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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
)
Power Authority of the State of New York ,)
Entergy Nuclear Indian Point 3, LLC, and)
Entergy Nuclear Operations, Inc.)
)
Indian Point 3 Nuclear Power Plant)
)
Transfer of Facility Operating License and)
Proposed License Amendment)

ADRIAN

Docket No. 50-286

License No. DPR-64

SUBMISSION OF SUPPLEMENTAL INFORMATION
IN THE CONSIDERATION OF APPROVAL OF PROPOSED
LICENSE AMENDMENT AND TRANSFER OF
INDIAN POINT 3 NUCLEAR POWER PLANT OPERATING LICENSE
TO ENTERGY NUCLEAR INDIAN POINT 3, LLC, AND
ENTERGY NUCLEAR OPERATIONS, INC.

The Town of Cortlandt, New York, and the Hendrick Hudson School District ("Petitioners") respectfully submit in the above-captioned proceeding the following documents and information for consideration by the Commission.

Errata Filing. The first submission corrects the inadvertent omission of a page from the affidavit of Attorney Peter Henner, which was attached to the Petitioners's filing of July 31, 2000. Thus, the omitted page(s) identified to day by two participants, along with the immediate preceding and subsequent pages, are transmitted herewith.

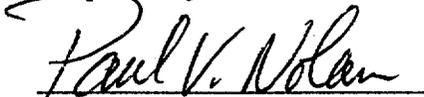
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SECY-02

Court Order. The second submission provides a copy of a recent court ruling in the Petitioners's challenge to PASNY's legal authority to sell Indian Point No. 3 to Entergy Indian Point 3, LLC. This lawsuit was pending in New York State Supreme Court and was captioned: Town of Cortlandt, et. al. v. Power Authority of the State of New York, Adele., Westchester County Index No. 11084-00. As the pendency of this suit was noted in the July 31, 200 filing of Petitioners, the Commission is asked to take notice of the subsequent ruling of the New York State Supreme Court.

Appeal Notice. The third submission consists of the Petitioners's filing of a notice of their intent to file an appeal to the New York State Supreme Court's recent decision. The Commission is asked to take notice of Petitioners's notice to the New York State Supreme Court.

Respectfully submitted this 28th day of September 2000.



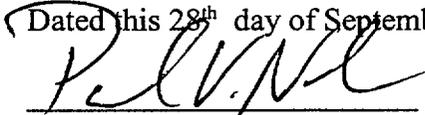
Paul V. Nolan, Esq.

Counsel to the Town of Cortlandt, New York and the
Hendrick Hudson School District

CERTIFICATE OF SERVICE

I, Paul V. Nolan, Esq., Counsel to the Town of Cortlandt, New York and the Hendrick Hudson School District, hereby certifies that on the 28th day of September 2000, service of this filing was made by first class mail, with a fax copy provided to the Secretary and to those individuals noted below with an (*), on this 28th day of September 2000 on the parties noted in the attached service list.

Dated this 28th day of September 2000.



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- 48) New York state law, and, in particular, SEQRA, specifically requires consideration of the consequential impacts of actions, such as the sale of power plants, which may affect the environment.
- 49) For example, 6 NYCRR 617.2(b)(2) defines an “action” for the purposes of SEQRA as “agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions.”
- 50) Under SEQRA, “environmental” conditions are defined to include “existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.” (New York State Environmental Conservation Law §8-0105(6)).
- 51) Furthermore, New York courts have recognized that the transfer of a facility that provides public benefits, including a power plant, is an action that has important consequential impacts that must be considered. In a case involving the transfer of the ownership of a public water supply system, a New York state appellate court rejected a claim “that there would be no discernible difference in environmental impact regardless of which entity holds title. The different entities have different levels of political accountability. . . .In the event of major capital expenses. . . it is not so clear that the City's continuing operational obligation to maintain and repaired the system equates with continuing responsibility for capital additions or replacements. The respective responsibilities and strategies to meet such capital needs would more appropriately be analyzed in an environmental impact statement. Nor is the transfer of title between public entities a mere paper transaction relieving the transferor of the obligation to fully analyze

environmental consequences of the transfer.” Giuliani v. Hevesi, 228 A.D.2d 348, 352-353 (1st Dept. 1996), aff’d as modified 90 N.Y.2d 27(1997) see also Niagara Mohawk Power Corporation v. Green Island Power Authority, 265 A.D.2d 711 (3d Dept. 1999), app. dismissed 94 N.Y.2d 891(mem.)(2000) (holding that a negative declaration did not satisfy obligation to “fully analyze the environmental consequences” of the transfer of a hydroelectric generating facility).

52) If their petition is granted, the Town and School District intends to present evidence, both documentary and in the form of live testimony, as to the past intentions of PASNY with respect to decommissioning and greenfielding of the site. Cortlandt and the School District respectfully maintain that more information should be required with respect to ENIP’s plans and financial resources, and a determination, on the ensuing factual record, should be made as to whether there will be any changes in the timing and scope of the decommissioning which will ultimately be undertaken as a result of the license transfer.

LIMITED LIABILITY CORPORATIONS

53) Under the terms of the proposed transfer, the IP3 facility will be transferred to a limited liability corporation, which has just recently been formed for the specific purpose of owning the IP3 facility. It should be noted that this limited liability corporation, Entergy Nuclear Indian Point 3, LLC (“ENIP”), does not have an operating history inasmuch as it has just been formed. At the very least, this LLC should be treated as a newly formed entity subject to the stricter financial requirements of 10 C.F.R. §50.33(f)(3) and (4). Thus, the financial ability of this

LLC, by itself, to operate IP3 and to greenfield the plant at the end of its current license term and/or any renewal or extension thereof should be considered.

54) In any event, ENIP, as a limited liability corporation, may not have adequate financial resources to respond to any unexpected liability that may arise, either as a result of: 1) an accident, 2) a shortfall in operating revenues, as a result of fluctuations in the energy market, 3) changes in the energy market, or in the cost of producing nuclear power, and 4) any other unexpected liability. The lack of adequate resources is even more acute because of ENIP's joint and several liability obligations with ENF.

55) Even though the Commission has issued reactor licenses to limited liability corporations in the past, and the Commission recently reaffirmed this practice in the case of GPU Nuclear, Inc., (Oyster Creek Nuclear Generating Station), CLI-00-06, NRC, decided May 3, 2000, such LLCs, whose only asset is the generating facility itself, cannot adequately meet the responsibilities and obligations that may arise in the event of unforeseen circumstances.

56) Therefore, the Commission should not approve the transfer of the IP3 facility to a limited liability corporation based upon the record before it.

GPU NUCLEAR DECISION

57) The Commission recently rejected a motion to intervene in a pending license transfer application on the grounds that the proposed intervenor, the Nuclear Information and Resource Service ("NIRS"), failed to demonstrate that its issues were "admissible." GPU Nuclear, Inc., (Oyster Creek Nuclear Generating Station), CLI-00-01, NRC, decided May 3, 2000.

- 58) The GPU proceeding, like the instant proceeding, involves a transfer of a license of an existing nuclear facility. In both cases, the transfer applicant has alleged that there will be no change in the physical operations at the facility, because the issue is merely a license transfer.
- 59) It should be noted that the issues in the instant case are factually distinguishable from GPU Nuclear inasmuch as the transferor in the instant case is a public entity, while the transferor in GPU Nuclear was an investor owned utility.
- 60) In the instant case, there are significant environmental impacts, as discussed above, and discussed at greater length in the attached petition in the pending New York State Supreme Court case, as a result of the change from public to private ownership.
- 61) Most notably, in the instant case, the proposed transfer is likely to impact the ultimate plans for decommissioning and greenfielding on the site, and on the length of time that spent nuclear fuel will be stored on site.
- 62) However, it should also be noted that the Cortlandt and the School District, with all respect to the Commission, believes that GPU Nuclear was wrongfully decided, and that the decision creates the very “fortress to deny intervention” that the Commission has repeatedly said that it would not establish in making determinations with respect to proposed intervenors.
- 63) Furthermore, in the instant case, the proposed intervenors, the Town of Cortlandt and the Hendrick Hudson School District, are the host community for the nuclear facility, and have a clear and vital interest in all present and future operations and related activities, e.g., decommissioning, at the IP3 facility.

SHORT FORM ORDER
To commence the statutory
time period for appeals as
of right [CPLR 5513 (a)],
you are advised to serve a
copy of this order, with
notice of entry upon all parties.

FILED
AND
ENTERED
ON 9/15, 2000
WESTCHESTER
COUNTY CLERK

SUPREME COURT : STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. NICHOLAS COLABELLA
J.S.C.

-----X

In the Matter of the Application of the

DECISION, ORDER & JUDGMENT

TOWN OF CORTLANDT, and the HENDRICK
HUDSON CENTRAL SCHOOL DISTRICT,

Petitioners.

INDEX NO.
11084/00

for judgment pursuant to Article 78 of the CPLR

- against -

MOTION DATE
9/1/00

THE POWER AUTHORITY OF THE STATE OF
NEW YORK, ENTERGY NUCLEAR INDIAN
POINT NO. 3, LLC, and ENTERGY NUCLEAR
OPERATIONS, INC.,

Respondents

D

-----X

The following papers numbered 1-107 were read on petition.

Papers Numbered

Notice of Petition, Petition,	
Exhibits, Memorandum	1-15
Answers, Exhibits, Memoranda	16-21, 22-23
Reply Affidavits, Exhibits, Memorandum	24-32
Sur-Reply, Affidavit Letter [Kass 9/7/00]	33-34, 35
Letter [Kass 9/8/00]	36
Letter [Henner 9/11/00]	37
Certified Record	38-107

In a proceeding pursuant to CPLR article 78, petitioners seek to annul a determination by the Power Authority of the State of New York ("NYPA") to sell the nuclear power generating facilities known as Indian Point 3 ("IP3") and the James A. FitzPatrick Nuclear Power Plant ("FitzPatrick") to Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc. ("Entergy"). Petition is dismissed.

The NYPA strictly complied with the procedural requirements of SEQRA prior to making its decision to approve the sale of IP3 and FitzPatrick. The fact, that the NYPA conducted negotiations for the sale during the review process, is irrelevant as the determination to approve a sale was always subject to the final outcome of the environmental assessment process.

The negative declaration by the NYPA was not arbitrary and capricious, but rather based on a detailed environmental assessment in which the NYPA identified the relevant potential environmental impacts, took the requisite hard look at such impacts and provided a reasoned elaboration of the basis for its determination.

The sale is not contrary to the NYPA's mandate under the Public Authorities Law. Public Authorities Law section 1005 (11) empowers the NYPA, in its discretion, to sell all or part of any generating, transmission or related facility including nuclear power plants consistent with its legislative purposes. The NYPA's determination to sell in this case, based on the current competitive environment, the availability of power from other sources and the difficulties in managing and operating two single-unit geographically dispersed plants of different technologies, had a rational basis and was not contrary to its legislative purposes.

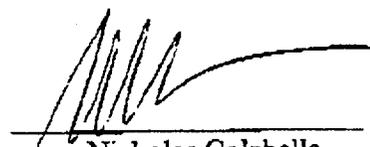
The NYPA is also not mandated, as petitioners claim, to supply electricity at cost. Public Authorities Law section 1001-a (4) merely espouses the legislative policy that cost savings in the production and delivery of electricity from the NYPA's acquisitions shall be passed onto the consumers. "Cost savings" are not equivalent to a direction that electricity be sold for cost.¹

Petitioners lack standing to assert its claim that Con Edison should have been granted a right of first refusal to purchase lands associated with IP3.

The foregoing constitutes the Decision, Order and Judgment of the Court.

Dated: White Plains, New York

9-15-2000



Nicholas Colabella
Supreme Court Justice

¹Cf. Advanced Refractory Technologies, Inc. v. Power Authority of the State of New York, 81 NY2d 670, 679-680 (holding that, absent statutory language that electricity be sold at the lowest possible rate, there was no mandate that power be sold at cost).

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STATE OF NEW YORK
COUNTY OF WESCHESTER SUPREME COURT

In the matter of the application of the

TOWN OF CORTLANDT, and the HENDRICK HUDSON
CENTRAL SCHOOL DISTRICT,

Petitioners,

NOTICE OF
APPEAL

Index No.: 11084-00

for judgment pursuant to Article 78 of the CPLR

-against-

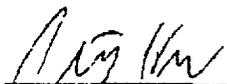
THE POWER AUTHORITY OF THE STATE OF NEW
YORK, ENTERGY NUCLEAR INDIAN POINT 3, LLC,
and ENTERGY NUCLEAR OPERATIONS, INC.,

Respondents.

PLEASE TAKE NOTICE that the Town of Cortlandt and the Hendrick Hudson Central School District, the Petitioners herein, hereby appeal to the Appellate Division of the New York State Supreme Court, Second Department, from the Decision, Order and Judgment of the Supreme Court, Westchester County (Colabella, J.) dated and entered in the office of the Westchester County Clerk on September 15, 2000 and served by Respondent Power Authority of the State of New York, with notice of entry on September 18, 2000; said order having dismissed the Petition.

This appeal is from each and every part of said Decision, Order and Judgment.

Dated: September 22, 2000
Clarksville, New York



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