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July 18, 2000

Via Local Courier to White Flynt
Ms.Karen Cyr
General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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

Dear Ms. Cyr:

Enclosed is a copy of the filing made today with the Secretary of the Commission, titled *Motion of Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr., for Leave to Intervene and Petition for Summary Relief or, in the Alternative, for a Hearing* in the above-captioned license transfer proceedings. The Petition is accompanied by a Joint Declaration of William Carano, Thomas Pulcher, and Richard Wiese, Jr.

We look forward to the Commission's consideration of this matter. If you have any questions, please call me at (703) 871-5012.

Sincerely,

Joseph R. Egan

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COPY

In the Matter of	)	
	)	
The Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant)	)	Docket No. 50-333-LT (License No. DPR-59)
	)	
and	)	
	)	
The Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3)	)	Docket No. 50-286-LT (License No. DRP-64)

MOTION OF NUCLEAR GENERATION EMPLOYEES ASSOCIATION and WILLIAM CARANO, THOMAS PULCHER, and RICHARD WIESE, JR., FOR LEAVE TO INTERVENE, AND PETITION FOR SUMMARY RELIEF, OR, IN THE ALTERNATIVE, FOR A HEARING

I. Introduction

Pursuant to Subpart M of the Nuclear Regulatory Commission's ("Commission's") Rules of Practice and Procedure and, specifically, 10 C.F.R. Section 2.1306 (March 31, 1999), the Nuclear Generation Employees Association ("NGEA"), and William Carano, Thomas Pulcher, and Richard Wiese, Jr., individually and as representatives of NGEA,[1]

[1] If necessary to facilitate standing to intervene, NGEA seeks leave of the Commission to promptly supplement this pleading with the names of numerous additional individual petitioners

timely move to intervene in each of the captioned proceedings and petition the Commission either for summary relief or for a hearing as to each. In support of their petition, the petitioners contend as follows:

1. In the captioned proceedings, the Commission is considering issuance of orders under 10 C.F.R. Section 50.80 approving the transfers of facility operating licenses No. DPR-59 for the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick") and No. DRP-64 for the Indian Point Nuclear Generating Unit No. 3 ("Indian Point 3"), both currently held exclusively by the Power Authority of the State of New York (the "Power Authority"), as owner and operator of each plant. The transfers would be to new entities Entergy Nuclear FitzPatrick, LLC ("ENF") and Entergy Nuclear Indian Point ("ENIP"), respectively (the proposed new plant owners), and to Entergy Nuclear Operations, Inc. ("ENO"), the proposed new operator of each plant. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. 65 Fed. Reg. 39953 - 39956 (June 28, 2000). According the applications, ENF and ENIP would assume title to each respective facility following approval of the proposed license transfer, and ENO would become responsible for the operation and maintenance of each facility. Id.

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who are members of NGEA and employees of the Power Authority of the State of New York, and who have agreed to serve if necessary as additional individual petitioners.

II. The Petitioners

2. Petitioner **NGEA** is an unincorporated association formed in January 2000 by management employees in the nuclear generation component of the Power Authority in anticipation of the corporate sale or transfer of the Authority's nuclear assets, for the purposes of protecting the interests of its members in connection with such a transfer and continuing to assure safe operation of the Authority's nuclear facilities pending, during, and following such a transfer. NGEA's address is P.O. Box 225, Lycoming, New York 13093. The NGEA boasts a membership of almost 400 men and women who are non-represented (*i.e.*, non-union) technical and management employees in nuclear generation, based at FitzPatrick, Indian Point 3, or at the Authority's corporate offices in White Plains, New York. Indian Point 3 is located in Westchester County, New York, and FitzPatrick is located in Oswego County, New York.

3. Collectively, NGEA members manage the operation and maintenance, refueling, capital improvements, design and engineering, purchasing, quality assurance, regulatory and environmental compliance, radiation protection, training, decommissioning planning, procedure writing and record keeping for FitzPatrick and Indian Point 3. NGEA members comprise nearly half of all the Power Authority's management employees in the nuclear generation area.

4. At FitzPatrick, NGEA members include 60 Design, System, Maintenance and Component Engineers; 22 Senior Reactor Operators (Active Licenses and Certified), Reactor Operators, Reactor Engineers, Shift Technical Advisors, and Licensed Operator Instructors; 9 Certified Senior Reactor Operators and Certified Reactor Operators working in departments other than operations; 26 First Line Supervisors providing direct supervision to Bargaining Unit and Hourly plant employees; 13 Second Line Supervisors providing direction to First Line Supervisors; 34 Technical Staff, including writers, work package planners, outage/non-outage schedulers, and work management employees; 9 Departmental and Group Managers; 8 Non-Technical Staff; and 4 non-licensed Training Instructors.

5. At Indian Point 3, NGEA members include 69 Design, System, Maintenance and Component Engineers; 23 Senior Reactor Operators (Active Licenses and Certified), Reactor Operators, Reactor Engineers, Shift Technical Advisors, and Licensed Operator Instructors; 27 First Line Supervisors providing direct supervision to Bargaining Unit and Hourly plant employees; 21 Second Line Supervisors providing direction to First Line Supervisors; 17 Technical Staff, including writers, work package planners, outage/non-outage schedulers, and work management employees; 8 Departmental and Group Managers; 4 Non-Technical Staff; and 3 non-licensed Training Instructors.

6. At the Authority's White Plains office, NGEA members include 31 Design, System, Maintenance and Component Engineers; 8 Second Line Supervisors providing direction to First Line Supervisors; 6 Departmental and Group Managers; and 2 Non-Technical Staff.

7. The individual petitioners are current active members of NGEA's Executive Committee. Petitioner **William Carano** is a resident of Westchester County, at 1 Lake View Drive, Peekskill, New York. His telephone number is (914) 737-5267. He is a Supervisory Engineer for Construction Services at the Power Authority's Indian Point 3 facility and has been employed by the Authority for more than 23 years. He is responsible for supervising contractors and union crafts. Mr. Carano is 53 years old.

8. Petitioner **Thomas Pulcher** is a resident of the County of Dutchess, at 9 Kretch Circle, Wappinger Falls, New York. His telephone number is (914) 896-6977. He is a Project Manager at the Authority's Indian Point 3 facility and has been employed by the Authority for more than 21 years. He is responsible for managing all phases of large modifications and repair projects. Mr. Pulcher is 50 years old.

9. Petitioner **Richard Wiese, Jr.**, is a resident of Onondaga County, at 7686 Mountain Ash, Liverpool, New York. His telephone number is (315) 457-4403. He is an Outage Coordinator at the FitzPatrick facility and has been employed by

the Authority for more than 19 years. He is responsible for supervising the development and maintenance of all outage schedules. Mr. Wiese is 52 years old.

III. Petitioners' Affected Interests

10. The Petitioners have two distinct vital interests in the captioned proceeding that clearly warrant their standing to intervene. First, as the management employees charged with maintaining the Commission's health and safety requirements at FitzPatrick and Indian Point 3, their collective cooperation in and acceptance of the transfer of facility licenses to a new operating entity is an absolute prerequisite to continued safe operation of those facilities. Petitioners' contentions, articulated below, directly call into question the ability of the proposed transferees to operate FitzPatrick and Indian Point 3 absent resolution of Petitioners' dispute.

11. Second, the individual petitioners, and each of the nearly 400 members of NGEA, are members of the Power Authority's management team and therefore are not protected by any union contract. They have managed nuclear operations for the Authority without the benefit of a written employment contract, and thus, it is the Authority itself which will set the terms of their new relationship with the transferees -- terms that at the current time are largely opaque to NGEA. Insofar as the proposed transfers will directly and materially affect their economic interests, morale, and working culture and conditions, which in turn impacts their performance and/or likelihood of departure, they have a vital interest in assuring

that the transfers do not adversely affect them or, worse, undermine the nuclear generation management component, perhaps even stimulating a mass defection of personnel directly responsible for the health and safety of nuclear operations.

A. Interest in Assuring Nuclear Safety

12. The individual petitioners, and each member of NGEA, comprise nearly half of the entire nuclear generation management division of the Power Authority, which itself controls virtually every aspect of the operation and maintenance of FitzPatrick and Indian Point 3. These are the individuals who, in turn, directly assure the safety and operational integrity of the Authority's nuclear facilities. For example, they assure that the reactors are operating and maintained within the Technical Specifications, that the reactors and individual work assignments meet radiological protection and health physics requirements, that the Commission's regulations and licensing requirements are met and correctly reported, that the plant's design basis is maintained, that nuclear fuel is managed to within thermal limits, that quality assurance and quality control requirements are met, and that workers and the public are not exposed to intolerable risks of harm.

13. Most NGEA members are longstanding employees in their respective positions Many of their positions (e.g., reactor operators) require successful completion of arduous and time-consuming individual licensing or certification requirements. Others (e.g. reactor engineer) require completion of extensive company-required

qualification programs, or adherence to lengthy and rigorous ANSI, ASME, IEEE, industry, or NRC training and qualification requirements. NGEA members are individuals who are not immediately replaceable, and their positions are not "fungible" even through the nuclear industry, as may sometimes be the case for union, crafts, or other management employees. For example, it is not possible to immediately replace an NGEA reactor operator with a licensed reactor operator from a nuclear facility not owned by the Authority, since that individual would first have to complete rigorous plant-specific training and be licensed for operation of FitzPatrick or Indian Point 3. Likewise, a reactor engineer from another nuclear utility would first have to complete the Authority's extensive plant-specific qualification program before being allowed to establish control rod maneuvers for FitzPatrick or Indian Point 3.

14. In short, NGEA's members are inextricably intertwined with the safety and performance of nuclear operations of FitzPatrick and Indian Point 3. They have a vital interest in assuring that the proposed transfer of ownership and operation of each nuclear facility to a new entity does not compromise their roles and abilities, individually or collectively, in assuring operational safety and appropriate regulatory performance.

B. <u>Impact on Jobs, Benefits, Morale, and Likelihood of Departure</u>

15. The Commission's experience with problem plants over the years (including, most

notably, Millstone, South Texas, Cooper, Peach Bottom, and Cook) has surely instructed that management employees play the key role in determining whether the appropriate safety and regulatory-compliance culture exists at a nuclear plant. The Commission has recognized that attrition of important management employees can materially and adversely impact safety performance. Conversely, the addition of new or competent management employees -- sometimes at the urging of the Commission -- has dramatically reversed declining safety performance at some plants. Lack of qualified management employees has at some units caused excessive overtime, high attrition, lack of quality control, and raised a plethora of safety issues, causing the Commission to issue guidelines and requirements as to numbers of personnel, minimum qualifications, and overtime restrictions. The Commission staff now regularly monitors such issues.

16. NGEA's management employees likewise have a vital interest in assuring that the proposed transfers do not adversely affect their salaries, benefits, pensions, working conditions, safety culture, professional roles, and attrition rates. While NGEA understands that it is not the Commission's role to insure narrow economic interests, NGEA is equally aware that the Commission *is* interested in assuring that, once the transfer occurs, there will be sufficient management personnel, and appropriate working conditions, so as to assure continued safe operation of the facilities. Insofar as such issues are presently largely opaque to NGEA, and are

totally within the control of the Authority as the proposed transferor (and may be subject to the control of ENF, ENIP, and ENO as the proposed transferees), NGEA has a vital interest in, and believes it can materially contribute to, the Commission's deliberations in the captioned proceedings.

IV. Facts In Support of Petition

17. Notwithstanding their vital interests in the outcome of the proposed transfers, none of the members of NGEA were allowed to participate in negotiations with the proposed transferees that lead in February 2000 to an agreement in principle for sale of FitzPatrick and Indian Point 3. Thus, the full and actual circumstances of the transaction, the actual intent of the parties, and their actual plans with respect to NGEA members were and are unknown to petitioners. A genuine dispute now exists between NGEA members and the parties concerning the effect of the proposed transactions on NGEA's members.

18. A contemporaneous "Fact Sheet" announcing the sale promised that "all nuclear operations employees" would receive salaries "no less than they currently receive," and that "all other benefits will be identical or equal to current benefits." See Joint Declaration of William Carano, Thomas Pulcher, and Richard Wiese, Jr., attached. The Entergy Group likewise distributed information in February 2000 making similar promises that benefits would be "identical," that there would be "no impact" on retirement allowances, and that Authority employees would be

"made whole" in the transaction Id. Likewise, Authority President Gene Zeltmann announced at a press conference on February 14, 2000 that "current compensation and benefit levels will be maintained." Id. In an open letter advertisement in the local newspaper, The Entergy Group promised it was "absolutely committed to employing the [Authority's] 1700 nuclear employees at the same salary, benefits, and pensions" that they presently receive. Id. (emphasis in original) In response to employee concerns, numerous additional assurances along the same lines were made by the Authority and The Entergy Group over the next several weeks, prompting the general acquiescence of nuclear generation employees to the proposed sale. Id.

19. Subsequent negotiations between the Authority and The Entergy Group resulted in a Purchase and Sale Agreement dated March 28, 2000 (the "Agreement") formalizing the transaction, subject to regulatory approvals. Announcing the Agreement, Authority President Zeltmann again confirmed that "salaries, benefits and pensions will be identical or comparable." Id. On information and belief, the closing of the Agreement has not taken place as of the date of this petition.

20. The The Power Authority is a New York State government entity. The proposed transferees, created by The Entergy Group, are not government-owned entities but private corporate entities. Upon the closing of the transaction, NGEA's members would each become employees of these new entities, and would cease to be

Authority (and New York State) employees.

21. As Authority employees, the benefits currently received by petitioners are substantial and include, but are not limited to, competitive corporate salaries, membership in the New York State and Local Retirement Systems pension plan ("NYSERS"), medical and dental benefits, vision and hearing care, cancer protector care, flexible spending account for pre-tax funding of health and dependent care expenses, life insurance, deferred compensation, ordinary death benefit, disability benefit, loan provisions, sick and medical leave (including accrual thereof), short and long term disability, vacation and holiday leave (including accrual thereof), tuition reimbursement, and other benefits. The Authority's comprehensive employee retirement benefits are a particularly significant term and condition of employment for NGEA members, and they include full continuing lifetime health coverage and life insurance.

22. Notwithstanding the Authority's repeated written assurances of a "seamless transition," "identical" or "comparable" pay and benefits, and employees (including petitioners) "made whole" in the transfer, petitioners now find that, in fact, the transition to Entergy will *not* be nearly "seamless," it will *not* result in equivalent pay and benefits for NGEA members, and it will *not* make petitioners whole in numerous material respects. In response to individual inquiries by NGEA members, the Authority and/or Entergy have now retrenched markedly

from their earlier assurances, making statements such as:

- There are "no guarantees anywhere that retiree benefits will remain the same year after year.... Moreover, NYSERS will not allow transferred employees to remain in NYSERS due to IRS regulations.
- Current Authority retirement benefits will be maintained only for three years, after which "Entergy will survey area practices and make modifications if necessary."
- Entergy has agreed to provide the same benefits package as the Authority only "for one year from the closing date. Beyond that period of time, Entergy will survey area practices and make modifications, if deemed necessary."
- Entergy will follow the Authority's sick and vacation leave policy only for one year from the closing date.
- "There has never been a guarantee that the NYPA [Authority] benefits package and its costs will remain the same for any period of time beyond one year."
- The Authority has unilaterally determined that transferred employees may not stay in the NYSERS program without benefit of any discussion with employees or their counsel.

See Joint Declaration of William Carano, Thomas Pulcher, and Richard Wiese, Jr.

23. Furthermore, the sale Agreement, on file with the Commission, contains numerous provisions affecting the rights and benefits of petitioners, for the current period and that following consummation of the transaction. Among them is a provision in Section 5.7(a) requiring that each Authority employee must "agree[] in writing" to become an employee of any transferee. There is a provision in Section 5.3(a)(x) stipulating that transferred employees will receive identical or increased base pay, and a benefits package "substantially comparable" to the benefits package now offered by the Authority. Section 5.7(d)(i) provides that transferred employees shall have pension plans "identical in all material aspects" to the pension plan currently applicable to petitioners under the NYSERS program. However, in apparent conflict with those provisions, the Agreement appears to contemplate substantially reduced benefits for employees. For example,

- Section 5.7 provides that Entergy will have the right to change petitioners' employment benefits after one year.
- Section 5.7 gives Entergy the right to alter petitioners' pension benefits if they retire more than 3 years after completion of the sale.
- Pension benefits provided by Entergy will be taxable by New York State, whereas Authority benefits were non-taxable.
- Non-vested members of NYSERS will be forced to quit the

NYSERS system, and therefore be unable to vest their NYSERS benefits, in order to obtain a pension from Entergy.

- Lifetime medical benefits for petitioners and their families are not guaranteed.
- Petitioners will be precluded from enjoying pending legislative enhancements to NYSERS. Moreover, the Entergy retirement program lacks the long-term security associated with the NYSERS program.

24. Petitioners have made specific inquiries to the Authority about the processes by which they will receive their pension and retirement benefits upon retirement both within and after the three-year commitment period. Those inquiries remain unanswered. Id. Petitioners see no vehicle of enforcement in the Agreement for failure to adhere to employee benefits promises, and certainly no third-party remedies exist for petitioners.

25. No individual employee consent agreement, as required pursuant to Section 5.7(a) of the Agreement, has yet been provided to Petitioners. Id.

26. Authority executives have refused in writing to meet with NGEA representatives and their counsel to obtain unambiguous, reliable, and consistent responses to inquiries about the transfer. Id.

27. On March 28, 2000, the NGEA, through petitioner Richard Wiese, requested a

meeting with the Authority to address (a) the absence of any specific right of enforcement in the Agreement; (b) the absence of secure employment for petitioners after one year; (c) the lack of severance arrangements if layoffs become necessary; and (d) the lack of protection regarding benefits both pre-and post-retirement. Id. On March 31, 2000, NGEA's counsel wrote to the Authority's counsel again requesting a meeting to discuss and clarify the rights and benefits of NGEA members , including (a) the possible loss of retirement and pension benefits; (b) the loss of pre-retirement and post-retirement health and welfare benefits; (c) the loss of morale due to potential replacement of petitioners; and (d) the authority's failure to protect petitioners' benefits through the sale process. NGEA's counsel suggested the establishment of administrative or trust mechanisms to secure the transferee's obligations to the petitioners. The Authority has thus far failed to schedule the requested meetings, and has steadfastly refused to recognize the NGEA, likewise refusing to recognize that NGEA is represented by counsel. Id. Indeed, the Authority has refused to allow NGEA counsel to attend question and answer meetings about the proposed transfers (an act apparently inconsistent with the Code of Professional Responsibility).

V. Concerns of Import to These Proceedings

28. As a result of the increasingly adversarial nature of the dialogue (or lack thereof) between NGEA members and the proposed transferor and transferees concerning the putative rights and benefits that will be available to petitioners following the proposed transfer, there has been (a) a precipitous decline in morale among NGEA members in charge of nuclear generation management; (b) a high level of confusion as to what rights and benefits may or may not accrue to petitioners following the proposed transfer; (c) a significantly increased attrition rate among nuclear generation management employees; (d) a general belief among petitioners that the transaction will markedly reduce their rights and benefits; and (e) a developing uneasiness or unwillingness to trust or communicate problems to senior executive nuclear management or corporate management concerning activities at FitzPatrick and Indian Point 3. Id. These are precisely the conditions have have precipitated severe management effectiveness problems at some nuclear plants, eroding regulatory and operational performance and creating "problem plant" conditions.

29. Though the plants and operating licenses would be transferred from a tax-exempt entity (the Authority) to a non-tax-exempt entity (Entergy) under the proposed transactions, the Agreement apparently leaves heretofore fully funded plant decommissioning funds under the control of the Authority, but with no formal

Internal Revenue Service ("IRS") ruling on the legality of such an arrangement. Moreover, It is unclear whether such an arrangement is consistent with the Commission's decommissioning requirements at 10 C.F.R. Section 50.75. The ultimate resolution of this issue poses an immense contingent liability to Entergy under the Agreement. A contrary ruling by the IRS (or the Commission) could expose the new operator to large tax liabilities, thereby further jeopardizing the pay, benefits, and rights of transferred employees, and the long-term integrity of nuclear operations. Id. See also, Agreement at Section 5.9 and Exhibits O-1 and O-2.

30. On information and belief, if the dispute between petitioners and the applicants in these proceedings is not resolved, the attrition rate for nuclear management employees will rise to levels that will materially adversely impact nuclear operations at FitzPatrick and Indian Point 3. Moreover, the morale of remaining employees, including those of petitioners who do not resign, will further adversely impact nuclear operations. See Joint Declaration of Carano, Pulcher, and Wiese.

31. It is petitioners' view that the sale Agreement is self-contradictory vis-a-vis the rights and obligations of transferred employees, as well as the statements made by Power Authority and Entergy officials, and presents legal as well as factual questions, many not appropriate for inquiry by the Commission (though some clearly are). Moreover, as a New York state agency, the Authority's obligations to

protect employee rights and benefits are subject to significantly enhanced legal standards than those that will govern Enterty in the private sector. Accordingly, in an effort to clarify legally the rights and benefits of petitioners in connection with the transfer and Agreement for sale, as well as to establish the legal obligations of the proposed transferor and transferees, NGEA will be filing in less than 14 days, through New York counsel, a lawsuit against the applicants in New York state court seeking various declaratory and injunctive relief, the outcome of which could materially alter (or even nullify) the Agreement.

VI. Public Policy Considerations

32 The electric utility industry, and in particular the nuclear generation component of that industry, is currently in the throes of a massive restructuring effort. Nuclear generation assets are being sold, transferred to independent power producers or other utilities, acquired by operators from other states and sometimes other countries, restructured to avoid stranded cost assessments or otherwise to consolidate operations within a single operator. To the best of petitioners' knoweldge, the Commission has never formally considered the impacts such restructuring may be having, or will ultimately have, on the nuclear generation workforce in this country generally, or on individual plant-specific workforces in particular -- and, in turn, what the impact will be for the ultimate safety and effectiveness of nuclear operations in America. Petitioners respectfully suggest

that these public policy issues are of paramount importance now, before broad and possibly irreversible impacts manifest themselves. The available nuclear workforce in America has been steadily declining, and college enrollment in nuclear programs likewise continues its long decline. Failure by proposed transferors or transferees to treat nuclear generation workers and managers fairly may further advance the loss of talent in the industry, having the ultimate effect of compromising nuclear safety.

33. The Commission has on multiple occasions established links between safety culture and safety performance, good morale and good performance, bad morale and bad performance, and high turnover/attrition with declining regulatory scores. Petitioners suggest that the captioned proceedings, and the facts in dispute, offer an opportunity for thorough examination and case study of this burgeoning area. And Petitioners believe they can contribute to the public debate that is necessary.

VII. Relief Sought

WHEREFORE, in view of the facts and allegations stated above, petitioners seek the following relief:

A. Intervention Status

34. In view of their clear standing and vitally affected interests in these proceedings, as articulated above, Petitioners respectfully request leave to intervene in the captioned proceedings.

B. Summary Relief

35. In view of the likelihood that the rights and benefits of petitioners, and the obligations of the applicants, will be legally clarified in the New York state court proceeding to be filed imminently by NGEA, Petitioners respectfully request that the captioned license transfer proceedings be summarily stayed pending a decision by the New York court as to the rights, obligations, and liabilities of the parties. As part of this request, and to ensure that the proceedings are not unnecessarily delayed, petitioners commit to file their action in New York within 14 days of the date of this petition and to seek all reasonable means to expedite its disposition.

C. Request for Hearing

36. In the alternative to the summary relief sought above, if no stay is granted, Petitioners respectfully request the Commission to grant them a hearing pursuant to 10 C.F.R. Section 2.1306. Petitioners propose that such hearing be limited to the following issue, arising out the facts and allegations presented herein:

A. Rights/Benefits. What rights, benefits, and mechanisms of enforcement will actually apply to petitioners upon consummation of the proposed transactions, and how will they materially depart from those now applicable to petitioners?

B. Obligations. What obligations will the transferor and/or transferees have to petitioners vis-a-vis such rights and benefits?

C. Morale. What impact will (are) changes in the rights and benefits of petitioners have (having) on morale among the nuclear generation management unit, and will (are) operations and regulatory performance be (being) adversely affected?

D. Attrition. What impact will (are) changes in the rights and benefits of petitioners have (having) on attrition among the nuclear generation management unit, and will (are) increased attrition rates adversely affecting operations and regulatory performance?

E. Replacements. In view of markedly increased attrition, can replacement nuclear generation management personnel be secured in sufficient time so as not to compromise operations and regulatory performance during hiring, qualification, and certification periods for new personnel?

F. Workforce Size and Structure. What plans exist to cut the size or alter the structure of the existing nuclear generation workforce at FitzPatrick and Indian Point 3, and what impact will any such cuts or restructuring have on petitioners and on nuclear operations and regulatory performance generally?

G. Decommissioning Liability. Does the treatment of decommissioning liabilities under the Agreement pose an unreasonable added risk to transferred employees of loss of pay, benefits, and rights insofar as such treatment may be contrary to IRS regulations and/or the Comission's

requirements in 10 C.F.R. Section 50.75 and may result in substantial tax liabilities for the new operators?

Respectfully Submitted,

Joseph R. Egan, Esq.
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(703) 871-5012

John Valentino, Esq.
Green & Seifter, Attorneys, P.L.L.C.
One Lincoln Center, 9th Floor
Syracuse, NY 13202
(315) 422-1391

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Motion of Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr., for Leave to Intervene, and Petition for Summary Relief, or, in the Alternative, for a Hearing, together with a supporting declaration, have been served upon the following persons by delivery, facsimile, or overnight mail and in accordance 10 C.F.R. Section 2.1313.

Gerald Goldstein, Esq.
Assistant General Counsel
New York Power Authority
1633 Broadway
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Karen Cyr, Esq.
General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

Dated at Washington, D.C. this 17th day of July, 2000.

Joseph R. Egan, Esq.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Joint Declaration of William Carano, Thomas Pulcher, and Richard Wiese, Jr.

State of New York	)	
	)	
	)	ss.
Counties of Westchester	)	
(Carano and Pulcher)	)	
and Oswego (Wiese)	)	

We, William Carano, Thomas Pulcher, and Richard Wiese, Jr., after each being first duly sworn, do solemnly jointly attest as follows:

1. William Carano resides at 1 Lake View Drive, Peekskill, New York.

2. Thomas Pulcher resides at 9 Kretch Circle, Wappinger Falls, New York.

3. Richard Wiese, Jr., resides at 7686 Mountain Ash, Liverpool, New York.

4. Each of us is a longstanding employee of the Power Authority of the State of New York ("Authority") and an active member of the Executive Committee of petitioner Nuclear Generation Employees Association ("NGEA"). NGEA's mailing address is P.O. Box 225, Lycoming, New York, 13093.

5. William Carano, 53, has worked for the Authority for more than 23 years and is a Supervisory Engineer for Construction Services at the Authority's Indian Point 3 facility, currently responsible for supervising contractors and union crafts.

6. Thomas Pulcher, 50, has worked at the Authority for more than 21 years and is a Project Manager at the Authority's Indian Point 3 nuclear facility, currently responsible for managing all phases of large modifications and repair projects.

7. Richard Wiese, Jr., 52, has worked at the Authority for more than 19 years and is an Outage Coordinator for the FitzPatrick nuclear facility, currently responsible for supervising the development and maintenance of all outage schedules.

8. In January 2000, we helped form NGEA for the purpose of protecting the interests of nuclear generation management employees at the Authority in anticipation of a transition to a new operator and/or owner of the Authority's nuclear assets. NGEA members are non-union management employees not represented by any bargaining unit and not possessing any written contract of employment with the Authority.

9. NGEA currently represents nearly 400 nuclear generation management employees at the Authority, comprising nearly half of all such employees in the nuclear generation division. Our members work on-site at FitzPatrick or Indian Point 3 and at the Authority's nuclear generation headquarters in White Plains, New York.

10. Collectively, nuclear generation management employees, including in large part NGEA members, manage the operation, maintenance, engineering, design, outages, scheduling, fuel management, licensing, quality assurance, radiological protection, regulatory compliance, decommissioning planning, purchasing, and virtually every other aspect of the nuclear generation enterprise. We assure the safety and operational integrity of the Authority's two nuclear facilities, and are the first line of protection for the public health and safety at those facilities.

11. As Authority employees, the benefits currently received by us are substantial and include, but are not limited to, competitive corporate salaries, membership in the New York State and Local Retirement Systems pension plan ("NYSERS"), medical and dental benefits, vision and hearing care, cancer protector care, flexible spending accounts for pre-tax funding of health and dependent care expenses, life insurance, deferred compensation, ordinary death benefits, disability benefits, loan provisions, sick and medical leave (including accrual thereof), short- and long-term disability, vacation and holiday leave (including accrual thereof), tuition reimbursement, and other benefits. Benefits include full continuing lifetime health coverage and life insurance.

12. We and our members were not involved in any manner in the Authority's decision to sell its nuclear assets to another company. Our input into the decision was neither desired nor solicited, nor accepted by the Authority.

13. Although in principle we do not object to the transfer of the Authority's nuclear generation enterprise to Entergy or any other company which has demonstrated the competence and resources to control nuclear operations, we are concerned that the transfer, as currently proposed to the Nuclear Regulatory Commission, will be detrimental both to the economic and personal interests of our members and to the operational safety and integrity of the Authority's nuclear units. Indeed, the apparent quid pro quo for the deal is the forced extraction of pay, benefits, rights, and prerogatives of nuclear generation employees, and the apparent inevitable

downsizing of nuclear generation management staff.

14. When the transaction with Entergy was originally announced in February 2000 with an "Agreement in Principle," the Authority assured all employees, in numerous written documents and pronouncements, that it would be "seamless" with respect to pay and benefits for employees, that no nuclear generation employees would lose their jobs, and that the substantial benefits we currently receive as Authority employees would remain identical.

15. For example, a "Fact Sheet" distributed to us by the Authority in February 2000 promised that "all nuclear operations employees" would receive salaries "no less than they currently receive," and that "all other benefits will be identical or equal to current benefits."

16. A similar written pronouncement was made by the Entergy Group to us in February 2000, promising that benefits would be "identical," that there would be "no impact" from the transaction on our retirement allowances, and that the Authority employees would be "made whole" in the transaction.

17. Authority President Gene Zeltmann announced at a press conference on February 14, 2000 that "current compensation and benefit levels will be maintained."

18. In an open letter advertisement to local newspapers during this time period, the Entergy Group promised it was "absolutely committed to employing the [Authority's] 1700 nuclear employees at the same salary, benefits, and pensions" that they presently receive. (Emphasis in original.)

19. In response to concerns by our members, numerous additional assurances along these same lines were made by the authority and the Entergy Group over the next several weeks, leading to a general acquiescence to the transaction.

20. We were not permitted by the Authority to be involved in continued negotiations leading to the Purchase and Sale Agreement between the two utilities on March 28, 2000 (the "Agreement"). Announcing that Agreement, Authority President Gene Zeltmann again confirmed that "salaries, benefits and pensions will be identical or comparable."

21. However, when we and our members reviewed the terms of the Agreement, it became clear to us that the promises and assurances made by Authority and Entergy Group executives were largely hollow. Moreover, it became clear that the Agreement itself was self-contradictory with respect to its treatment of our pay, benefits, and rights.

22. For example, though the Agreement presents the veneer that transferred employees will receive identical or increased base pay, a benefits package "substantially comparable" to that now offered by the Authority, and a pension plan "identical in all material aspects" to that provided under NYSERS, its binding details in fact contain provisions substantially undermining our pay, benefits, and pension plans. Under the Agreement, Entergy has the right:

- to change employment benefits after one year;
- to alter our members' pension benefits if they retire more than 3 years after completion of the sale;
- to discontinue lifetime medical benefits for our members and their families; and
- to lay off employees after one year.

In addition:

- Pension benefits provided by Entergy will be taxable by New York State, whereas with the Authority they are not
- Non-vested members of NYSERS will be forced to quit the NYSERS system, and therefore be unable to vest their NYSERS benefits, in order to obtain a pension from Entergy.
- Transferred employees will not enjoy pending legislative enhancements to NYSERS.
- No enforcement mechanisms or third-party remedies are available to us to compel adherence to commitments made in the Agreement.

23. In light of the self-contradictory nature of the Agreement, the apparent substantial loss of benefits, and the clear conflict between the Agreement and prior assurances made to us by the Authority and Entergy, we have made numerous requests for clarification and additional information. Indeed, we have pursued every avenue available to us to obtain additional information that would clarify the rights, pay, benefits, and other prerogatives of our members following consummation of the transaction. Our efforts, however, have for the most part been steadfastly rebuked.

24. This lack of information has led to considerable confusion about the deal and compounded the fundamental belief of our members that the transaction will in fact markedly reduce our pay, our numbers, our benefits, our rights, and our prerogatives, as well as diminish the licensed operator's obligations to us individually and collectively.

25. Over the past few months, many of our members have made individual inquiries concerning various aspects of their benefits and rights following consummation of the transaction. In response to those inquiries, the Authority and/or Entergy have likewise retrenched markedly from their earlier assurances, making statements in writing such as the following:

- Entergy will provide the same benefits package as the Authority only "for one year from the closing date. Beyond that period of time, Entergy will survey area practices and make modifications, if deemed necessary."

- Authority retirement benefits will be maintained only for three years, after which "Entergy will survey area practices and make modifications if necessary."

- There are "no guarantees anywhere that retiree benefits will remain the same year after year...."

- NYSERS will not allow transferred employees to remain in NYSERS due to IRS regulations.

- Entergy will follow the Authority's sick and vacation leave policy only for one year from the closing date.

- "There has never been a guarantee that the NYPA [Authority] benefits package and its costs will remain the same for any period of time beyond one year."

26. Although the Agreement provides that all transferred employees must sign an individual consent agreement, to date no such agreement, or draft agreement, has been offered to us. Our input has not been solicited with respect to any such agreement.

27. Authority executives have refused in writing to meet with NGEA representatives and their counsel to obtain unambiguous, reliable, and consistent responses to our inquires about the transfer.

28. On March 28, 2000, one of us (Richard Wiese) wrote a letter requesting the Authority's executive management to meet with NGEA's representatives to address (a) the absence of any specific right of enforcement in the Agreement; (b) the absence of secure employment for petitioners after one year; (c) the lack of severance arrangements if layoffs are made; and (d) the lack of protection regarding benefits both pre- and post-retirement. To date, the Authority has not granted this meeting.

29. On March 31, 2000, NGEA's legal counsel wrote to the Authority's counsel again requesting a meeting to discuss and clarify the rights and benefits of NGEA members, including (a) the possible loss of retirement and pension benefits; (b) the loss of pre-retirement and post-retirement health and welfare benefits; (c) the loss of morale due to potential replacement of our members; and (d) the Authority's failure to protect our members' benefits through the sale process. Our counsel suggested the establishment of administrative or trust mechanisms to secure the transferee's obligations to the petitioners. To date, the Authority has not granted this meeting.

30. In fact, the Authority has refused altogether to recognize the NGEA, even refusing to recognize that NGEA is represented by counsel. The Authority refused, for example, to allow NGEA counsel to attend question and answer meetings about the proposed transfers.

31. As a result of the anticipated tragic loss for our members of jobs, pay, benefits, rights, and prerogatives associated with the proposed transfers, there has been:

- A precipitous decline in morale among NGEA members in charge of safe nuclear generation management;

- A high level of confusion as to what rights and benefits may or may not accrue to our members;

- A significantly increased attrition rate among nuclear generation management employees. In fact, on information and belief, the attrition rate is already more than double its historical average among nuclear generation management employees.

- A developing uneasiness or unwillingness to trust or communicate problems to senior executive nuclear management or corporate management concerning activities at FitzPatrick and Indian Point 3.

32. In apparent recognition of declining morale among nuclear generation staff, the Authority recently commissioned a "culture survey" to gauge the impact of the

transition on work performance and work culture. The Authority has not provided NGEA or its members with a copy of the completed survey. On information and belief, the results of this survey confirm the substantial decline in morale and thus raise important safety considerations for the Commission.

33. It is our belief, widely shared by NGEA members, that if the present dispute between NGEA and the applicants is not resolved, further substantial declines in morale will ensue, and attrition rates will rise even more dramatically.

34. Insofar as nuclear generation management employees are generally highly trained, and often must be licensed, certified, qualified pursuant to company or plant-specific qualification programs, or authorized pursuant to ASME, ANSI, IEEE, or other industry requirements, we believe the transaction will create a potentially dangerous void in qualified nuclear generation management staff at both FitzPatrick and Indian Point 3 for a substantial period of time, possibly years. This void will, at a minimum in our view, lead to considerable increased overtime demanded of those remaining, causing work confusion and even further erosion of morale and more attrition.

35. It is our view that the above situation presents a safety-related issue at each plant which falls within the scope of the proposed license transfer proceedings and warrants the close attention and examination of the Commission. Moreover, it is apparent to us that, unless ordered otherwise by the Commission in this proceeding, the applicants will remain unwilling to share critical information about the transfer with those most important to ensuring the operational integrity and safety of nuclear generation at FitzPatrick and Indian Point 3 -- individuals who have successfully and unceasingly devoted years of their lives to that goal for the Authority.

36. The issues raised in our declaration and accompanying petition for intervention are materially relevant to the proposed license transfer proceedings since they directly relate to the ability of the proposed new operator to operate the transferred nuclear facilities. Any action by the Commission to approve the license transfers prior to resolution of the issues raised herein would significantly impede the collective ability of our members to achieve a viable resolution.

37. Copies of documents referenced in or supportive of this declaration will be furnished by us to the Commission or the applicants as required or upon request.

AFFIRMATION

I, William Carano, have read the foregoing Petition and hereby affirm that the statements contained therein, except for those alleged upon information and belief, are true and correct to the best of my knowledge, and as to those statements, I believe them to be true.

Dated: 7-14-2000

William Carano

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 14th day of July in the year 2000, before me, the undersigned, personally appeared William Carano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

CONSTANCE DYCKMAN
Notary Public, State of New York
No. 4603497
Qualified in Westchester County
Commission Expires November 30, 2000

ILV/162606.1

AFFIRMATION

I, Thomas Pulcher, have read the foregoing Petition and hereby affirm that the statements contained therein, except for those alleged upon information and belief, are true and correct to the best of my knowledge, and as to those statements, I believe them to be true.

Dated: 7-14-00

Thomas Pulcher

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 14 day of July in the year 2000, before me, the undersigned, personally appeared Thomas Pulcher, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

CONSTANCE DYCKMAN
Notary Public, State of New York
No. 4603497
Qualified in Westchester County
Commission Expires November 30, 2000

ILV/162600.1

AFFIRMATION

I, Richard Wiese, Jr., have read the foregoing Petition and hereby affirm that the statements contained therein, except for those alleged upon information and belief, are true and correct to the best of my knowledge, and as to those statements, I believe them to be true.

Dated: July 14, 2000

Richard Wiese, Jr.

STATE OF NEW YORK)
) ss.:
COUNTY OF Oswego)

On the 14 day of July in the year 2000, before me, the undersigned, personally appeared Richard Wiese, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kellye Lonberger
Notary Public
KELLYE LONBERGER
Notary Public, State of New York
No. 01LO5064208
Qualified in Oswego County
Commission Expires August 12, 2000

JLV/62600.1