

RAS 2560

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 12/28/00

SERVED 12/29/00

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 28, 2000

MEMORANDUM AND ORDER
(Schedule for Filing Proposed Contention based on Proprietary Data)

The Presiding Officer's Memorandum and Order (CAN Motion for Schedule Change and Change of Hearing Location), dated December 22, 2000, providing that CAN could file a revised contention based on proprietary information by January 5, 2001 (11:59 p.m.), was based on CAN's having had access to the proprietary data since December 12 or 13, 2000. By motion dated December 27, 2000, CAN advises that on December 13, it began receiving some unredacted information but that it did not receive all of the required materials, and it seeks additional time within which to submit its revised contention.

On December 28, 2000, the Licensees responded to CAN's motion, opposing the proposed extension from January 5, 2001 to January 12, 2001, of the time within which CAN might file a revised contention. The Licensees point out that the proprietary information it was required to make available to CAN was defined by CLI-00-22 as "proprietary information redacted from the publicly available versions of the license transfer applications." It claims,

however, that with one exception, the information which CAN claims was delayed does not fall within the scope of the information to which it was entitled. Thus, the Licensees claim that the availability or unavailability of such information cannot support the extension request.

To address each of the categories of information requested, the first, the proprietary version of the Staff's SERs for the two license transfer applications, clearly was not included as information to which CAN is entitled under CLI-00-22. Indeed, the Presiding Officer suggested that the Licensees include it among the documents made available, in order to relieve the NRC Staff of the procedural steps it would have to follow to permit release of proprietary information. Moreover, as the Licensees observe, the SER contains no information that was not included in the license transfer applications themselves.

The second category of information, the SEC Form 10Ks, which were Enclosure 2 to the license transfer applications, also were not within the scope of information covered by CLI-00-22, according to the Licensees, because they are not proprietary. They are publicly available, non-proprietary information and accordingly cannot support the requested extension of time.

The third category of information, "updated financial information" that "CAN assumes that the NRC has received," does not exist, according to the Licensees. "The Entergy Companies have provided no additional information on financial qualifications to the NRC since the license transfer applications were approved." The Licensees add that, to the extent CAN is seeking additional information that was not part of the NRC review process, CAN is seeking discovery, which does not exist in 10 C.F.R. Part 2, Subpart M proceedings such as this one. This information also cannot support the requested extension, according to the Licensees.

The final item of information on which CAN relies for its request is "Enclosure 10 (Projected Balance Sheet)" to the Indian Point 3 license transfer application. The Licensees concede that CAN may not have received this single page of proprietary information, applicable

only to the Indian Point 3 facility, prior to December 27, 2000. They thus offer no objection to a “modest extension of time for a contention based solely on this information” (emphasis in original).

It appears to the Presiding Officer that the proper formulation of proprietary issues by CAN might well require consideration of both reactors’ projected balance sheets together, and that the information in the Indian Point 3 balance sheet might bear on contentions involving both facilities. Further, CAN could easily have been confused concerning the 10K reports, inasmuch as they were referenced in both applications under consideration here (albeit not as being proprietary in themselves). Beyond that, the Licensees’ claims with respect to the SERs and the updated financial information appear persuasive.

Taking into account all these considerations, the Presiding Officer hereby extends the time for filing revised financial qualifications contention(s) based on proprietary information to Wednesday, January 10, 2001 (11:59 p.m.). If revised contention(s) are submitted, the Licensees may respond as to their sufficiency by January 16, 2001 (11:59 p.m.). If one or more contention is accepted, the Presiding Officer will establish various filing dates for such contention(s).

IT IS SO ORDERED.

/RA/

Charles Bechhoefer, Presiding Officer
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 28, 2000

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

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Unit No. 3))

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SCHEDULE FOR FILING PROPOSED CONTENTION BASED ON PROPRIETARY DATA) 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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LB MEMORANDUM AND ORDER
(SCHEDULE FOR FILING PROPOSED
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[Original signed by Adria T. Byrdsong]

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Dated at Rockville, Maryland,
this 29th day of December 2000