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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Presiding Officer

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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

**NYPA/ENTERGY COMPANIES' REPLY TO "CITIZENS
AWARENESS NETWORK, INC. RESPONSE" . . . TO
SUBSEQUENT REQUEST BY APPLICANTS TO DISMISS
ISSUES #1 ACCEPTED BY COMMISSION ORDER CLI-00-22"**

On December 15, 2000, the Town of Cortlandt, New York, and the Hendrick Hudson School District (collectively "Cortlandt") filed with the Presiding Officer a Notice of Withdrawal announcing that Cortlandt voluntarily and with prejudice withdrew from this proceeding. By the Notice, Cortlandt also withdrew its Request for Hearing and Petition for Leave to Intervene and withdrew the issues that it raised in this proceeding, including Issue #1 admitted by the Commission's November 27, 2000, Memorandum and Order, CLI-00-22.

Relying on settled NRC case law, the Power Authority of the State of New York, Entergy FitzPatrick, LLC, Entergy Indian Point 3, LLC, and Entergy Operations, Inc. (collectively "NYPA/Entergy Companies") in a pleading filed on December 18, 2000, requested that the

Presiding Officer dismiss Issue #1. Subsequently the same day, Citizens Awareness Network, Inc. (“CAN”) responded in opposition to the NYPA/Entergy Companies’ filing.

The primary argument asserted in the CAN filing is that the Commission’s Memorandum and Order “clearly directed all parties to make presentation on both the issues admitted”. CAN interprets CLI-00-22 to mean that an admitted issue must remain to be litigated even though the intervenor that raised the issue withdraws from the proceeding. There is simply nothing in the language of the Commission’s Memorandum and Order quoted by CAN – or elsewhere in that decision – that suggests such a result.

The language of CLI-00-22 relied upon by CAN merely instructs the parties to “organize their presentations around the following two issues” and requires that “[t]he parties’ filings and arguments must be confined to the contours of these two issues.” Whether or not these quotations contemplate Cortlandt (had it remained a party) filing testimony on CAN’s issue or CAN filing testimony on Cortlandt’s issue, it simply cannot be stretched to the conclusion that Cortlandt’s Issue #1 remains alive once Cortlandt withdraws from the proceeding. Nowhere in CAN’s quoted language or elsewhere in CLI-00-22 does the Commission deal with the impact of an intervenor’s withdrawal on the admitted issues. Nor would such a discussion have been expected, especially in view of the well-established NRC caselaw on the subject. Had the Commission intended to change its established caselaw on the disposition of a withdrawing party’s issue (as discussed in NYPA/Entergy Companies’ December 15 pleading), one would certainly have expected the Commission to announce such a change.

There is nothing in CAN’s July 31, 2000 Request for Hearing and Petition to Intervene that could be read as a basis for CAN’s adopting Cortlandt’s Issue #1. There is no mention of

Entergy Indian Point 3 liability for financial obligations of Entergy FitzPatrick financially jeopardizing Indian Point 3 in the event of an accident there or at FitzPatrick. Nor does CAN make mention of the joint and several liability which Cortlandt had alleged was imposed by the Facilities Payment Note and the Fuel Payment Note, which in the Commission's words is the "precise contour" of Issue #1. See CLI-00-22, at 18-20, 50. Finally, CAN has made no attempt to justify its adoption of Issue #1 as a late-filed contention.

The South Texas Appeal Board's rationale for dismissing the contentions of a withdrawing intervenor -- despite the desire of other, non-sponsoring intervenors to litigate them -- provides a compelling reason for the Presiding Officer to dismiss Issue #1. As the Appeal Board stated:

This approach is neither unfair to remaining intervenors nor inconsistent with the public interest. Intervenors, after all, choose the issues they wish to advance. To be sure, . . . an intervenor may ordinarily conduct additional cross-examination and submit proposed factual and legal findings on contentions sponsored by others. But that does not elevate the intervenor's status to that of a co-sponsor of the contentions. Because contentions can be withdrawn or (as in the instant case) settled through negotiation, a non-sponsoring party assumes at least some risk that the pursuit of it interests may not be wholly within its control. Indeed, an approach that accorded a remaining intervenor more or less an equal right to pursue contentions earlier put forth by another party would frustrate the Commission's policy of encouraging legitimate efforts by applicants and intervenors to reach good faith, mutually satisfactory resolution of issues without the need for litigation.

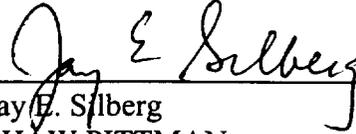
Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 383 (1985) (emphasis added; footnotes omitted).

Here, the other intervenors chose the issues they wished to advance when they filed their petitions to intervene. Thus they should be left to litigate only those issues now. Moreover, allowing CAN to litigate Cortlandt's issues would directly frustrate the Commission's policy of

encouraging settlement. Therefore, the issues sponsored by Cortlandt, including Issue #1, must be dismissed.

December 20, 2000

Respectfully submitted,



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Plant and Indian Point Nuclear)	
Generating Unit No. 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NYPA/Entergy Companies' Reply To "Citizens Awareness Network, Inc. Response . . . To Subsequent Request By Applicants To Dismiss Issues #1 Accepted By Commission Order CLI-00-22" were served on the persons listed below by electronic mail, with conforming copies by U.S. mail, first class, postage prepaid, this 20th day of December, 2000.

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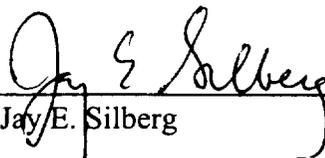
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