

November 9, 2000

Mr. James Knubel  
Chief Nuclear Officer  
Power Authority of the State of  
New York  
123 Main Street  
White Plains, NY 10601

Mr. Michael R. Kansler  
Senior Vice President and  
Chief Operating Officer  
Entergy Nuclear FitzPatrick  
123 Main Street  
White Plains, NY 10601

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT - ORDER APPROVING  
TRANSFER OF LICENSE FROM THE POWER AUTHORITY OF THE STATE OF  
NEW YORK TO ENTERGY NUCLEAR FITZPATRICK, LLC, AND ENTERGY  
NUCLEAR OPERATIONS, INC., AND APPROVING CONFORMING AMENDMENT  
(TAC NO. MA8949)

Dear Messrs. Knubel and Kansler:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application submitted under cover letters dated May 11 and May 12, 2000, as supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, requesting approval of the transfer of the license for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) held by the Power Authority of the State of New York to Entergy Nuclear FitzPatrick, LLC to possess and use and to Entergy Nuclear Operations, Inc. to possess, use, and operate FitzPatrick, and requesting approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. Enclosure 1 is the Order which approves the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment with the changes as indicated in Enclosure 2, which will be issued and made effective when the transfer is completed.

Enclosures 3 and 4 contain the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation related to the preceding action. The nonproprietary version of the safety evaluation will be placed in the NRC public document room and added to the Agency-wide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) Library.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

*/RA/*

Guy S. Vissing, Senior Project Manager, Section 1  
Project Directorate I  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket No. 50-333

Enclosures: 1. Order  
2. Conforming Amendment  
3. Safety Evaluation (nonproprietary)  
4. Safety Evaluation (proprietary)

cc w/encls: See next page

**NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT  
BECOMES NONPROPRIETARY UPON REMOVAL OF ENCLOSURE 4.**

Mr. James Knubel                      November 9, 2000  
 Chief Nuclear Officer  
 Power Authority of the State of  
 New York  
 123 Main Street  
 White Plains, NY 10601

Mr. Michael R. Kansler  
 Senior Vice President and  
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The Order has been forwarded to the Office of the Federal Register for publication.

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 Guy S. Vissing, Senior Project Manager, Section 1  
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ACCESSION NO. NON-PROPRIETARY VERSION: ML003768011 \*See previous concurrence

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DATED November 9, 2000

ORDER APPROVING TRANSFER OF LICENSE FOR FITZPATRICK NUCLEAR POWER  
PLANT

DISTRIBUTION w/Enclosures 1 & 2

PUBLIC

PDI-1 Reading

SCollins/RZimmerman

EAdensam

MGamberoni

VDricks

SLittle

OGC

Ghill (2)

ACRS

SECY

MSatorius

MOprendeck, RI

DISTRIBUTION w/Enclosures 1, 2, 3, 4

GVissing

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
POWER AUTHORITY OF THE STATE	)	
OF NEW YORK	)	Docket No. 50-333
	)	
(James A. FitzPatrick Nuclear Power Plant)	)	

ORDER APPROVING TRANSFER OF LICENSE  
AND CONFORMING AMENDMENT

I.

The Power Authority of the State of New York (PASNY or the Authority) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick or the facility) at steady-state power levels not in excess of 2536 megawatts thermal. The facility, which is owned by PASNY, is located in Oswego County, New York. The license authorizes PASNY to possess, use, and operate the facility.

II.

Under cover of letters dated May 11, 2000, and May 12, 2000, PASNY, Entergy Nuclear FitzPatrick, LLC (Entergy Nuclear FitzPatrick), and Entergy Nuclear Operations, Inc. (ENO), submitted an application requesting approval of the proposed transfer of the FitzPatrick operating license to Entergy Nuclear FitzPatrick to possess and use and to ENO to possess, use, and operate FitzPatrick, and approval of a conforming amendment to reflect the transfer. The application was supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Entergy Nuclear FitzPatrick, a Delaware corporation, is a wholly owned indirect subsidiary of Entergy Corporation and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #1. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of

Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. After completion of the proposed transfer, Entergy Nuclear FitzPatrick would be the owner of FitzPatrick, and ENO would be the operator of FitzPatrick. The conforming amendment would remove the current licensee from the facility operating license and would add Entergy Nuclear FitzPatrick and ENO in its place, as appropriate.

The applicants propose that, after the sale and transfer of FitzPatrick to Entergy Nuclear FitzPatrick, the Authority would retain all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facility, while the trust fund would remain at all times committed to the decommissioning of FitzPatrick. The September 21, 2000, supplement to the application, filed by the Authority on behalf of itself and the other transfer applicants, includes the following proposals and commitments relating specifically to the Authority's retention of the decommissioning trust fund for FitzPatrick:

- (1) The Authority will waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority.
- (2) Upon the transfer of FitzPatrick, and pursuant to Section 7 of the decommissioning agreement between Entergy Nuclear FitzPatrick, Entergy Nuclear, Inc., and the Authority, Entergy Nuclear FitzPatrick shall have the sole discretion to permanently cease operations of FitzPatrick. For purposes of compliance with NRC requirements, by operation of the transfer Entergy Nuclear FitzPatrick and ENO shall have sole responsibility for decommissioning FitzPatrick, and the Authority's responsibility under Commission jurisdiction with respect to FitzPatrick will be limited solely to the holding and disbursement of funds for the decommissioning of the unit. Entergy Nuclear

FitzPatrick and ENO will have control over all physical decommissioning activities. The Authority's waiver and decommissioning responsibility as described above only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear FitzPatrick or until the decommissioning of FitzPatrick has been completed in accordance with NRC regulations and guidance, whichever shall first occur.

In addition, the November 3, 2000, supplement to the application proposes that the relevant trust agreement will provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by PASNY, Entergy Nuclear FitzPatrick, and ENO, pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the Federal Register on June 28, 2000 (65 FR 39954). Pursuant to such notice, the Commission received a hearing request dated July 14, 2000, from the Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr.; and a hearing request dated July 31, 2000, from the Citizens Awareness Network. These requests are currently pending before the Commission. No written comments were submitted.

Pursuant to 10 CFR §2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Nuclear Regulatory Commission shall give its consent in writing. After reviewing the information in the application and all supplements thereto (collectively, the application) and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear FitzPatrick and ENO are qualified to be the holders of the license, to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear FitzPatrick and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility 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 proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated November 9, 2000.

### III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o) and 2234, and 10 CFR 50.80, IT IS

HEREBY ORDERED that the transfer of the license as described herein and in the application to Entergy Nuclear FitzPatrick and ENO is approved, subject to the following conditions:

- (1) Before the completion of the sale and transfer of FitzPatrick, Entergy Nuclear FitzPatrick and ENO shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (2) For purposes of ensuring public health and safety, Entergy Nuclear FitzPatrick, upon the transfer of the FitzPatrick license, shall provide decommissioning funding assurance for FitzPatrick by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by the Authority for FitzPatrick after the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick may be credited towards the amount required under this paragraph.
- (3) If the assets of any decommissioning trust maintained by the Authority for FitzPatrick are retained in such trust following the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick and ENO instead of being transferred to any trust established by Entergy Nuclear FitzPatrick, the Authority shall maintain the assets as retained in such trust in accordance with the application for the transfer of the FitzPatrick license.
- (4) The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to the expenses related to decommissioning FitzPatrick as defined by the NRC in its regulations and issuances, and as provided in the FitzPatrick license and any amendments thereto.
- (5) The decommissioning trust agreement shall provide that no contribution to the decommissioning trust that consists of property other than liquid assets shall be permitted.

- (6) With respect to the decommissioning trust fund, investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear IP3, LLC, Entergy Nuclear FitzPatrick, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.
- (7) The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- (8) The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (9) The decommissioning trust agreement shall provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements. The NRC shall not be a beneficiary of the trust or of any of the trust funds, unless required by law to be so for the sole purpose of enforcing the provisions or purpose of the trust agreement as set forth above.
- (10) Article VI of the decommissioning trust agreement shall require that, notwithstanding the provision of Section 6.01(ii)(a) of the current decommissioning trust agreement, PASNY may not terminate any fund established under the Master Trust for FitzPatrick except

after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate.

- (11) Entergy Nuclear FitzPatrick, ENO, or their successors or assigns shall take no action that would adversely affect any contract between it and the Authority for the Authority's eventual payment of decommissioning funds from the trust.
- (12) Entergy Nuclear FitzPatrick and ENO, or their successors or assigns shall inform the NRC within 30 days of any adverse developments with respect to the Authority's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning FitzPatrick.
- (13) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- (14) The Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, and remain subject to the Commission's jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund to Entergy Nuclear FitzPatrick or the

decommissioning of FitzPatrick has been completed in accordance with NRC regulations and guidance, whichever occurs first.

- (15) Entergy Nuclear FitzPatrick shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the license for FitzPatrick and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.
- (16) Entergy Nuclear FitzPatrick and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the \$70 million contingency commitment to provide funding for the FitzPatrick plant as represented in the application, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- (17) After receiving all required regulatory approvals of the transfer of FitzPatrick, the transfer applicants shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of FitzPatrick. If the transfer of the license is not completed by November 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application submitted under cover letters dated May 11 and May 12, 2000, and supplements dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, and the safety evaluation dated November 9, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 9th day of November 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

POWER AUTHORITY OF THE STATE OF NEW YORK

DOCKET NO. 50-333

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.  
License No. DPR-59

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by the Power Authority of the State of New York (the licensee) submitted under cover letters dated May 11 and May 12, 2000, as supplemented June 13, June 16, July 14, September 21, October 26, and November 3, 2000, 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;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. DPR-59 is amended as indicated in the attachment to this license amendment.

3. This license amendment is effective as of its date of issuance, to be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Attachment: Amended Operating Licenses Pages 1 through 7  
and Amended Technical Specifications

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. \_\_\_\_\_

FACILITY OPERATING LICENSE NO. DPR-59

DOCKET NO. 50-333

Replace the following pages of the license with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Pages

1-5

Insert Pages

1-7

Replace the following pages of the Appendix A Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Pages

Title Page

214

245

258c

260a

Insert Pages

Title Page

214

245

258c

260a

Replace the following pages of the Appendix B Radiological Environmental Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Pages

Title

1

2

48

67

Insert Pages

Title

1

2

48

67

Replace the following page of the Appendix C Additional Conditions with the attached revised page. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Page

Appendix C

Insert Page

Appendix C

ENTERGY NUCLEAR FITZPATRICK, LLC  
AND ENTERGY NUCLEAR OPERATIONS, INC.  
DOCKET NO. 50-333  
JAMES A. FITZPATRICK NUCLEAR POWER PLANT  
AMENDED FACILITY OPERATING LICENSE

Amendment No.  
License No. DPR-59

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by the Power Authority of the State of New York (PASNY), Entergy Nuclear FitzPatrick, LLC (ENF) and Entergy Nuclear Operations, Inc. (ENO) submitted under cover letters dated May 11 and May 12, 2000, as supplemented on June 13, June 16, July 14, September 21, October 26, and November 3, 2000, 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.
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. ENF and ENO are financially and technically qualified to engage in the activities authorized by this amendment;
  - E. ENF and ENO have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements" of the Commission's regulations;
  - F. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public;
  - G. The receipt, possession, and use of source, byproduct and special nuclear material as authorized by this amendment will be in accordance with the

Commission's regulations; in 10 CFR Parts 30, 40, and 70, including 10 CFR Sections 30.33, 40.32, 70.23, and 70.31; and

- H. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. DPR-59 (previously issued to the Power Authority of the State of New York and Niagara Mohawk Power Corporation pursuant to the Atomic Safety and Licensing Board's Initial Decision and Supplemental Initial Decision dated November 12, 1973, and January 10, 1974, respectively; and the Atomic Safety and Licensing Appeal Board's Decision dated January 29, 1974; is hereby amended in its entirety and transferred to ENF and ENO on [date] to read as follows:
- A. This amended license applies to the James A. FitzPatrick Nuclear Power Plant, a boiling water nuclear reactor and associated equipment (the facility), owned by ENF and operated by ENO. The facility is located in Scriba, Oswego County, New York, and is described in the "Final Safety Analysis Report" as supplemented and amended, and the Environmental Report as supplemented and amended.
  - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
    - (1) Pursuant to Section 104b of the Act and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," a) ENF to possess and use and b) ENO to possess, use and operate the facility at the designated location in Scriba, Oswego County, New York, in accordance with the procedures and limitations set forth in this amended license;
    - (2) ENO pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
    - (3) ENO pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
    - (4) ENO pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, at any time, any byproduct, source and special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration; or associated with radioactive apparatus, components or tools.

(5) ENO pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This amended license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Sections 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

ENO is authorized to operate the facility at steady state reactor core power levels not in excess of 2536 megawatts (thermal).

(2) Technical Specifications

The Technical Specifications contained in Appendices A and B, as revised through Amendment No. \*, are hereby incorporated in the license. ENO shall operate the facility in accordance with the Technical Specifications.

(3) Fire Protection

ENO shall implement and maintain in effect all provisions of the approved fire protections program as described in the Final Safety Analysis Report for the facility and as approved in the SER dated November 20, 1972; the SER Supplement No. 1 dated February 1, 1973; the SER Supplement No. 2 dated October 4, 1974; the SER dated August 1, 1979; the SER Supplement dated October 3, 1980; the SER Supplement dated February 13, 1981; the NRC Letter dated February 24, 1981; Technical Specification Amendments 34 (dated January 31, 1978), 80 (dated May 22, 1984), 134 (dated July 19, 1989), 135 (dated September 5, 1989), 142 (dated October 23, 1989), 164 (dated August 10, 1990), 176 (dated January 16, 1992), 186 (dated February 19, 1993), 190 (dated June 29, 1993), 191 (dated July 7, 1993), 206 (dated February 28, 1994), and 214 (dated June 27, 1994); and NRC Exemptions and associated safety evaluations dated April 26, 1983, July 1, 1983, January 11, 1985, April 30, 1986, September 15, 1986 and September 10, 1992 subject to the following provision:

ENO may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

\* Each amendment updates this paragraph to indicate the latest amendment to the License.

(4) Systems Integrity

ENO shall implement a program to reduce leakage from the systems outside containment that would or could contain highly radioactive fluids during a serious transient or accident to as low as practical levels. This program shall include the following:

1. Provisions establishing maintenance and periodic visual inspection requirement, and
2. Leak test requirements for the systems at a frequency not to exceed operating cycle intervals.

(5) Iodine Monitoring

ENO shall implement a program which will ensure the capability to accurately determine the airborne iodine concentration in areas vital to the mitigation of or recovery from an accident. This program shall include the following:

1. Training of personnel,
2. Procedures for monitoring, and
3. Provisions for maintenance of sampling and analysis equipment.

D. Physical Protection

ENO shall fully implement and maintain in effect all provisions of the Commission-approved physical security guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "FitzPatrick Modified Amended Security Plan," with revisions submitted through March 7, 1988; "FitzPatrick Modified Amended Security Force Training and Qualification Plan," with revisions submitted through April 10, 1985; and "FitzPatrick Security Contingency Plan," with revisions submitted through June 20, 1980. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

E. Power Uprate License Amendment Implementation

The licensee shall complete the following actions as a condition of the approval of the power uprate license amendment.

(1) Recirculation Pump Motor Vibration

Perform monitoring of recirculation pump motor vibration during initial Cycle 13 power ascension for uprated power conditions.

(2) Startup Test Program

The licensee will follow a startup testing program, during Cycle 13 power ascension, as described in GE Licensing Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate." The startup test program includes system testing of such process control systems as the feedwater flow and main steam pressure control systems. The licensee will collect steady-state operational data during various portions of the power ascension to the higher licensed power level so that predicted equipment performance characteristics can be verified. The licensee will do the startup testing program in accordance with its procedures. The licensee's approach is in conformance with the test guidelines of GE Licensing Topical Report NEDC-31897P-1, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991 (proprietary), GE Licensing Topical Report NEDO-31897, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," February 1992 (nonproprietary), and NEDC-31897P-AA, Class III (proprietary), May 1992.

(3) Human Factors

The licensee will review the results of the Cycle 13 startup test program to determine any potential effects on operator training. Training issues identified will be incorporated in Licensed Operator training during 1997. Simulator discrepancies identified will be addressed in accordance with simulator Configuration Management procedural requirements.

F. Additional Conditions

The Additional Conditions contained in Appendix C, as revised through Amendment No. , are hereby incorporated into this license. ENO shall operate the facility in accordance with the Additional Conditions.

G. ENF and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the \$70 million contingency commitment to provide funding for the facility as represented in the application for approval of the transfer of the facility license from PASNY to ENF and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

H. The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to the expenses related to decommissioning of the facility as defined by the NRC in its

regulations and issuances, and as provided in this license and any amendments thereto

- I. The decommissioning trust agreement shall provide that no contribution to the decommissioning trust that consists of property other than liquid assets shall be permitted.
- J. With respect to the decommissioning trust fund, investments in the securities or other obligations of the PASNY, Entergy Corporation, Entergy Nuclear IP3, LLC, ENF, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.
- K. The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- L. The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- M. ENF, or its successors or assigns shall take no action that would adversely affect any contract between it and PASNY for PASNY's eventual payment of decommissioning funds from the trust.
- N. ENF, or its successors or assigns shall inform the NRC within 30 days of any adverse developments with respect to PASNY's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning the facility.
- O. The decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- P. For purposes of ensuring public health and safety, ENF, upon the transfer of this license to it, shall provide decommissioning funding assurance for the facility, to be held in a decommissioning trust fund for the facility by the prepayment or equivalent method, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by PASNY for the facility after the transfer of the facility license to ENF may be credited towards the amount required under this paragraph.

- Q. ENF shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENF and ENO and the requirements of the order approving the transfer, and consistent with the safety evaluation supporting such order.
3. This license is effective as of the date of issuance and shall expire at midnight on October 17, 2014.

FOR THE NUCLEAR REGULATORY COMMISSION

(ORIGINAL SIGNED BY: ROBERT W. REID)

Robert W. Reid, Chief  
Operating Reactors Branch #4  
Division of Operating Reactors

Attachments/Appendices:

1. Appendix A - Technical Specifications
2. Appendix B - Radiological Effluent Technical Specifications
3. Appendix C - Additional Conditions

Date of Issuance: June 3, 1977

APPENDIX C

ADDITIONAL CONDITIONS  
OPERATING LICENSE NO. DPR-59

Amendment Number	Additional Conditions
243	Entergy Nuclear Operations, Inc. shall describe snubber operation and surveillance requirements in the Final Safety Analysis Report such that future changes to those requirements will be subject to the provisions of 10 CFR 50.50.
250	Entergy Nuclear Operations, Inc. shall relocate operability and surveillance requirements for logic bus power monitors, core spray sparger differential pressure, and low pressure coolant injection cross-connect valve position instruments to an Entergy-controlled document where future changes to those relocated requirements are controlled under the provisions of 10 CFR 50.59.

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
TRANSFER OF FACILITY OPERATING LICENSE  
FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK  
TO ENERGY NUCLEAR FITZPATRICK AND ENERGY NUCLEAR OPERATIONS, INC.  
AND CONFORMING AMENDMENT  
DOCKET NO. 50-333  
JAMES A. FITZPATRICK NUCLEAR POWER PLANT

1.0 INTRODUCTION

By application submitted under cover letters dated May 11 and May 12, 2000, as supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, the Power Authority of the State of New York (the Authority), Entergy Nuclear FitzPatrick, LLC (Entergy Nuclear FitzPatrick), and Entergy Nuclear Operations, Inc. (ENO) requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License DPR-59 for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) from the Authority to Entergy Nuclear FitzPatrick, to possess and use, and ENO to possess, use, and operate FitzPatrick. The application also requested the approval of a conforming license amendment to reflect the proposed transfer.

As a result of the ongoing restructuring of the electric utility industry, the Authority has made the decision to exit from the business of owning and operating nuclear generating facilities. The Purchase and Sale Agreement signed by the Authority and Entergy Nuclear FitzPatrick on March 28, 2000, also includes the purchase of the Indian Point Nuclear Generating Unit No. 3 (IP3) by Entergy Nuclear Indian Point 3, LLC, and also certain assets at the White Plains Nuclear Headquarters Offices. A separate license transfer application for IP3 was submitted and is being reviewed in a separate safety evaluation.

The application was filed pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The supplements to the initial application that were not specifically referenced in the Federal Register notice of the transfer and amendment request did not expand the application beyond the scope of the notice.

## 2.0 BACKGROUND

FitzPatrick is a single unit boiling water reactor owned and operated by the Authority, a corporate municipal instrumentality and political subdivision of the State of New York. The operating license was granted in 1974 and commercial operation began in July 1975. After completion of the proposed transfer, Entergy Nuclear FitzPatrick will own FitzPatrick, and ENO will operate FitzPatrick as agent for Entergy Nuclear FitzPatrick, pursuant to an operating agreement between the parties (see Enclosure 6 of the May 12, 2000 application).

Entergy Nuclear FitzPatrick and ENO are newly formed entities. Entergy Nuclear FitzPatrick is engaged principally in the business of owning all or part of one or more generating facilities and selling electric energy in the wholesale market. ENO is engaged principally in the business of operating eligible nuclear facilities. Entergy Nuclear FitzPatrick is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #1, with its principal office located in White Plains, New York. ENO is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2, with its principal place of business to be located in White Plains, New York. Organization charts are shown in Enclosure 7 of the May 12, 2000 application.

Entergy Corporation, with headquarters located in New Orleans, Louisiana, is a global energy company that owns, manages, or invests in power plants generating approximately 30,000 megawatts of electricity worldwide. Through its subsidiaries Entergy Corporation owns and operates six nuclear power plants at five sites - Arkansas Nuclear One Units 1 and 2, Grand Gulf Nuclear Station, River Bend Station, Waterford 3 Steam Electric Station, and the Pilgrim Nuclear Power Station.

The applicants state that upon closing of the transaction, the following events will occur, as disclosed in the Purchase and Sale Agreement (Enclosure 4 of the May 12, 2000 application):

- (1) Entergy Nuclear FitzPatrick will assume title to the facility (including all equipment, spare parts, fixtures, inventory, and other property necessary for the operation and maintenance of FitzPatrick), will take title to all used and spent nuclear fuel and other licensed materials at FitzPatrick, and through its authorized agent, ENO, will assume all responsibility for the operation and maintenance of the plant.
- (2) All employees within the Authority's Nuclear Generation Department, and certain other employees supporting the Nuclear Generation Department, will become employees of ENO.
- (3) As part of the transaction, the Authority has entered into power purchase agreements through 2004 with Entergy Nuclear FitzPatrick where the Authority will purchase capacity and energy from FitzPatrick at pre-established rates and schedules.
- (4) As of closing, the Authority will maintain the FitzPatrick decommissioning trust fund and will make the funds available for the radiological decommissioning of FitzPatrick, in accordance with a Decommissioning Agreement (Exhibit O-1 to Enclosure 4 of the May 12, 2000 application). Any additional amounts required to be contributed to the trust to meet

NRC minimum funding requirements will be the responsibility of Entergy Nuclear FitzPatrick. The Authority may elect to transfer its interest in the trust fund to Entergy Nuclear FitzPatrick at the end of the license, upon dismantlement of the unit, or if the fund becomes taxable to the Authority. In the event the Authority does not elect to transfer the trust, Entergy Nuclear Inc., an affiliate of Entergy Nuclear FitzPatrick, has agreed to decommission the plant for the lesser of the agreed upon amount or the amount in the trust.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through the transfer of control of a license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

### 3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Entergy Nuclear FitzPatrick does not qualify as an electric utility under 10 CFR 50.2. However, the staff has determined that Entergy Nuclear FitzPatrick meets the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f).

A non-electric utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought, consistent with 10 CFR 50.33(f). The information must show the following:

- (1) The applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license. The applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source of funds to cover these costs.
- (2) In the case of a newly formed entity organized primarily for the purpose of operating nuclear power plants, the information must show: (a) the legal and financial relationships the applicant has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and (c) any information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

Also, 10 CFR 50.33(k)(1) requires that Entergy Nuclear FitzPatrick must provide information as described in 10 CFR 50.75 indicating there is reasonable assurance that funds will be available to decommission FitzPatrick. The applicants' proposal for decommissioning funding assurance is discussed in Section 4.0 of this Safety Evaluation.

In the application, Entergy Nuclear FitzPatrick states that it has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for FitzPatrick for the period of the license. Entergy Nuclear FitzPatrick and the Authority signed power purchase agreements (see Exhibit K to the May 12, 2000 application) on March 28, 2000, under which Entergy Nuclear

FitzPatrick will sell 100% of the total output from FitzPatrick at fixed prices, “take or pay,” through 2003, and 31% of the total output through 2004. For the remaining output in 2004 and for the full output after 2004, Entergy Nuclear FitzPatrick will pursue other firm contracts or sell any uncommitted power on the market in New York.

The following table summarizes the terms of the power purchase agreement and Entergy Nuclear FitzPatrick’s expected market prices for uncommitted power, as stated in the license transfer application:

TABLE 1  
Expected Market Prices for Uncommitted Power

Year	Output to Contract %	Contract Price (\$/Mwh)	Output to Contract %	Contract Price (\$/Mwh)	Market Price (\$/Mwh)
2000	45	32.00	55	29.00	N/A
2001	44	32.00	56	29.00	N/A
2002	37	32.00	63	29.00	N/A
2003	31	32.00	69	29.00	N/A
2004	31	32.00	0	N/A	[REDACTED]
2005	0	N/A	0	N/A	[REDACTED]

*(Shaded area contains proprietary information.)*

The application states that FitzPatrick is expected to be operated at an average annual capacity factor of 85%, with the sale of power expected to cover the expected operating costs with a margin of additional income over and above operating costs. (By way of comparison, FitzPatrick has had capacity factors in 1997 to 1999 of 94.7%, 73.2%, and 93.9%, respectively. This represents an average capacity factor over the last 3 years of 87.3%.) In support of the claim that there is reasonable assurance of obtaining the necessary funds to operate FitzPatrick following the sale to Entergy Nuclear FitzPatrick, the applicants have provided a proprietary FitzPatrick projected income and expenses statement for the period from 2000 to 2005.

**SHADED AREAS CONTAIN PROPRIETARY INFORMATION**

TABLE 2  
Projected Income and Expenses 2000 - 2005

(\$000)	2000	2001	2002	2003	2004	2005
Contract Power Sales	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	0
Market Power Sales	0	0	0	0	[REDACTED]	[REDACTED]
Total Revenue:	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
O & M *	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Fuel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Depreciation & Amortization	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Admin & Other	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Oper. Expenses:	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Operating Profit/(Loss):	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Interest Expense:	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Income Taxes:	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Net Income/(Loss):	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Note: Assumes 9/7/00 Close (Shaded area contains proprietary information.)

The applicants have also included the following estimate of total and fixed operating expenses:

TABLE 3  
Estimate of Total and Fixed Operating Expenses

(\$000s)	2000	2001	2002	2003	2004	2005
Total Op. Expenses	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Fixed Op. Expenses	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(6 months)	N/A	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Note: Assumes 9/7/00 Close (Shaded area contains proprietary information.)

The NRC staff conducted sensitivity analyses on the projected income statement provided by the applicants in order to judge the financial resiliency of Entergy Nuclear FitzPatrick to weaker than projected revenue. Although expense projections are the domain of the applicants, the

**SHADED AREAS CONTAIN PROPRIETARY INFORMATION**

staff believes that the applicants' assumptions are reasonable. For example, based on the Authority's annual reports for 1994 through 1997, these projected expenses fall in line with historical trends. However, the revenue projections are sensitive to the unit's capacity factor, and projected market prices in the year 2004 and beyond.

One set of sensitivity analyses adopted the assumption that capacity factors dropped by 10 percentage points below those assumed by the applicants. With all other assumptions held constant, the staff found that Entergy Nuclear FitzPatrick, notwithstanding such assumed reduced revenues over the 5½-year projection period submitted (2000 to 2005), would have the financial capability of maintaining the unit in a safe manner.

In another set of sensitivity analyses, projected revenues for the years 2001 through 2005 were assumed to be substantially less than projected by the applicant. With all other assumptions held constant, the results showed that Entergy Nuclear FitzPatrick would be capable of sustaining a drop of 12% in revenue and still break even. However, this staff assumption, for sensitivity purposes only, seems to be unlikely given the North American Electric Reliability Council (NERC) Reliability Assessment for 1998 through 2007, dated October 1998. In the Reliability Assessment report, NERC predicts that the Northeast Power Coordinating Council (United States) (NPCC(US)), which includes FitzPatrick, will see generating capacity margins dropping from 17.3% in 1998 to 5.0% in 2007. Such a trend would indicate that market prices are subject to upward pricing pressure. Therefore, the staff finds that the applicants' assumptions for market prices are reasonable, as shrinking generating capacity margins should cause market prices of electricity to increase in the area, assuming other factors remaining equal.

Although these sensitivity analyses indicate lower earnings for Entergy Nuclear FitzPatrick if lower capacity or lower market prices are experienced compared to their forecast, Entergy Nuclear FitzPatrick should still be able to remain financially stable through the use of retained earnings. In addition, Entergy Nuclear FitzPatrick would have as an additional source of funds certain credit lines discussed later in this section.

The staff assessed how reasonable or probable these changes in rates may be for the period 2001-2005. Forecasts of electric rates in competitive markets are subject to many factors that make such predictions speculative; however, the reasonableness of various growth rates may be assessed by considering various factors that could provide some indication of future electricity prices. For example, recent trends in electricity prices can provide inferences on how such prices may continue to change in the more competitive environment expected in the electric power industry.

Data on United States retail electricity prices from the Energy Information Administration indicate that the overall price (all sales categories) has declined from its highest level in 1993 (at 6.93 cents per kWh) to 6.81 cents per kWh by 1998. The average retail price for the industrial category declined from 4.85 cents per kWh in 1993 to 4.52 cents per kWh in 1998. Considering this recent downward trend in retail prices and increasing competition in the electric power industry, the general trend of electricity prices at the retail level may continue downward in the near future. However, recent dramatic price increases in some United States electricity markets suggest that future prices may, on the contrary, increase. Thus, it is difficult to predict the direction of prices likely to be paid for FitzPatrick power in its market area. The recent downward trend in United States retail prices may not necessarily produce a significant downward influence on future FitzPatrick market prices.

The staff concludes that attempting to forecast the growth rate, or even the direction of change, for market-based prices in the FitzPatrick market area is too speculative, given the uncertainty of deregulation, and other unknown factors potentially affecting electricity capacity or prices, to be useful for its contingency analysis. But the staff's most important conclusion from this analysis is that, even if prices for FitzPatrick power were to increase at an average annual rate much lower than anticipated by Entergy Nuclear FitzPatrick, this would not preclude Entergy Nuclear FitzPatrick from operating and maintaining FitzPatrick in a manner that would protect the public health and safety.

On the basis of information contained in the application as cited above providing 5 year cost estimates and indicating the source of funds to cover these costs, the NRC staff concludes that Entergy Nuclear FitzPatrick has provided assurance of being able to obtain the funds necessary to cover the estimated operating costs for the period of the facility license in accordance with 10 CFR 50.33(f)(2). The NRC staff also finds that Entergy Nuclear FitzPatrick, as a newly-formed entity, has provided the information required by 10 CFR 50.33(f)(3), and, in summary, has demonstrated that it is financially qualified to hold the license for FitzPatrick.

At the closing of the FitzPatrick purchase, Entergy Nuclear FitzPatrick and ENO will have access to an established line of credit of \$20 million from an affiliate, Entergy Global Investments, Inc. This line of credit will provide working capital, if necessary, for the operation and maintenance of FitzPatrick. In addition, up to \$50 million will be provided through a line of credit from another affiliate, Entergy International Ltd. LLC. Entergy Nuclear FitzPatrick and ENO will notify the NRC if any of this \$50 million line of credit is called upon to pay for costs associated with the safe operation and maintenance of FitzPatrick, including the costs of nuclear property damage insurance and any retrospective premium pursuant to 10 CFR 140.21. Enclosure 9 of the May 12, 2000 application provides financial statements for Entergy International, Ltd. LLC and Entergy Global Investments, Inc. The staff has reviewed these financial statements and concludes that these companies should be capable financially to meet their commitments to Entergy Nuclear FitzPatrick and ENO as specified in the application.

To ensure that these additional funds are available as might be necessary, the staff believes that the commitment stated in the application of lines of credit of up to \$70 million for FitzPatrick should be the subject of a condition of approval of the transfer of the operating license and a corresponding condition in the license itself, essentially as follows:

Entergy Nuclear FitzPatrick and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the \$70 million contingency commitment to provide funding for the FitzPatrick plant as represented in the application for approval of the transfer of the FitzPatrick License from the Power Authority of the State of New York to Entergy Nuclear FitzPatrick and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

ENO, the proposed operator of FitzPatrick, is not seeking any ownership interest in the facility. According to the application, Entergy Nuclear FitzPatrick, as the proposed owner of FitzPatrick, has committed to assume full financial responsibility for funding the safe operation of the plant. The application states that ENO will operate FitzPatrick at cost and Entergy Nuclear FitzPatrick will reimburse ENO for its costs of operation under the terms of an Operating Agreement (see draft agreement included as Enclosure 6 to the May 12, 2000 application). Since the NRC staff has determined above that Entergy Nuclear FitzPatrick is financially qualified under

10 CFR 50.33(f) to hold the license for the FitzPatrick plant, the staff concludes that ENO has satisfied applicable financial qualification requirements and that there is no problematical financial qualifications issue with regard to ENO.

#### 4.0 DECOMMISSIONING FUNDING ASSURANCE

The Commission has determined that decommissioning funding assurance is necessary to protect public health and safety. The applicants propose in the May 12, 2000, application, that the master decommissioning trust for FitzPatrick<sup>1</sup> continue to be held for the benefit of the Authority until FitzPatrick is decommissioned. The master decommissioning trust would continue to be held by the current trustee, The Bank of New York, on behalf of the Authority. The Authority also requests that it be removed as a named licensee from the FitzPatrick license at the time that the sale of FitzPatrick occurs. Thus, the Authority proposes to retain responsibilities for holding and disbursing decommissioning funds as a non-licensee that would normally be held by a licensee.

The applicants state that, although the Authority would continue to hold the decommissioning trust, "...the regulatory responsibility for the decommissioning of FitzPatrick... will always reside with Entergy Nuclear FitzPatrick." The application also states that, under the master decommissioning trust, the Authority's interest in the trust may be transferred only to the licensed owner of FitzPatrick responsible for decommissioning, and is not subject to the claims of creditors of the Authority. (See the Authority's response, dated June 13, 2000, to a staff request for additional information [Question 4].) Applicants further state that, pursuant to the Decommissioning Agreements attached to the Purchase and Sale Agreement for FitzPatrick, the Authority will retain the contractual obligation to decommission the plant. However, this obligation is limited to an amount equal to the lesser of the inflation-adjusted cost amount based on the formulas in 10 CFR 50.75(c) or the actual amount in the decommissioning fund at the time decommissioning commences. At the time decommissioning commences for the plant, the Authority would direct the trustee to disburse the funds from the trust to pay for decommissioning activities.<sup>2</sup>

The applicants have proffered several reasons why they believe that the Authority's continued holding of the decommissioning trust provides an adequate level of assurance, despite its not remaining a licensee. First, the applicants have agreed to amend the master decommissioning trust agreement covering FitzPatrick with the following provisions:

- (1) Use of assets in the trust, in the first instance, shall be limited to the expenses related to decommissioning of FitzPatrick as defined by the NRC in its regulations

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<sup>1</sup> The master decommissioning trust agreement covers both the IP3 and FitzPatrick plants, with separate sub-trusts covering each plant.

<sup>2</sup> The provisions in the various documents appended to the license transfer application relating to the buyer's and seller's respective responsibilities for decommissioning are complex. Based on a review of the provisions in their entirety, the staff concludes that their effect is to limit the Authority's responsibilities to holding and disbursing decommissioning trust funds with the apparent purpose of attempting to limit any adverse Federal income tax consequences to the decommissioning funds.

and issuances, and as provided in the FitzPatrick license and any amendments thereto.

- (2) No contribution to the trust that consists of property other than liquid assets shall be permitted.
- (3) Investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear Indian Point 3, Entergy Nuclear FitzPatrick, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.
- (4) No disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
- (5) The trust agreement shall not be modified in any material respect without the prior written consent of the Director of the Office of Nuclear Reactor Regulation.

Second, the applicants believe that The Bank of New York, as trustee, has fiduciary duties that require it to hold and expend the funds for the purpose of decommissioning FitzPatrick. These fiduciary duties would be further strengthened by the five additional conditions previously discussed. In addition, the Authority, as a political subdivision and corporate municipal instrumentality of New York, is required to ensure that the public interest of the State of New York in the safe and complete decommissioning of FitzPatrick is carried out.

Third, the applicants believe that the proposed funding mechanism provides assurance equivalent to the mechanisms described in 10 CFR 50.75(e)(1)(iii) because it is comparable to a parent-company guarantee, a third-party guarantee, or a surety. Applicants state, "Having a fully funded decommissioning trust fund provides at least as much financial assurance as relying upon a parent company or third party guarantor (even one meeting the NRC's financial tests) or the issuer of a surety bond, line of credit or letter of credit, to adhere to its commitments years in the future."

Finally, the applicants believe that their proposal would comply with 10 CFR 50.75(e)(1)(vi), which essentially allows other funding mechanisms that the NRC determines, upon review, to provide a level of assurance that is equivalent to the other stated mechanisms.

As indicated in the application, the decommissioning trust fund for FitzPatrick as of March 31, 2000, is \$336.6 million. The amount of the decommissioning trust fund meets the requirements of the "prepayment" decommissioning funding assurance mechanism in 10 CFR 50.75(e)(1)(i) using the generic formulas in 10 CFR 50.75(c). For FitzPatrick, the current amount required under 10 CFR 50.75(c) is approximately \$345 million, assuming that vendor services for low-level waste disposal are used, in accordance with NUREG-1307, Revision 8, "Report on Waste Burial Charges." In addition, pursuant to the "prepayment" assurance option, a licensee or an applicant is allowed to take a 2-percent credit in real dollar terms for future earnings on its decommissioning trust fund. The proposed transferee of FitzPatrick meets the requirements of

10 CFR 50.75 if it takes the 2-percent credit. The transferee would be responsible for decommissioning costs above those not covered by the initial deposits plus future earnings.

In this case, the applicants contemplate that a non-licensee may hold decommissioning funds throughout the term of the license and the decommissioning period. As described below, the staff has concluded that reasonable assurance will be provided by requiring certain additional modifications to the trust agreement and other conditions beyond those offered by the applicants. With the addition of such conditions, the staff believes that the requirements of 10 CFR 50.75(e)(1)(vi) will be met -- namely, an assurance mechanism that "provides, as determined by the NRC upon its evaluation of the specific circumstances of each licensee submittal, assurance of decommissioning funding equivalent to that provided by the mechanisms specified in paragraphs (e)(1)(i) through (v) of this section."

In some ways, a trust held by the Authority could provide more assurance than one held by an investor-owned utility. The Authority was initially formed to develop the hydroelectric and navigational resources of those portions of the Niagara and Saint Lawrence Rivers within New York State boundaries and, subsequently, to provide baseload electric generating capacity for the benefit of the residents of New York State. Although the Authority has decided to sell its nuclear plants, it will continue to serve in the capacity for which it was originally created. As provided under New York State law, the Authority is a "corporate municipal instrumentality" of New York State and is "a political subdivision of the state, exercising governmental and public powers, perpetual in duration." (Section 1000.1 of Chapter 519, Laws of New York, 1992.) In addition, although New York State does not explicitly guarantee the Authority's bonds and other financial issuances, New York State has pledged not to limit or alter the rights it has vested in the Authority until the Authority fully performs under the contracts to which it is a party.<sup>3</sup> In addition, the Authority generally has maintained a bond rating of AA or equivalent from major rating agencies. This is a strong rating that reduces the potential for long-term default on the decommissioning trust funds.

On the other hand, the Authority is proposing to hold the decommissioning trust at least until 2015, when the IP3 operating license expires. (The FitzPatrick license expires in 2014.) Although the staff is not aware of any specific plans on the part of Entergy Nuclear FitzPatrick, it

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<sup>3</sup> Section 1011.1 of Chapter 519, Laws of New York, 1992, states--

The state of New York does hereby pledge to and agree with the holders of any obligations issued under this title, and with those parties who may enter into contracts with the authority [NYPA] pursuant to the provisions in sub-paragraph five or six of section one thousand five above, that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority. The authority as agent for the state is authorized to include this pledge and undertaking for the state in such obligations or contracts.

is possible that, if a deferred dismantlement for decommissioning is chosen and if the FitzPatrick license is extended, the Authority could potentially hold the trust fund for 75 years even without considering license renewal. This fact increases uncertainty in a situation in which the NRC would not retain the same type of direct regulatory authority over the Authority that the NRC would have, if the Authority remained a licensee. In addition, although the proposal contains certain similarities to a third party guarantee, the Authority is not regulated or licensed as a surety company.

On balance, the staff believes that, given the specific factual situation involved in the proposed license transfer and the imposition of certain conditions in addition to and beyond those proposed in the application, the applicants' proposal will meet the standard for other assurance mechanisms as specified in 10 CFR 50.75(e)(1)(vi). These additional conditions include the Authority making the following two modifications to the decommissioning trust agreement no later than the date of the license transfer to the proposed transferees:

- (1) consistent with the November 3, 2000, supplement to the application, incorporate a provision that states that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements. The NRC shall not be a beneficiary of the trust or of any of the trust funds, unless required by law to be so for the sole purpose of enforcing the provisions or purpose of the trust agreement as set forth above.
- (2) revise Article VI to require that, notwithstanding the provision of Section 6.01(ii)(a) of the current trust agreement, the Authority may not terminate any fund established under the Master Trust except after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation or Director, Office of Nuclear Materials Safety and Safeguards, as appropriate. In the event of such request, the Authority shall, in addition to any other information, provide full information with respect to the intended disposition of any funds remaining in the trust.

In addition, to ensure compliance with the Commission's decommissioning requirements, the Authority has agreed in writing (supplement dated September 21, 2000 to the application) to the following two provisions (the first of which the staff will incorporate as a condition of approval of the license transfer):

- (1) The Authority waives any right to deny, contest or challenge the Commission's jurisdiction over the Authority with respect to the FitzPatrick plant to the extent that there may arise in the future any matter warranting action by the Commission to ensure compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust funds and retained by the Authority.
- (2) Upon the transfer of the FitzPatrick plant, and pursuant to Section 7 of the Decommissioning Agreements between Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear, Inc. (the Entergy Companies), and the Authority (Exhibit O-1 and O-2 to the Purchase and Sale Agreement), Entergy Nuclear FitzPatrick will

have the sole discretion to permanently cease operations of FitzPatrick. For purposes of compliance with NRC requirements, by operation of the transfer, the Entergy companies will have sole responsibility for decommissioning FitzPatrick, and the Authority's responsibility under Commission jurisdiction with respect to FitzPatrick will be limited solely to the holding and disbursement of funds for the decommissioning of the facility. The Entergy companies will have control over all physical decommissioning activities. The above waiver and description of the Authority's responsibility only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear FitzPatrick, LLC, or until the decommissioning of FitzPatrick has been completed in accordance with NRC regulations and guidance, whichever shall first occur.

The staff believes that there are also other considerations that, when considered with the above conditions, add to a finding of reasonable assurance. First, the fiduciary duties of the trustee, the fact that decommissioning is essentially prefunded, and the existence of certain similarities to a third-party guarantee provide additional assurance that necessary funds will remain available for decommissioning when needed. For example, were Entergy Nuclear FitzPatrick to secure a surety bond as a means of demonstrating decommissioning funding assurance, the surety would be based on a contractual agreement between Entergy Nuclear FitzPatrick and the surety company. (Although The Bank of New York, as trustee, is an additional party to the applicants' proposal that would not typically be present in a surety arrangement, the staff believes that modifications to the trust as described previously will enhance the assurance of the trust agreement and make such assurance reasonably equivalent to a surety bond.) However, unlike a surety company, in which the bond is based on a promise to pay at some future time if Entergy Nuclear FitzPatrick were to default, in this situation the money would already be set aside in trust. On the other hand, surety companies are regulated by the Federal and State governments. However, the Authority's size and financial strength as an "AA"- rated company is equivalent to surety companies that are on the U.S. Department of the Treasury's "Circular 570" and thus acceptable to the NRC. Thus, the applicants' proposal in many ways provides assurance equivalent to a surety bond.

The Authority's status as a political subdivision of New York State and New York's pledge not to limit or alter the rights of the Authority until the Authority's contractual obligations are satisfied also provides reasonable assurance that the contracts between the Authority and Entergy Nuclear FitzPatrick will remain in force. The Authority's status and New York's pledge offset the possible adverse impacts on assurance potentially resulting from the long time period during which the Authority may hold the trust.

Accordingly, the staff concludes that reasonable assurance of decommissioning funding will be provided if The Bank of New York continues to hold the decommissioning trust under the current management with the Authority, provided that the Order approving the license transfer for FitzPatrick contains essentially the following conditions, with those conditions that apply to the proposed licensees also being added as conforming license conditions:

- (1) For purposes of ensuring public health and safety, Entergy Nuclear FitzPatrick shall provide decommissioning funding assurance for FitzPatrick by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by the

Authority for FitzPatrick after the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick may be credited towards the amounts required under this paragraph.

- (2) If the assets of any decommissioning trust maintained by the Authority for FitzPatrick are retained in such trust following the transfer of the FitzPatrick license to Entergy Nuclear FitzPatrick and ENO instead of being transferred to any trust established by Entergy Nuclear FitzPatrick, the Authority shall maintain the assets as retained in such trust in accordance with the application for the transfer of the FitzPatrick license.
- (3) The Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, and remain subject to the Commission's jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters concerning compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund to Entergy Nuclear FitzPatrick or the decommissioning of FitzPatrick has been completed in accordance with NRC regulations and guidance, whichever occurs first.
- (4) Entergy Nuclear FitzPatrick shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the license for FitzPatrick and the requirements of the order approving the transfer, and consistent with this safety evaluation.
- (5) Entergy Nuclear FitzPatrick, or its successors or assigns, shall take no action that would adversely affect any contract between it and the Authority for the Authority's eventual payment of decommissioning funds from the trust.
- (6) Entergy Nuclear FitzPatrick, or its successors or assigns, shall inform the NRC within 30 days of any adverse developments with respect to the Authority's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning FitzPatrick.
- (7) The decommissioning trust agreement for FitzPatrick shall provide that:
  - a. The use of assets in the fund, in the first instance, shall be limited to the expenses related to decommissioning FitzPatrick as defined by the NRC in its regulations and issuances, and as provided in the FitzPatrick license and any amendments thereto.
  - b. No contribution to the fund that consists of property other than liquid assets shall be permitted.

- c. Investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear FitzPatrick, Entergy Nuclear IP3, LLC, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.
- d. No disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of the payment. In addition, no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.
- e. The trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.
- f. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a “prudent investor” standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations.
- g. The U.S. Nuclear Regulatory Commission may enforce the provisions or purpose of the trust agreement as discussed above.
- h. The Authority may not terminate any fund established under the Master Trust for FitzPatrick except after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate.

## 5.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the transfer application postdates the issuance of the operating license for FitzPatrick, no antitrust review is required or authorized.

## 6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the Atomic Energy Act prohibit the Commission from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” The Commission’s regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The May 12, 2000, application states that both Entergy Nuclear FitzPatrick, LLC, and ENO are newly formed companies, are Delaware corporations, have principal offices in White Plains, New York, and are indirect wholly owned subsidiaries of Entergy Corporation. Entergy Nuclear

FitzPatrick is wholly owned indirect subsidiary of Entergy Nuclear Holding Company #1 (under Entergy Nuclear New York Investment Company #2). ENO is a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. Entergy Corporation's stock will continue to be widely held and traded on the New York Stock Exchange.

The application gives the names of the principal officers and directors of Entergy Nuclear FitzPatrick and ENO and represents that all are citizens of the United States. The application also represents that neither Entergy Nuclear FitzPatrick nor ENO are owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, nor are they acting as agents or representatives of another entity. The NRC staff does not know or have reason to believe otherwise.

## 7.0 NUCLEAR INSURANCE AND INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect Entergy Nuclear FitzPatrick and ENO as the new owner and operator of FitzPatrick.

In accordance with the Price-Anderson Act, the new licensees will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. They will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that Entergy Nuclear FitzPatrick, the owner, will be able to satisfy applicable insurance requirements for itself and ENO.

Consistent with NRC practice, the staff will require Entergy Nuclear FitzPatrick and ENO to provide satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting the new licensees. Because the issuance of the amended license is directly tied to the consummation of the proposed transfer, the order approving the transfer will be conditioned essentially as follows:

Before the completion of the transfer of the facility, Entergy Nuclear FitzPatrick and ENO shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

## 8.0 TECHNICAL QUALIFICATIONS

According to the application, all employees within the Authority's Nuclear Generation Department, which includes the onsite operating organization, will become employees of ENO. The existing plant staff will remain technically qualified after the license transfer. The application states that all groups responsible for implementation of technical support for Operation of Fitzpatrick will be maintained by ENO as currently described in the Updated Final Safety Analysis Report (UFSAR) and Technical Specifications (TSs). These groups include those responsible for various functions such as maintenance, operations and engineering. The application proposes no change to the TSs concerning any matter related to plant operations of the FitzPatrick facility. The applicants further state that currently all plant departments (e.g.,

Operations, Maintenance, Chemistry, Radiation Protection, etc.) report to the Site Executive Officer, and with the purchase of FitzPatrick, and operation of it by ENO, this reporting relationship is to remain the same.

The July 14, 2000, submittal provided an organization chart and a description of part of the Entergy Corporation organization depicting the reporting and communication relationships ENO officers responsible for FitzPatrick will have within the Entergy Corporation corporate structure. This description of the reporting and communication relationships differs slightly from and supercedes the description provided in the May 12, 2000, submittal. The operational organization chart shows that the Site Executive Officer of the site reports to the Senior Vice President and Chief Operating Officer of ENO, who in turn reports to the President and Chief Executive Officer (CEO) of ENO. Upon closing of the sale, the President and CEO will also become the Chief Nuclear Officer (CNO) responsible for the safe and reliable operation of the ENO operated nuclear power plants and has no responsibility for ancillary businesses that would detract his attention from nuclear safety matters. Thus, clear management control and clear lines of authority exist at the corporate level and a corporate officer is clearly responsible for nuclear activities.

The October 26, 2000 submittal stated that the President, CEO and CNO of ENO is, in addition to being the CEO of ENO (IP3 and FitzPatrick), is also the CEO of Entergy Operations, Inc. (Waterford, River Bend, Grand Gulf and Arkansas Nuclear 1 and 2), Entergy Nuclear Generation Company (Pilgrim), and Entergy Nuclear, Inc. (Maine Yankee and Millstone Unit 1 decommissioning). As CEO of these companies, he is responsible for the safe and reliable operation of the nuclear power plants and has no responsibility for ancillary businesses that would detract his attention from nuclear safety matters. The application describes the CNO position as being, "... responsible for providing top level direction of all activities associated with the safe and reliable operation of nuclear sites ..." The resume of the individual to be the CNO provided by the applicants indicates technical and management qualifications far exceeding the highest level manager qualifications endorsed by Regulatory Guide 1.8.

The Senior Vice President and Chief Operating Officer, "... is responsible for the implementation of all activities associated with the safe and reliable operation of nuclear sites ..." The resume for that position also indicates qualifications exceeding the highest level manager qualifications endorsed by Regulatory Guide 1.8.

The application states that the responsibilities of the FitzPatrick Site Executive Officer include, "... direct responsibility for the day-to-day activities required for the safe, efficient and reliable operation of the nuclear facilities." The resume of the individual for this position indicates qualifications exceeding the highest level manager qualifications endorsed by Regulatory Guide 1.8.

The applicant's submittals adequately address the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable. The applicant has described the proposed organization and personnel qualifications for the management of, and means for providing technical support to the plant staff for the operation of FitzPatrick after the transfer of the facility operating license from the Authority to ENO. The management and technical support organization has been reviewed and the staff concludes that ENO will have an acceptable corporate organization and adequate resources to provide technical support for the safe operation of FitzPatrick under both normal and off-normal conditions after the license transfer. The staff has reviewed the operating

organization and concludes that it will continue to provide for the integrated management of operation and maintenance activities at the site after the license transfer. The staff concludes that the ENO management and technical support organizations and the operating organization proposed for FitzPatrick after the license transfer meet the relevant criteria and, therefore, are acceptable. Accordingly, the staff finds ENO is technically qualified to be the holder of the FitzPatrick license with respect to the authority to operate FitzPatrick.

## 9.0 CONFORMING AMENDMENTS

In connection with the application for license transfer, the Authority, Entergy Nuclear FitzPatrick and ENO requested a conforming amendment to the license, including the TSs, that would remove references to the Authority and replace them with references to Entergy Nuclear FitzPatrick or ENO, as appropriate. No physical or operating changes to FitzPatrick are requested. Supplemental information received that was not specifically referenced in the initial Federal Register notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

The changes to be made to the Operating License and TSs do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer that were identified and discussed earlier in this Safety Evaluation. The staff made modifications to the amendment as proposed to clarify the qualifications of the transferees and their authorizations stated in the Operating License. The Amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

### 9.1 Conclusion with Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

## 10.0 STATE CONSULTATION

In accordance with the Commission's regulations, the New York State official was notified of the proposed issuance of the amendment for FitzPatrick. The State official had no comments.

## 11.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

## 12.0 CONCLUSIONS

In view of the foregoing discussion, and based upon the information and representations contained in the application, the NRC staff concludes that with the appropriate conditions discussed above, Entergy Nuclear FitzPatrick and ENO are qualified to be the license holders for FitzPatrick to the extent requested, and that the transfer of the license to Entergy Nuclear FitzPatrick and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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