

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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Entergy Nuclear Indian Point 3, LLC)	
Entergy Nuclear FitzPatrick, LLC)	
Entergy Nuclear Operations, Inc.)	
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)	
Indian Point Nuclear Generating Unit No. 3)	Docket No. 50-286
)	License No. DPR-64
)	
James A. FitzPatrick Nuclear Power Plant)	Docket No. 50-333
)	License No. DPR-59

ORDER APPROVING TRANSFER OF CONTROL OF MASTER
DECOMMISSIONING TRUST, AMENDMENTS TO MASTER
DECOMMISSIONING TRUST AGREEMENT, AND LICENSE AMENDMENTS
TO MODIFY AND DELETE DECOMMISSIONING TRUST LICENSE
CONDITIONS

I.

Entergy Nuclear Indian Point 3, LLC (ENIP3) and Entergy Nuclear Operations, Inc. (ENO) are the owner and operator, respectively, of Facility Operating License No. DPR-64 for Indian Point Nuclear Generating Unit No. 3 (Indian Point Unit 3 or IP3). IP3 is a Westinghouse pressurized-water reactor located in Westchester County, New York. Entergy Nuclear FitzPatrick, LLC (ENF) and ENO are the owner and operator, respectively, of Renewed Facility Operating License No. DPR-59 for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a General Electric boiling-water reactor located in Oswego County, New York.

II.

By the application dated August 16, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16230A308), ENO requested, on behalf of

itself, ENIP3, ENF, and the Power Authority of the State of New York (PASNY, which now does business as the New York Power Authority), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.90, "Application for amendment of license, construction permit, or early site permit," that the U.S. Nuclear Regulatory Commission (NRC or the Commission) issue an Order consenting to (1) the transfer to ENO of the beneficial interest in the Master Decommissioning Trust (Master Trust), including all rights and obligations thereunder, held by PASNY for IP3 and FitzPatrick; (2) amendments to the Master Decommissioning Trust Agreement dated July 25, 1990 (ADAMS Accession No. ML100500726), as amended (Master Trust Agreement), governing the Master Trust in order to facilitate the transfer of control of the Master Trust; (3) amendments to the operating licenses for IP3 and FitzPatrick in order to modify the existing trust-related license conditions to reflect the proposed transfer of control of the Master Trust; and (4) amendments to delete certain existing trust-related license conditions in order to apply to IP3 and FitzPatrick the generic requirements of 10 CFR 50.75(h). The NRC's approval of this application is a precondition to completing the pending application submitted jointly by Exelon Generation Company, LLC (Exelon) and ENO, dated August 18, 2016 (ADAMS Accession No. ML16235A081), requesting that the NRC issue an Order and conforming amendment consenting to the direct license transfer of Renewed Facility Operating License No. DPR-59 for FitzPatrick from ENO to Exelon.

By Orders dated November 9, 2000 (ADAMS Accession Nos. ML003767953 and ML003768011), the NRC consented to the direct license transfers of IP3 and FitzPatrick from PASNY to their current owners and operator. As described in these Orders, however, PASNY remained the custodial holder of the decommissioning trust funds for IP3 and FitzPatrick in the Master Trust, which includes the Indian Point Unit 3 Decommissioning Trust Fund (IP3 Fund) and the FitzPatrick Decommissioning Trust Fund (FitzPatrick Fund). The Decommissioning Agreement for IP3 dated November 21, 2000, among PASNY, Entergy Nuclear, Inc. (ENI), and

ENIP3, and the Decommissioning Agreement for FitzPatrick dated November 21, 2000, among PASNY, ENI, and ENF (the Decommissioning Agreements), contemplate the transfer of the decommissioning trust funds for IP3 and FitzPatrick to ENIP3 and ENF at the end of the initial terms of the IP3 and FitzPatrick operating licenses, respectively.

ENO and PASNY propose a transaction that will facilitate the transfer of control of the Master Trust to ENO, the current operator of IP3 and FitzPatrick. In addition to paying PASNY consideration for the acquisition of the Master Trust, the proposed transfer would require that ENO assume PASNY's responsibilities and obligations pursuant to the Decommissioning Agreements upon transfer of control of the Master Trust to ENO from PASNY. An Order directing the transfer of control of the Master Trust and consenting to the Master Trust Agreement amendments is required, because the terms of the Master Trust Agreement must be amended before the transfer. Under the license conditions of the operating licenses for IP3 and FitzPatrick, and the terms of the Master Trust Agreement itself, any such amendment requires the prior written consent of the Director of the Office of Nuclear Reactor Regulation. In addition, the existing license conditions do not contemplate the transfer of control of the Master Trust to ENO. Under the terms of Section 10.05 of the Master Trust Agreement, as amended, the terms of the agreement may be amended to comply with an Order issued by the NRC.

Thus, in accordance with these requirements, ENO, on behalf of ENIP3, ENF, and PASNY, requests that the NRC issue an Order directing the transfer of control of the Master Trust, consenting to an amendment to the Master Trust Agreement authorizing the transfer of control of the Master Trust to ENO, and approving license amendments that modify and delete trust-related license conditions in the IP3 and FitzPatrick operating licenses. A notice of this application was published in the *Federal Register* on September 27, 2016 (81 FR 66305). On November 1, 2016 (ADAMS Accession No. ML16306A258), a request for a hearing on the application was filed by Ms. Susan H. Shapiro, on behalf of Indian Point Safe Energy Coalition,

Hudson River Sloop Clearwater, Council on Intelligent Energy & Conservation Policy, Sierra Club Hudson Valley, Nuclear Information and Resource Service, Alliance for Green Economy, and Radiation and Public Health Project. On December 13, 2016 (ADAMS Accession No. ML16348A495), an Atomic Safety and Licensing Board denied the hearing request for failure to demonstrate standing.

Based on its review of the information in the application, and other information before the Commission, the NRC staff approves the proposed transfer of control of the Master Trust to ENO, along with the proposed amendments to the Master Trust Agreement, as amended. In addition, the NRC staff finds that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, "Nuclear Regulatory Commission"; the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the amendments can be conducted without endangering the public health and safety and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the amendments will not be inimical to the common defense and security or to the public health and safety; and the issuance of the amendments will be in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated January 27, 2017.

III.

Accordingly, pursuant to Section 161i(4) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.75, IT IS HEREBY ORDERED that the application to transfer control of the

Master Trust for IP3 and Fitzpatrick to ENO and the amendments to the Master Trust Agreement are approved.

IT IS FURTHER ORDERED that the license amendments to the operating licenses of IP3 and FitzPatrick that modify existing trust-related license conditions to reflect the transfer of control of the Master Trust to ENO and delete other existing trust-related license conditions in order to apply the generic requirements of 10 CFR 50.75(h) to IP3 and FitzPatrick, are approved. The amendments shall be issued and made effective at the time that the transfer of control of the Master Trust is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated August 16, 2016, and the NRC staff safety evaluation dated January 27, 2017 (ADAMS Accession No. ML16336A492), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01-F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are also accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, MD, this 27th day of January 2017.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

William M. Dean, Director,
Office of Nuclear Reactor Regulation.