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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

OFFICE OF SECRETARY
RULINGS AND
ADJUDICATIONS STAFF

Before the Presiding Officer

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' RESPONSE TO
NOTICE OF WITHDRAWAL BY TOWN OF CORTLANDT,
NEW YORK, AND HENDRICK HUDSON SCHOOL DISTRICT**

In its Memorandum and Order dated November 27, 2000, CLI-22-00, the Nuclear Regulatory Commission admitted the Town of Cortlandt, New York, and the Hendrick Hudson School District (collectively "Cortlandt") as parties in this proceeding. In doing so, the Commission determined that Cortlandt's Request for Hearing and Petition for Leave to Intervene had demonstrated Cortlandt's standing with respect to the Indian Point 3 license application (CLI-22-00, at sec. IV.A.3) and that one of the issues set forth by Cortlandt in its pleadings, dealing with Entergy Indian Point 3, LLC's liability for certain financial obligations of Entergy FitzPatrick, LLC, was admissible (CLI-22-00, at sec. V.A).

On December 15, 2000, Cortlandt filed with the Presiding Officer a Notice of Withdrawal, voluntarily and with prejudice withdrawing its Request of Hearing and Petition for Leave to Intervene. The Notice of Withdrawal also withdrew the issues raised by Cortlandt in this proceeding, including Issue 1 admitted by CLI-22-00 concerning the liability of Entergy Indian Point 3, LLC for certain financial obligations of Entergy Nuclear FitzPatrick, LLC.

The Power Authority of the State of New York and Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc. (collectively “NYPA/Entergy Companies”) request that the Presiding Officer promptly accept and approve Cortlandt’s withdrawal and that all the issues raised by Cortlandt in this proceeding, and particularly Issue 1 as set forth in CLI-00-22, should be promptly dismissed.

The withdrawal of an intervenor in an NRC proceeding causes the withdrawing party’s contentions to be removed from litigation. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, 382 (1985). Issues based upon the contentions of the withdrawing party are likewise dismissed. Public Serv. Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-90-12, 31 NRC 427, 431 (1990). To this end, it is well recognized that acceptance of contentions for litigation in a proceeding does not convert them into cognizable issues for litigation absent their sponsoring intervenor. South Texas, supra at 21 NRC at 383.

Cortlandt has voluntarily and with prejudice withdrawn from this proceeding and has withdrawn its Request for Hearing and Petition for Leave to Intervene and its issues filed in this proceeding. See Notice of Withdrawal. The Board should promptly accept and approve the Notice of Withdrawal as requested by Cortlandt. See Sacramento Municipal Utility District

(Rancho Seco Nuclear Generating Station), LBP-94-23, 40 NRC 81, 82 (1994). Additionally, allowing Cortlandt to withdraw and to dismiss its issues is fully consistent with the Commission's policy of encouraging parties to resolve matters among themselves in that Cortlandt's Notice of Withdrawal follows an agreement between Cortlandt and the Entergy Companies addressing its concerns with respect to the proceeding. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 19 (1998). It is well established under NRC precedent that when an intervenor withdraws from a proceeding, its contentions are withdrawn as well:

Where there is more than one intervenor in a case, the withdrawal of one . . . serve[s] to remove the withdrawing party's contentions from litigation. The Commission has made it clear, in this regard, that the mere acceptance of contentions at the threshold stage does not turn them into cognizable issues for litigation independent of their sponsoring intervenor.

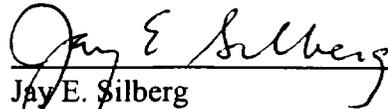
South Texas, supra at 21 NRC 382-83 (footnotes omitted).

In view of the expedited schedule established for this proceeding (even if extended as requested by the December 11, 2000 motion filed by Citizens Awareness Network, Inc.), it is crucial that the Presiding Officer promptly accept and approve Cortlandt's withdrawal and promptly dismiss Cortlandt's issues, particularly Issue 1 as set forth in CLI-22-00. Otherwise,

NYPA/Entergy Companies will needlessly incur the burden in preparing for an issue which should no longer be a part of this proceeding.

December 18, 2000

Respectfully submitted,



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Generating Unit No. 3))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NYPA/Entergy Companies' Response to Notice of Withdrawal by Town of Cortlandt, New York and Hendrick Hudson School District" were served on the persons listed below by electronic mail, with conforming copies by U.S. mail, first class, postage prepaid, this 18th day of December, 2000.

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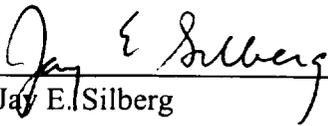
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