the Entergy companies' proprietary cost projections.

The Applicants also criticize CAN for not having raised concerns about the reliability and credibility of the supplemental lines of credit when CAN filed its original petition. However, CAN's arguments on this point are based in part on the financial statements of EGI and EIL, which were not available to CAN prior to the Commission's M&O. Mr. Smeloff also raises concerns about EGI and EIL's interlocking fiduciary interests, their lack of due diligence investigations into ENF's and ENIP's business plans, and the fact that neither company is a well-known financial institution. *See Smeloff Declaration at paragraph 19.* While these concerns are not based on proprietary information, they are relevant to the concerns Mr. Smeloff raises with respect to the liquidity of EGI's and EIL's assets, and the need for the Entergy companies

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

to provide more information to establish the reliability of the supplemental funding offered. *See Smeloff Reply Declaration at paragraph 8.*

Therefore, the issues CAN raises with regard to supplemental funding are not untimely as the Applicants assert, but are an essential component of the contention the Commission permitted CAN to submit.

2. CAN's Supplemental Funding Issue Is Within the Scope of the Commission's M&O and Financial Qualifications Regulations

On the second point, the Applicants cite the Commission's M&O in this proceeding, which did not admit a contention challenging "the 'sufficiency' vel non of the \$90 million supplemental funding" in CAN's July 31, 2000 Request for Hearing. *See M&O at page 23.* However, the Commission's decision was not absolute on this point: "*CAN has given us no reason to reach a different conclusion in the instant proceeding.*" *Id. (emphasis added).* Thus, the Commission did not preclude the relevance of supplemental funding to an applicant's financial qualifications; the Commission determined that CAN's contentions on that issue did not meet admissibility requirements, such as material specificity and relevance to the proceeding.

Furthermore, while 10 CFR § 50.33(f) does not specifically require transferees to provide supplemental funding, the NRC document which the Applicants cite in support of their cost-and-revenue projections (NUREG-1577) demonstrates that it can be relevant:

OL applicants that are not "electric utilities" are required under section 50.33(f)(2) to submit information that demonstrates that they possess or have reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license. The reviewer will confirm that non-electric utility OL applicants have submitted estimates for total annual operating costs for each of the first 5 years of operation of their facilities, and have also indicated the source(s) of funds to cover operating costs. Information on the sources of funds

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

should include projections of the market price of power in the area in which the plant will be located, any long-term contracts that the applicant has for the plant, contracts or other arrangements with relevant transmission or grid reliability authorities that designate the plant as a "must-run" facility, government-required charges designated for nuclear plant operations (e.g., non-bypassable wires charges), corporate revenues from other sources that may be used at the nuclear plant, and any other information relevant to the source of revenues. The reviewer will evaluate this information for reasonableness and will compare it to plants of similar size, design, and location. If applicable, the reviewer will also use information from Moody's, Standard and Poors, and Value Line or other widely accepted rating organizations to assist in his or her review. If a license applicant has an "investment-grade" rating or equivalent from at least two of these sources, or has demonstrated that it has met the electricity supply and demand test described above, the reviewer will find such applicants financially qualified. If an applicant cannot meet these criteria, the reviewer will also consider other relevant financial information (i.e., information on cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least 6 months, the amount of decommissioning funds collected or guaranteed for the plant in relation to the current estimated decommissioning cost, and any other relevant factors). An OL applicant that is a newly-formed entity organized for the primary purpose of operating the facility is required to submit the information described in 10 CFR 50.33(f)(3).

NUREG-1577 § III.1.b (emphasis added). As stated before, the lines of credit from EGI and EIL would only be enough to cover a [REDACTED] outage at one reactor, or a total of [REDACTED] of outages between the two reactors. See Smeloff Declaration at paragraph 17; and Smeloff Reply Declaration at paragraph 8. [REDACTED]

[REDACTED] The issue as raised by CAN meets the Commission's specificity requirements and is relevant to determining whether the Entergy companies demonstrate reasonable financial assurance.

Also, the adequacy of supplemental funding falls within the scope of the financial qualifications issue. The Entergy companies have clearly followed the guidance of NUREG-1577 by including the agreements with EGI and EIL as part of their § 50.33(f) filings. However, in

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

support of the Applicants' Response to CAN, Mr. Barrett E. Green explains that these funding sources [REDACTED]

[REDACTED]. The Applicants and Mr. Green believe that this demonstrates the EGI and EIL's assets are adequately liquid to satisfy financial assurance requirements. To the contrary, this information does not resolve CAN's issue. *See Smeloff Reply Declaration at paragraphs 5-8.* In fact, it brings to light the heart of the issue: [REDACTED]

[REDACTED], the company/s could either default on other financial commitments, or go bankrupt. However, this would also create pressure on ENF and ENIP to attempting to postpone the maintenance outage until the supplemental funding were available, which could compromise the public health and safety. Thus, the limited liquidity of EGI and EIL's assets undermines ENF and ENIP's ability to demonstrate reasonable financial assurance of the safe operation of FitzPatrick and IP3.

D. CAN's Market Projections Issue Is Admissible.

In its Revised Contention, CAN argues that the Entergy companies' market revenue projections must be evaluated more thoroughly in order to determine whether ENF and ENIP have demonstrated financial qualifications to operate FitzPatrick and IP3. Applicants object to this aspect of CAN's contention. Applicants start by mischaracterizing CAN's contention. According to the Applicants, CAN "asserts that the Entergy Companies' market price and revenue projections are not reasonable." See Applicants' Response at page 17. However, CAN does not claim that the projections are unreasonable per se. Rather, CAN asserts that the Entergy companies have not provided any documentation or evidence to support their

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

projections, and there is no basis on which to determine whether the Applicants' filings establish ENF's and ENIP's financial qualifications to operate the reactors. *See CAN Revised Contention at pages 11-13.*

Second, the Applicants maintain that the market uncertainties only pertain to "a small portion of the five-year review period" of their projections, this assertion is irrelevant. *See Applicants' Response at page 18.* As cited in CAN's revised contention, the NRC's regulations plainly require that the projections filed with license transfer applications must demonstrate that "the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs *for the period of the license.*" While the Entergy companies would only be reliant on market revenues for a small portion of the period *projected*, they would be reliant on market revenues *for the vast majority* of the remaining period of the FitzPatrick and IP3 licenses. Thus, ENF's and ENIP's ability to address the uncertainties described in CAN's Revised Contention are basic to fulfilling the financial qualifications requirements of 10 CFR § 50.33(f).

The Applicants also claim that CAN's concerns are not based on the proprietary information provided pursuant to the Commission's M&O, and that CAN does not challenge the accuracy of ENF and ENIP's market revenue projections. However, the uncertainties in the Entergy companies' market revenues are directly pertinent to their ability to cover the projected costs of operating FitzPatrick and IP3. In fact, as CAN explains in the Revised Contention, ENF's and ENIP's high fixed costs will continue for 2-3 years beyond the period of the projections through the facilities and fuel payments. Even though the uncertainties in the Entergy companies' abilities to generate sufficient revenues increase after 2004, the costs and

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

cost uncertainties remain the same. If ENF and/or ENIP is not able to sell electricity at the rates projected – together with the capacity factor uncertainties – the companies' earnings could suffer increased shortfalls beginning in 2004; in this situation, the Entergy companies may not be able to generate sufficient revenue to cover the projected operating costs for FitzPatrick and IP3. Thus, the uncertainties in ENF's and ENIP's market revenue projections are directly pertinent to the proprietary cost projections and the scope of the revised financial qualifications contention the Commission permitted CAN to submit.

The Applicants also criticize CAN for not challenging the accuracy of their market price projections. However, this is not a valid criticism. It is not CAN's responsibility to challenge the accuracy of market price projections that are not supported by any documentary evidence that demonstrates their accuracy. 10 CFR § 50.33(f)(2) clearly establishes that the first burden of proof in this proceeding is on applicants: "If the application is for an operating license, the applicant shall submit information that demonstrates reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license." The same passage in NUREG-1577 cited above details how non-utility license transfer applicants can satisfy the requirements and what the NRC must do to evaluate the applications. In addition to five-year projections and market price estimates, applicants must provide "any other information relevant to the source of revenues." § 50.33(f)(3)(iii) reiterates a similar requirement for newly-formed entities. However, even though ENF and ENIP have established no firm contracts beyond 2004 and admit relying on "sell[ing] any uncommitted power into the market in New York," they provide no relevant information to support their revenue projections beyond 2004. Furthermore, while the Applicants and Mr. Green express great confidence in the reliability of these

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

projections in the Response to CAN's Revised Contention, they fail to include any of the analyses or independent forecasts to substantiate their claims.

The only other support the Applicants offer on this point is the NRC Staff's Safety Evaluation Reports: "Taking into account the uncertainty of deregulation and market forecasts, the Staff concluded that the Entergy Companies provided assurance of their ability to obtain the funds necessary to cover the estimated operating costs ..." *See Applicants' Response at page 19.* Applicants misrepresent the certainty of the Staff's conclusion. The Staff plainly indicates that "attempting to forecast the growth rate, *or even the direction of change*, for market-based prices in the IP3 [and FitzPatrick] market area[s] *is too speculative*, given the uncertainty of deregulation, and *other unknown factors* potentially affecting electricity capacity or prices." *See SERs at page 7 (emphasis added).* The inability to make any reliable evaluations of market projections just a few years down the road means that the uncertainties confronting ENF's and ENIP's financial forecasts are significantly greater than those that usually cloud business outlooks.

Even if the Staff were not so equivocal in its evaluation, the fact that Staff found assurance of the Applicants' financial qualifications cannot be relied on as grounds for dismissal of the contention, for several reasons. First, the Board must weigh the admissibility of CAN's revised contention, without addressing its merits. The Staff's statement goes to the merits of whether the Applicants are financially qualified. Second, the NRC Staff has no particular weight in this proceeding. The applicant bears the burden of proof. Finally, even if some weight could be given to the Staff's evaluation, it does not appear that the NRC Staff reviewed the Entergy companies' market projections as thoroughly as the guidance in NUREG-1577 requires: "The

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

reviewer will evaluate this information for reasonableness *and will compare it to plants of similar size, design, and location.*” NUREG-1577 § III.1.b (*emphasis added*). The only location-specific factor which the NRC Staff included in their evaluation was an estimate of electricity demand in the Northeast US by the North American Electric Reliability Council. According to the SERs, the NRC Staff did not utilize any other pertinent data as required by the regulatory guide, nor did they request supporting documentation from the Entergy companies. Thus, the NRC Staff’s existing evaluation cannot be utilized as support for the Applicants’ claim to satisfying financial qualifications requirements.

Therefore, for the above reasons, CAN’s issue regarding the uncertainties in the Entergy companies’ market revenue projections should be admitted, and the Applicants should be required to provide supporting documentation to satisfy financial qualifications requirements.

III. CAN’S PROPOSED CONDITIONS ON THE LICENSE DEMONSTRATE THAT CAN’S CONCERNS CAN BE ADDRESSED THROUGH A HEARING ON THE LICENSE TRANSFER AND SUPPORT THE ADMISSIBILITY OF CAN’S REVISED CONTENTION

Supplemental to its request that the license transfer applications should be dismissed, CAN also included a list of conditions the NRC could impose on the applications, should the Commission decide it is more prudent to do so. In their Response to CAN’s Revised Contention, the Applicants argue that these suggested conditions are untimely and irrelevant. *See Applicants’ Response at page 24.* However, CAN included the suggested conditions pursuant to the Commission’s M&O, which directs the intervenors “to state explicitly exactly what remedial measures (if any) they believe the Commission should take in addition to those specified in their

NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS

intervention petitions.” *See M&O at page 51.* By labeling CAN’s suggested conditions untimely and irrelevant, and suggesting that it is inappropriate for the Commission to even consider them, the Applicants’ arguments constitute an impermissible attack on the Commission’s order. Furthermore, CAN recognized that the Commission’s instruction was made to address the review requirements for hearing requests per 10 CFR § 2.1308(a)(3), which states:

“In considering a hearing request or intervention petition on an application for a transfer of an NRC license, the Commission will consider: ... (3) The possible effect of an order granting the request for license transfer on that interest, including whether the relief requested is within the Commission’s authority, and, if so, *whether granting the relief requested would redress the alleged injury.*”

Thus, CAN was also under the burden to demonstrate that it is within the Commission’s power to address CAN’s concerns. The conditions suggested by CAN satisfy that requirement. To the extent that the Applicants argue that CAN should not be allowed to demonstrate that its concerns lie within the Commission’s authority to address, the Applicants’ argument against the validity of CAN’s suggested conditions is an impermissible collateral attack on the Commission’s rules and an attempt to restrict CAN’s hearing rights under the Atomic Energy Act.

The Applicants also allege that CAN’s suggested conditions do not rely on the proprietary information, and that the conditions should be rejected as late-filed and outside the scope of the filing permitted under the Commission Order.” *Id.* However, the conditions proposed by CAN are directed specifically at addressing the reasonable uncertainties in ENF and ENIP’s cost-and-revenue projections and the inability of the applications to demonstrate the Entergy companies have “reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license.” 10 CFR § 50.33(f)(2). Although the suggested conditions do not incorporate exact quantities of supplemental funding or retained

NOTE: THIS DOCUMENT OMTS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

earnings, those amounts are easily extrapolated from ENF's and ENIP's cost projections. By averaging the Fixed Operating Costs (included as proprietary information in the applications), the level of supplemental funding or retained earnings that should be required for FitzPatrick is [REDACTED]; the level of supplemental funding or retained earnings that should be required for IP3 is [REDACTED]. Per Condition #1, the Entergy companies would be required to provide evidence of supplemental funding in the form lines of credit or cash and cash equivalents in the above amounts, provided that funds are adequately liquid and reliably available. Per Condition #2, ENF and ENIP would be required to provide evidence of supplemental funding in the above amounts until they have each built up an equivalent amount of retained earnings. Per Condition #3, NYPA would be obligated to provide supplemental funding in the above amounts until ENF and ENIP have each built up an equivalent amount of retained earnings.

For the reasons stated above, CAN's suggested conditions are admissible and timely, and should be accepted for hearing.

CONCLUSION

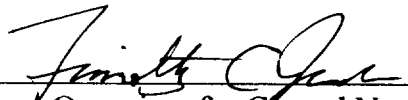
For the reasons set forth above, CAN requests the additional issue stated above be admitted to the proceeding created by CLI-00-22 already in progress.

NOTE: THIS DOCUMENT OMTS PROPRIETARY INFORMATION INDICATED BY
SHADED AREAS SURROUNDED BY BRACKETS

DATED at Syracuse, New York, this 31st day of January, 2001.

Respectfully submitted:

CITIZENS AWARENESS NETWORK, INC.

BY: 
Timothy L. Judson, Organizer for Central New York-CAN

BY: _____
Deborah B. Katz, Executive Director of CAN

pro se for CAN

Citizens Awareness Network, Inc.
c/o P.O. Box 3023
Charlemont, MA 01339-3023
(413) 339-5781

cc: Office of Secretary;
Service List

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

THE CITIZENS AWARENESS NETWORK

In the Matter of)	
POWER AUTHORITY OF THE STATE OF)	
NEWYORK, ET AL.)	
(James A. FitzPatrick Nuclear Power Plant)	Docket Nos. 50-333-LT and
and Indian Point Nuclear Generating)	50-286-LT
Unit No. 3))	


CERTIFICATE OF SERVICE

I hereby certify that UNREDACTED copies of the foregoing REPLY TO NYPA/ENTERGY COMPANIES' RESPONSE TO CAN'S REVISED CONTENTION have been served upon the Presiding Officer, Applicants' representatives, Nuclear Regulatory Commission representatives by electronic mail or US Postal Mail. Other persons listed below were served with REDACTED copies of the foregoing REPLY, ETC. by US Postal Mail.

Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, DC 20555-0001	Lawrence J. Chandler, Esquire Office of the General Counsel U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: ljc@nrc.gov ; ogc@nrc.gov)
Chief Administrative Judge G. Paul Bollwerk, III Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: gpb@nrc.gov)	Gerald C. Goldstein, Esquire Arthur T. Cambouris, Esquire David E. Blabey, Esquire The Power Authority of the State of New York 1633 Broadway New York, NY 10019 (E-mail: goldstein.g@nypa.gov)
Timothy L. Judson Citizens Awareness Network, Inc. 140 Bassett Street Syracuse, NY 13210 Phone/fax: (315) 425-0430 (E-mail: cnycan@rootmedia.org)	Deborah Katz, Executive Director Citizens Awareness Network, Inc. PO Box 83 Shelburne Falls, MA 01370 P/f: (413) 339-5781/-8768 (Email: can@shaysnet.com)

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

Alan D. Scheinkman, Esquire County Attorney Stewart M. Glass, Esquire Senior Assistant County Attorney Westchester County Dept. of Law, Room 600 148 Martine Avenue	John Valentino, Esquire Green & Seifter One Lincoln Center, 9 th Floor Syracuse, NY 13202 (E-mail: jvalentino@greenseifter.com)
Joseph R. Egan, Esquire Egan & Associates, P.C. 1500 K Street, NW Suite 200 Washington, DC 20005 (E-mail: eganpc@aol.com)	Paul V. Nolan, Esquire 5515 North 17 th Street Arlington, VA 22205-2207 (E-mail: pvnpvn@aol.com)
Nancy T. Bocassi Hendrick Hudson School District 61 Trolley Road Montrose, NY 10548 (E-mail: nbocassi@henhud.lhric.org)	Thomas F. Wood, Esquire Town of Cortlandt 153 Albany Post Road Buchanan, NY 10511 (E-mail: townhall@peekskillCortlandt.com)
Jay E. Silberg, Esquire William R. Hollaway, Esquire Shaw, Pittman, Potts & Trowbridge 2300 N Street, NW Washington, DC 20037-1128 (E-mail: jay.silberg@shawpittman.com)	Douglas E. Levanway, Esquire Wise, Carter, Child and Caraway P.O. Box 651 Jackson, MS 39205-0651 (E-mail: del@wisecarter.com)
John M. Fulton Entergy 600 Rocky Hill Road Plymouth MA 02360 phone: (508) 830-8898 fax: (508) 830-8767 e-mail	David E. Blabey Executive Vice President, Secretary and General Counsel New York Power Authority 123 Main Street White Plains, New York 10601 Phone: (914) 390-8090 Fax: (914) 390-8038



Timothy L. Judson
Citizens Awareness Network

Dated at Syracuse, New York,
this 31st day of January 2001

Exhibit #1

[REDACTED VERSION]

**Declaration of Edward A. Smeloff
Director of the Pace Law School Energy
Project**

[REDACTED VERSION]

Before the
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

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

**(James A. FitzPatrick Nuclear Power Plant
and Indian Point Nuclear Generating Unit
No. 3)**

**Docket Nos. 50-333-LT
and 50-286-LT
(consolidated)**

ASLBP No. 01-785-02-LT

January 31, 2001

**DECLARATION OF EDWARD A. SMELOFF
IN SUPPORT OF THE CITIZENS AWARENESS NETWORK, INC.'S REPLY
TO NYPA/ENTERGY COMPANIES' RESPONSE
TO CAN'S REVISED CONTENTION ON FINANCIAL QUALIFICATIONS**

Under penalty of perjury, Edward A. Smeloff states as follows:

1. I have reviewed NYPA/Entergy Companies Response to the Citizens Awareness Network, Inc.'s Revised Contention on Financial Qualifications, the supporting Affidavit of Robert E. Green, and the attached financial documents.
2. Entergy has attacked CAN's contention that Entergy has provided inadequate supplemental funding, claiming that the contention is not based on new information, while sidestepping the issue as to whether the letters of credit between interlocking Entergy companies can be relied on to assure that funding is available for the Indian Point 3 and Fitzpatrick nuclear plants for a period of at least [REDACTED]. In addition, Entergy has failed to respond to CAN's contention that the credit, even if available, is insufficient to support more than [REDACTED] of outage time at both reactors. This

**NOTE: THIS DOCUMENT OMITTS PROPRIETARY INFORMATION INDICATED BY SHADED
AREAS SURROUNDED BY BRACKETS**

situation is critical given the interlocking nature of the lines of credit and the credible possibility of both Fitzpatrick and Indian Point 3 be forced out of operation at the same time.

3. My conclusion in my January 10, 2001 declaration that the license transfer application provided insufficient information about the reliability of the letters of credit provided by Entergy Global Investments (EGI) and Entergy International Ltd (EIL) was based on enclosure 9 included in the proprietary copy of the application.
4. The two pages that the Entergy companies supplied in this enclosure are clearly inadequate for the Nuclear Regulatory Commission or any other impartial analyst to determine whether the lines of credit between Entergy Nuclear Indian Point 3 ["ENIP"] and Entergy Nuclear FitzPatrick ["ENF"] and EGI and EIL are of the quality needed to assure that cash will be available when needed by ENIP and/or ENF.
5. Entergy's claim that these two pages, which purport to be a balance sheet for EGI (April 30, 2000) and a consolidated statements of financial position (December 31, 1999), demonstrates that the total cash and cash equivalents are adequate to support the letters of credit relies solely on Mr. Greene's assertion that a category listed on these two pages [REDACTED] means investments [REDACTED] [REDACTED] which he claims are liquid and therefore can be called upon to meet these letters of credit.
6. In fact, the so-called balance sheet for EGI shows that there are no temporary cash investments. All investments are either in [REDACTED] or [REDACTED] [REDACTED]. Apparently, the Applicants expect the

Nuclear Regulatory Commission to accept on faith that a balance sheet for which there is no evidence of an independent audit using ambiguous definitions of liquidity provides sufficient evidence that the cash will be available when and if needed by ENIP and ENF.

7. Similarly, the consolidated statement for EIL is minimal in content with no evidence that it has been independently audited. The totality of information that Entergy expects the Nuclear Regulatory Commission to rely on to ascertain the credibility of the EIL line of credit is a December 31, 1999 one-page document that claims [REDACTED] is held in [REDACTED] and that [REDACTED] according to Mr. Greene's affidavit. No additional information is provided as to what other calls on these funds Entergy has incurred on behalf of other Entergy affiliated companies.
8. In fact, Entergy in its response has completely failed to address the key issue raised in my January 10, 2001 declaration that lines of credit provided by the affiliated Entergy companies involve interlocking corporate interests and therefore do not provide the level of confidence needed to assure that the funds will be available when and if needed. In addition, Entergy has failed to respond to the issue that the total amount of funds that could be available in the lines of credit is inadequate to cover more than [REDACTED] of outages at both plants.
9. It is not uncommon for two or more of a utility's nuclear plants have been out of service for six months or longer. Examples of simultaneous outages are provided below:

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

- Two of the three units at the Palo Verde Nuclear Generating Station were shut down at the same time for approximately twelve months starting in March 1989. During this same twelve month period, the third Palo Verde unit was shut down for numerous outages, including one outage that lasted approximately four months.
- The two units at the South Texas nuclear plant were both shut down for the twelve month period February 1993 to February 1994.
- All five of TVA's operating nuclear power plants were shut down in 1985. The first unit to be restarted, Sequoyah Unit 1, re-commenced commercial operations in May 1989.
- All three units at Northeast Utilities' Millstone nuclear plant were shut down for multi-year outages starting in March of 1996.
- Commonwealth Edison has experienced numerous simultaneous extended outages among the eight units at its Dresden, LaSalle, Quad Cities, and Zion nuclear stations. For example, during the first six months of 1996, the utility had at least three units shut down at any one time for extended outages of longer than three months in duration. Commonwealth Edison had at least four units shut down at any one time for extended outages during the last six months of 1996, except for a short period at the end of August and early September. The utility also experienced simultaneous outages of at least six months in length at its two unit Zion nuclear station from October 1993 through April 1994 and at its two unit LaSalle Station from September 1996 through 1998.

NOTE: THIS DOCUMENT OMITS PROPRIETARY INFORMATION INDICATED BY SHADED AREAS SURROUNDED BY BRACKETS.

- Both units at the D.C. Cook Nuclear Plant in Michigan were shutdown in September 1997.
- Both units at the Salem Nuclear Station were shutdown for more than two years between July 1995 and the fall of 1997.
- Both units at the Brunswick nuclear plant were shutdown for the twelve month period April 1992 through April 1993.
- Both units at the Calvert Cliffs nuclear plant were shut down at the same time for more than one year starting in May 1989.

I declare that the foregoing facts are true and correct to the best of my knowledge, and that the opinions expressed above are based on my best professional judgment.

Signed under the pains and penalties of perjury, this 31ST day of January, 2001.

[Original signed by Edward A. Smeloff
Pace Energy Project]

Edward A. Smeloff

Exhibit #2

**“AmerGen Announces Third Potential
US Acquisition.” British Energy
International press release, 4/15/99**

http://www.british-energy.co.uk/corporate/nm_business_amerger_4.html

British Energy International

AmerGen

AmerGen Announces Third Potential US Acquisition

15th April 1999

AmerGen Energy - the Pennsylvania-based 50/50 joint venture between British Energy and PECO Energy - has announced today that it has reached interim agreement with Illinois Power to purchase and operate the Clinton nuclear power station. Clinton is a 930MW boiling water reactor (BWR) commissioned in 1987, situated about 190 miles south of Chicago.

The proposed purchase price is \$20m, payable in cash, of which British Energy's share would be \$10m, payable upon completion of the final agreement, expected near the end of 1999.

The plant is currently shut down, but PECO are managing it under a restart contract which commenced in January 1998. PECO will continue to manage Clinton until completion of the acquisition.

Under the proposed deal, Illinois Power - the current owners of the plant - would buy at least 75% of the plant's output through to December 2004. Illinois Power would transfer to AmerGen the existing decommissioning fund for the station - expected to be some \$95m - and will make six further annual payments of \$30m into the fund.

Prior to the proposed acquisition, this interim agreement confers exclusive negotiating rights between Illinois Power and AmerGen until at least 15 June. As part of the agreement, PECO have assumed all the plant's current operating and capital expenses - approximately \$18m per month - and will receive income from all electricity generated. British Energy has agreed separately with PECO to share 50% of these costs and benefits during the period up to final agreement.

Dr Robin Jeffrey, AmerGen President and British Energy's Executive Director, North America, said "The Clinton deal demonstrates British Energy's commitment to delivering shareholder value and growth through its US nuclear strategy. I'm confident that British Energy, working with our US partners, can play a significant role in the developing competitive electricity market in North America."

AmerGen Chief Executive, Dickinson Smith of PECO said "We are particularly pleased to formalise our negotiations with Illinois Power. We have had an excellent relationship with the company and its Clinton plant personnel for more than a year, and we are convinced that Clinton once again can become an outstanding nuclear facility and an excellent asset for our AmerGen portfolio."

Media Contacts:

Doug McRoberts British Energy 0131 527 2020
Susan Brissette British Energy 001 416 214 0552
Bill Jones PECO Energy 001 215 841 4129
Shirley Swarthout Illinois Power 001 217 424 6400

Investor Relations Contacts:

Paul Heward British Energy 0131 527 2250
Sonia Boggis British Energy 0171 389 3489
Susan Coan PECO Energy 001 215 841 4003

NOTE TO EDITORS

Clinton is the third potential AmerGen US nuclear acquisition to be announced. The others are Three Mile Island 1 and Vermont Yankee, both of which are progressing well. On Tuesday of this week, the US Nuclear Regulatory Commission confirmed it had cleared the transfer of the operating licence for TMI-1 to AmerGen.

international

- [Markets](#)
 - [Australia](#)
 - [Canada](#)
 - [Czech Republic](#)
 - [Estonia](#)
 - [Lithuania](#)
 - [Russia](#)
 - [Ukraine](#)
 - [United States](#)
- [Introduction](#)
- [British Energy](#)
- [Technical Consultancy](#)
- [Commercial Consultancy](#)
- [Other Products and Services](#)

[Top](#) ▲

Before the
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judge:
Charles Bechhoefer,
Presiding Officer

In the Matter of

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

**Docket Nos. 50-333-LT
and 50-286-LT
(consolidated)**

ASLBP No. 01-785-02-LT

**(James A. FitzPatrick Nuclear Power Plant
and Indian Point Nuclear Generating Unit
No. 3)**

February 8, 2001

**CITIZENS AWARENESS NETWORK, INC.'S REPLY TO NYPA/ENTERGY
COMPANIES' RESPONSE TO CAN'S REVISED CONTENTION ON FINANCIAL
QUALIFICATIONS**

ERRATA NOTICE

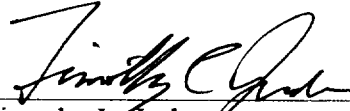
Noted below are ERRATA for the Citizens Awareness Network, Inc.'s REPLY TO NYPA/ENTERGY COMPANIES' RESPONSE TO CAN'S REVISED CONTENTION ON FINANCIAL QUALIFICATIONS.

On page 7, ll. 18-19 of CAN's Reply (submitted January 31, 2001), the phrase, "the Applicants' arguments against the admissibility of," should be omitted. The sentence should read, "As set forth herein below, CAN's issues challenging ENF's and ENIP's financial qualifications are admissible, timely, and within the scope of the proceeding."

On page 20, line 5, the clause, "this assertion is irrelevant," should be moved so as to follow the citation. Thus, the beginning of the paragraph should read:

Second, the Applicants maintain that the market uncertainties only pertain to "a small portion of the five-year review period" of their projections. *See Applicants' Response at page 18.* This assertion is irrelevant. As cited in CAN's revised contention, ...

For the Citizens Awareness Network, Inc.

A handwritten signature in black ink, appearing to read "Timothy L. Judson", written over a horizontal line.

Timothy L. Judson
Citizens Awareness Network

Dated at Syracuse, New York,
this 8th day of February, 2001.

THE CITIZENS AWARENESS NETWORK

In the Matter of)
)
 POWER AUTHORITY OF THE STATE OF)
 NEW YORK, ET AL.)
)
 (James A. FitzPatrick Nuclear Power Plant)
 and Indian Point Nuclear Generating)
 Unit No. 3))

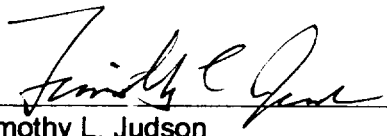
Docket Nos. 50-333-LT and
 50-286-LT

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ERRATA NOTICE for CAN'S REPLY TO NYPA/ENTERGY COMPANIES' RESPONSE have been served upon the persons listed below by electronic mail or US Postal Mail.

Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, DC 20555-0001	Lawrence J. Chandler, Esquire Office of the General Counsel U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: ljc@nrc.gov ; ogclt@nrc.gov)
Chief Administrative Judge G. Paul Bollwerk, III Atomic Safety and Licensing Board Panel Mail Stop - T-3 F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 (E-mail: gpb@nrc.gov)	Gerald C. Goldstein, Esquire Arthur T. Cambouris, Esquire David E. Blabey, Esquire The Power Authority of the State of New York 1633 Broadway New York, NY 10019 (E-mail: goldstein.g@nypa.gov)
Timothy L. Judson Citizens Awareness Network, Inc. 140 Bassett Street Syracuse, NY 13210 Phone/fax: (315) 425-0430 (E-mail: cnycan@rootmedia.org)	Deborah Katz, Executive Director Citizens Awareness Network, Inc. PO Box 83 Shelburne Falls, MA 01370 P/f: (413) 339-5781/-8768 (Email: can@shaysnet.com)

<p>Alan D. Scheinkman, Esquire Westchester County Attorney Stewart M. Glass, Esquire Senior Assistant County Attorney Dept. of Law, Room 600 148 Martine Avenue White Plains, NY 10601</p>	<p>John Valentino, Esquire Green & Seifter One Lincoln Center, 9th Floor Syracuse, NY 13202 (E-mail: jvalentino@greenseifter.com)</p>
<p>Joseph R. Egan, Esquire Egan & Associates, P.C. 1500 K Street, NW Suite 200 Washington, DC 20005 (E-mail: eganpc@aol.com)</p>	<p>Paul V. Nolan, Esquire 5515 North 17th Street Arlington, VA 22205-2207 (E-mail: pvnvpv@aol.com)</p>
<p>Nancy T. Bocassi Hendrick Hudson School District 61 Trolley Road Montrose, NY 10548 (E-mail: nbocassi@henhud.lhric.org)</p>	<p>Thomas F. Wood, Esquire Town of Cortlandt 153 Albany Post Road Buchanan, NY 10511 (E-mail: townhall@peekskilCortlandt.com)</p>
<p>Jay E. Silberg, Esquire William R. Hollaway, Esquire Shaw, Pittman, Potts & Trowbridge 2300 N Street, NW Washington, DC 20037-1128 (E-mail: jay.silberg@shawpittman.com)</p>	<p>Douglas E. Levanway, Esquire Wise, Carter, Child and Caraway P.O. Box 651 Jackson, MS 39205-0651 (E-mail: del@wisecarter.com)</p>
<p>John M. Fulton Entergy 600 Rocky Hill Road Plymouth MA 02360 phone: (508) 830-8898 fax: (508) 830-8767 e-mail jfulto1@entergy.com</p>	<p>David E. Blabey Executive Vice President, Secretary and General Counsel New York Power Authority 123 Main Street White Plains, New York 10601 Phone: (914) 390-8090 Fax: (914) 390-8038</p>


 Timothy L. Judson
 Citizens Awareness Network

Dated at Syracuse, New York,
 this 8th day of February, 2001