UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/22/00

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge:

Charles Bechhoefer,
Presiding Officer

In the Matter of POWER AUTHORITY OF THE STATE OF NEW YORK and ENTERGY NUCLEAR FITZPATRICK LLC, ENTERGY NUCLEAR INDIAN POINT 3 LLC, and ENTERGY NUCLEAR OPERATIONS, INC. (James A. FitzPatrick Nuclear Power Plant and Indian Point Nuclear Generating Unit No. 3)	Docket Nos. 50-333-LT and 50-286-LT (consolidated) ASLBP No. 01-785-02-LT December 22, 2000

MEMORANDUM AND ORDER
(CAN Motion for Schedule Change and Change of Hearing Location)

On December 11, 2000, the Citizens Awareness Network, Inc. [CAN], an intervenor in this license-transfer proceeding, filed a motion both to change the existing schedule in this proceeding and to change the location of the oral hearing. The schedule and hearing location had been established by the Commission in CLI-00-22, reiterated by the Presiding Officer in his Memorandum and Order (Filing Schedules and Procedures), dated November 30, 2000, LBP-00-32, and supplemented by the Presiding Officer's Memorandum and Order (Supplemental Filing Schedules and Procedures), dated December 5, 2000 and his Memorandum and Order (Ruling on Licensee's Motion for Adjustment of Schedule), dated December 13, 2000. On December 15, 2000, the Licensees (NYPA/ENTERGY COMPANIES) responded, supporting the suggested changes in schedule but objecting to the proposed change of hearing location. No other party or participant has responded.

1. Change in schedule. The Presiding Officer hereby adopts the proposed schedule, with two exceptions. First, in accepting the withdrawal of Cortlandt, and for reasons spelled out in the Order on this subject (LBP-00-34) issued today, there will be only one issue admitted by CLI-00-22 that remains to be litigated. Second, the date proposed by CAN for oral argument, February 19, 2001, represents a Federal holiday (Presidents Day). The Presiding Officer has conferred with parties' representatives concerning an appropriate oral hearing date and has ascertained a date for an oral hearing satisfactory to all parties and (in particular) their proposed witnesses. (The delay of the oral hearing to Tuesday, March 13, 2001, reflects the availability of one of the Licensees' proposed witnesses. CAN's pro se representative advised that he is not normally available on Wednesdays.)

As set forth by CAN, and modified as set forth above, the adjusted schedule consists of the following dates:

January 5, 2001 (11:59 p.m.): Submission by CAN of a revised financial qualifications issue. This date is premised upon the agreement between the Licensees and CAN representatives concerning protection of proprietary data and, as reported by the Licensees' representative by telephone to the Presiding Officer, receipt by CAN's representative on December 12, 2000, of documents including such proprietary data. (If CAN submits a revised financial qualuifications issue based on proprietary data, further schedules for filings on that issue will be established.)

January 12, 2001 (11:59 p.m.): Filing of written statements of position and written direct testimony (together with supporting affidavits) on the remaining issue admitted in CLI-00-22.

February 1, 2001 (11:59 p.m.):

1. Submission of written responses to direct testimony, and rebuttal testimony (with supporting affidavits) on remaining issue admitted by CLI-00-22.

2. Submission of proposed questions on written direct testimony on remaining issue admitted by CLI-00-22.

February 12, 2001 (11:59 p.m.): Submission of proposed questions directed to written rebuttal testimony.

March 13, 2001 (9:30 a.m.): Assuming all parties have not unanimously sought a hearing consisting of written comments, an oral hearing is hereby scheduled, at a location in Westchester County to be hereafter designated.

March 30, 2001 (11:59 p.m.): Filing by parties and governmental participants of post-hearing statements of position.

Under the foregoing schedule, the Presiding Officer would expect to certify the record to the Commission for decision during the week of April 2-6, 2001.

2. Hearing Location. By its December 11, 2000 motion, CAN also seeks to change the locale of the oral hearing, currently specified by CLI-00-22 as at the Commission's headquarters in Rockville, Maryland, to a location in Westchester County, New York. CAN states that a location in Westchester County would permit both members of the public and workers from the general area of at least the Indian Point-3 reactor to attend the non-proprietary portions of the hearing. CAN also cites the circumstance that a number of the intervening parties are governmental and municipal entities located near the Indian Point-3 reactor. Finally, CAN stresses that a hearing location in Westchester County would reduce the travel burden for its pro se representative and its witness, and on other parties and participants from New York State.

In its response opposing the change in location, filed December 15, 2000, the Licensees point out that at least two of the governmental and municipal entities referenced by CAN for its convenience argument--the Town of Cortlandt and the Hendrick Hudson School District--are withdrawing from the proceeding. (As referenced above, the Presiding Officer, in a separate Order issued today, has approved such withdrawal.) Further, the Licensees claim that a Westchester County hearing location would be less convenient for "one of CAN's counsel [not further identified, but for whom no Notice of Appearance has yet been filed]," for counsel and witnesses for the NRC, counsel for the Nuclear Generation Employees Association, counsel for the Licensees (whose office is in Washington, D.C.), the Commissioners, and for the Presiding

Officer. Finally, the Licensees observe that other potential hearing attendees, although not located near NRC Headquarters, are nonetheless significant distances from Westchester County--namely, the Executive Director for CAN, who lives in Shelburne Falls, MA; CAN's pro se representative who, although seeking the Westchester County location, resides in Syracuse, NY; one of the Association counsel, who also is located in Syracuse; and Entergy Company's other counsel, who reside in Jackson, MS and Plymouth, MA.

Other parties and participants--in particular, the Association and Westchester County--have expressed no opinion in response to CAN's motion to move the hearing location. They were, of course, authorized to respond if they elected to do so.

In considering an appropriate hearing location, NRC rules provide--albeit in the context of reactor construction permit proceedings--that "it is the Commission's policy and practice to begin the evidentiary hearing in the vicinity of the site of the proposed facility." 10 C.F.R. Part 2, Appendix A(I)(a). Beyond that, "due regard shall be had for the convenience and necessity of the parties, . . . , or the representatives of such persons, as well as of the [Presiding Officer]." 10 C.F.R. Part 2, Appendix A(1)(b). Although these proceedings are not technically subject to these guidelines, the principles expressed therein may be appropriate.

It appears to the Presiding Officer that the "convenience and necessity of the parties" or their representatives would balance the equities in favor of the proposed Westchester County location. The representative and witness for CAN, apparently the party with the least resources available to it, could drive to a location in Westchester County (e.g., White Plains, NY), and certain of its members could also attend the hearing (although not permitted to participate, unless designated by CAN as a witness). Except for the Licensees' lead counsel, the NRC Staff participants, and the Presiding Officer, a location in Westchester County would appear to be as convenient as Rockville, Maryland. Balancing these considerations, particularly the status of CAN as a pro se intervenor, the Presiding Officer hereby selects a location in

Westchester County, NY, as the site of the oral hearing, beginning at 9:30 a.m. on Tuesday, March 13, 2001. The precise location will be announced in a later Order.

* * *

For the reasons set forth above, it is, this 22nd day of December, 2000:

ORDERED:

1. The Motion of CAN for a modified hearing schedule is, to the extent indicated above, granted. The schedule for filings in this proceeding is modified as set forth above.

2. To the extent all parties have not unanimously sought a hearing consisting of written comments, an oral hearing is hereby scheduled for Tuesday, March 13, 2001, beginning at 9:30 a.m., at a location in Westester County, NY to be designated in a later Order.

/RA/

_____
Charles Bechhoefer, Presiding Officer
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 22, 2000

[Copies of this Memorandum and Order have been e-mailed or telefaxed this day to counsel for, or representatives of, each of the parties and participants.]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (CAN MOTION FOR SCHEDULE CHANGE AND CHANGE OF HEARING LOCATION) have been served upon the persons listed below by electronic mail. Each recipient will also receive a paper copy of this document.

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Docket Nos. 50-333-LT and 50-286-LT
LB MEMORANDUM AND ORDER
(CAN MOTION FOR SCHEDULE CHANGE
AND CHANGE OF HEARING LOCATION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of December 2000