

DOCKETED
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December 28, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Presiding Officer

OFFICE OF SECRETARY
RULEMAKINGS 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' ANSWER TO
CITIZENS AWARENESS NETWORK, INC.'S REQUEST
FOR TIME FOR SUBMISSION OF REVISED CONTENTION**

On December 27, 2000, Citizens Awareness Network, Inc. ("CAN") filed a "Request for Time for Submission of Revised Contention" ("CAN Request") seeking to extend the deadline from January 5, 2001 to January 12, 2001 for the submission of a contention based upon the proprietary financial information that the Commission's November 27, 2000, Memorandum and Order, CLI-00-22, directed be made available to CAN. 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") respectfully submit this answer in opposition to CAN's request.

CAN bases its request on alleged delays in receiving "all of the required materials" which CLI-00-22 required that the Entergy Companies make available to it. CAN Request at 1. CAN

correctly describes the scope of the proprietary information which CLI-00-22 directed be made available – “[CLI-00-22] required the Entergy companies to make the proprietary information redacted from the publicly available versions of the license transfer applications available to CAN, subject to a Protective Agreement.” *Id.* However, with one exception discussed below, the information which CAN claims was delayed does not fall with the scope of the information to which it was entitled, *i.e.*, “the proprietary information redacted from the publicly available versions of the license transfer applications.” Therefore, the availability or unavailability of such information cannot support CAN’s extension request.

The first category of information which CAN claims it was delayed in receiving were the NRC Staff’s Safety Evaluations for the two license transfer applications. CAN Request at 1. These two documents, which CAN acknowledges have now been received, are clearly not “information redacted from the publicly available versions of the license transfer applications”. Obviously, the Staff’s Safety Evaluations were not part of the license transfer applications. Furthermore, the Safety Evaluations contain no information that was not included in the license transfer applications themselves. The proprietary information in the Safety Evaluations is taken directly and verbatim from the proprietary information in the license transfer applications. CAN makes no claim that an extension of time is justified by the timing of its receipt of that information as it was presented in the applications themselves. In addition, CAN never requested that the Entergy Companies provide it with copies of the non-redacted Safety Evaluations. That request came instead from the Presiding Officer. For these reasons, any delay in CAN’s receipt of the Safety Evaluations cannot support an extension of time.

The second category of information relied upon by CAN for its requested extension are the SEC Form 10K’s, which were Enclosure 2 to the license transfer applications. These

documents also fall outside the scope of proprietary information that the Commission directed NYPA/Entergy Companies to make available to CAN. The most obvious reason why the 10 K's cannot support the extension of time is that these documents are not proprietary. Since the 10 K's were not proprietary, they were obviously outside the scope the directive of CLI-00-22. Rather, they are publicly available, non-proprietary information that is readily available from a variety of public sources, including the Securities and Exchange Commission. While we have agreed to assist CAN in accessing these documents, the fact is CAN on its own could have obtained these documents at any time during the many months since the license transfer applications were filed. Its failure to do so in a timely manner cannot now be used as an excuse for more time.

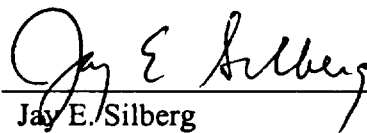
The third category of information which CAN alleges justifies an extension of time is "updated financial information" that "CAN assumes that the NRC has received". This asserted information cannot justify an extension since, to the knowledge of the Entergy Companies, no such information exists. The Entergy Companies have provided no additional information on financial qualifications to the NRC since the license transfer applications were approved. Nor is there any requirement to do so. To the extent that CAN is seeking additional information that was not part of the NRC review process for the license transfers, CAN is seeking discovery. The short answer to this request is that Subpart M to 10 CFR Part 2 includes no provisions for discovery. Indeed, the Statement of Considerations accompanying the promulgation of Subpart M explicitly states that "there are no provisions for formal discovery." 63 Fed. Reg. 66729 (1998). Section 2.1317 explicitly states that the hearing docket "will constitute the only discovery in proceedings under this subpart." CAN's attempt to force the Entergy Companies to update all the financial information previously provided to the Commission is clearly an attempt

to circumvent the "no formal discovery" rule established by the Commission for Subpart M. Such an attempt cannot support the requested extension of time.

The final item of information on which CAN relies for its requested extension is Enclosure 10 (Projected Balance Sheet) to the Indian Point 3 license transfer application. CAN acknowledges, at least implicitly, that it received Enclosure 10 to the FitzPatrick license transfer application. Since it appears that, prior to December 27, CAN may not have received this single page of proprietary information applicable only to Indian Point 3, NYPA/Entergy Companies would not object to a modest extension of time for a contention based *solely* on this information. However, given the limited amount of information on this one page, and its application only to the Indian Point 3 license transfer application, we respectfully submit that the seven day requested extension sought by CAN for *any* financial qualifications contention is not justified.

December 28, 2000

Respectfully submitted,



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(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 NYPA/Entergy Companies' Answer to Citizens Awareness Network, Inc.'s Request for Time for Submission of Revised Contention, were served on the persons listed below by electronic mail, with conforming copies by U.S. mail, first class, postage prepaid, this 28th day of December, 2000.

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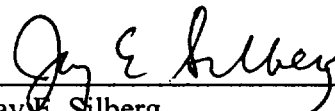
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