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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

January 12, 2001

Administrative Judge Charles Bechhoefer
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Docket Nos. 50-333-LT and 50-286-LT (consolidated) -- 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)

Dear Judge Bechhoefer,

Enclosed for filing is the Citizens Awareness Network, Inc.'s Written Statement on Issue #2 admitted for hearing by Commission Memorandum & Order CLI-00-22, issued November 27, 2000.

Sincerely,

Timothy L. Judson
Citizens Awareness Network, Inc.

Cc: Office of the Secretary;
attached service list

Template = SECY-037

SECY-02

THE CITIZENS AWARENESS NETWORK

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

January 12, 2001

THE CITIZENS AWARENESS NETWORK, INC. STATEMENT ON ISSUE #2 ADMITTED FOR HEARING BY COMMISSION ORDER CLI-00-22, NOVEMBER 27, 2000.

On May 12, 2000, the Power Authority of the State of New York ["NYPA"], Entergy Nuclear Indian Point, LLC ["ENIP"], Entergy Nuclear FitzPatrick, LLC ["ENF"], and Entergy Nuclear Operations, Inc. ["ENO" or collectively, "the Entergy companies"; with NYPA, "the Applicants"] submitted applications to transfer the operating licenses for the Indian Point Unit 3 and James A. FitzPatrick nuclear power reactors. On July 31, 2000, the Citizens Awareness Network, Inc. ["CAN"] submitted a Request for Hearing on the applications which described CAN's concerns that the proposed transfer would not offer reasonable assurance that public and worker health and safety would be protected. By Memorandum and Order (CLI-00-22, November 27, 2000) ["M&O"], the Nuclear Regulatory Commission granted CAN standing and admitted certain CAN contentions for hearing. Specifically, CAN was invited to present the case that the proposed transfer, which would leave NYPA with certain responsibilities for decommissioning and site remediation, would negate the Commission's regulatory authority to ensure that NYPA satisfies NRC requirements for protecting the public health and safety. The

Commission also invited parties, on the basis of the Nuclear Generation Employees Association ["NGEA"] admitted contention, to address whether the arrangement for holding the Decommissioning Trust is legal and satisfies regulatory requirements. CAN hereby presents its statements on these issues for hearing, including its responses to the NRC Staff's Safety Evaluation Reports on the applications.

Background: Contentions Admitted for Hearing

In its July 31 hearing request, CAN argued that the decommissioning arrangements set forth in the sale agreement and license transfer applications rely on a system of determining responsibility for decommissioning and site remediation that is unprecedented, creating inventories of orphaned radioactive waste offsite under conditions in which NRC has relinquished authority to enforce regulations attendant to radioactive materials. These arrangements are occasioned by two concerns:

(1) uncertainties and unresolved questions regarding the tax status of the decommissioning fund; and

(2) Entergy's unwillingness to accept responsibility for certain aspects of decommissioning and remediation, which are to be retained by NYPA.

Entergy and NYPA are attempting to create a dangerous precedent. NYPA has agreed to retain the decommissioning trust fund (pending a favorable IRS ruling on its tax status) and to make payments to the Entergy companies for NRC-approved decommissioning activities. However, in its hearing request, NGEA argued that this arrangement does not satisfy NRC requirements for

decommissioning funding assurance, per 10 CFR § 50.75; thus, the Entergy companies would not be eligible to own and operate IP3 and FitzPatrick. The Commission's M&O admitted this issue as a genuine dispute of law and fact, as well as CAN's related concern that, following the license transfer, NYPA would not have access to the decommissioning fund to pay for its own remediation activities. More specifically, CAN's second concern was that, because NYPA would no longer be licensed by the NRC following the transfer, the Commission would lose the ability to take enforcement action against NYPA to ensure compliance with its regulations. CAN furthermore argued that, without being licensed to conduct decommissioning activities, NYPA would lose the ability to access the fund,[1] thereby, raising the question of whether NYPA can provide financial assurance of adequate funding for its decommissioning and remediation responsibilities. CAN's Reply Brief at 14.

NRC Staff's Safety Evaluation Report and Order Approving the License Transfer Applications

NRC Staff completed safety evaluations of the license transfer applications ["SERs"], dated November 9, 2000. In the SERs, the staff recommended stipulations for the decommissioning fund arrangements proposed

[1] The Master Decommissioning Trust Agreement details that "The exclusive purpose of this Master Trust is to acumulate and hold funds for the contemplated Decommissioning of the [FitzPatrick and Indian Point 3] Units as to expend the funds for that purpose." *See* Master Decommissioning Trust Agreement *at page 6.* "Decommissioning" is defined in the Trust Agreement as "the decommissioning of a nuclear generating Unit from service in accordance with Applicable Law and ... shall consist of the removal (as a facility) of a nuclear generating unit safely from service and the reduction of residual radioactivity at the site of such a unit to a level that permits the release of the property for unrestricted use and **termination of the NRC license relating to each unit**." *Id. at pages 4-5.*

in the applications to satisfy NRC financial assurance requirements by meeting the standard set forth in 10 CFR § 50.75(e)(1)(vi). The staff also set conditions for approval of the applications which, if adopted, would address financial uncertainties with regard to the Applicants' joint and several responsibilities with regard to decommissioning. We do not believe that these stipulations satisfy NRC regulatory requirements.

Specifically, 10 CFR § 50.75(e)(1)(vi) states that licensees may demonstrate financial assurance by way of "Any other mechanism, or combination of mechanisms, that provides, as determined by the NRC upon its evaluation of the specific circumstances of each licensee submittal, assurance of decommissioning funding equivalent to that provided by the mechanisms specified in paragraphs (e)(1)(i) through (v) of this section." Staff reasons that the arrangement is similar to the "prepayment" mechanism described paragraph (i) because the fund (at its current level) can be expected to grow over time to meet the NRC's minimum funding requirement. Staff also reasons that the arrangements are similar to the surety mechanisms described in paragraph (iii) because of NYPA's historically strong bond ratings and a commitment by New York State not to disband or reorganize NYPA without ensuring that all of the agency's contractual obligations are satisfied.

Staff also reasons, on this point, that because NYPA has a mandate "to ensure that the public interest of the State of New York in the safe and complete decommissioning of FitzPatrick [and IP3] is carried out," that constitutes an additional degree of surety *See SERs at page 9.* However, CAN does not

believe that this consideration is relevant or applicable. The Commission's rules contain no provision for the municipal status of a licensee offering assurance of the licensee's commitment to satisfy Commission requirements. Neither does the municipal status of NYPA answer the problem of NRC authority over a non-licensed entity. Furthermore, NYPA's documented record of mishandling and illegal dumping of radioactive materials in local communities,[2] leading to potentially hazardous levels of off-site contamination, demonstrates no guarantee that NYPA could be trusted to fulfill its obligations without enforcement by the NRC, even if NYPA's municipal status were relevant.

Applicants' Decommissioning Fund Arrangements Do Not Satisfy NRC Rules and Requlations for Financial Assurance of Decommissioning Funding

CAN submits that the arrangement described in the license transfer applications satisfies neither of the alternatives described in the SER. Paragraph (i) is not satisfied because (1) the decommissioning fund is not yet fully funded and (2) is not being transferred to the Entergy companies. The NRC Staff notes that the decommissioning trust can be considered to be fully funded according to formulas set forth in 10 CFR § 50.75(c), which accounts for annual rates of escalation for decommissioning costs, and 50.75(e)(1)(i), which allows licensees to rely on a 2-percent rate of return on investment. *See* SERs *at 9*. However, according to a strict interpretation of 10 CFR § 50.75(e)(1)(i), the Entergy companies cannot be said to have "prepaid" the cost of decommissioning since the fund is neither in their possession nor has it accumulated to the level required

[2] *See* CAN Request for Hearing *at page 20 and Exhibits 6, 7, and 8.*

by NRC for decommissioning. The arrangement approximates the requirements of 50.75(e)(1)(i), but the Staff acknowledges that there are other features of the arrangement that are dissimilar, including the fact that NYPA "could potentially hold the trust fund for 75 years without even considering license renewal. This fact increases uncertainty in a situation in which the NRC would not retain the same type of direct regulatory authority over the Authority that the NRC would have, if the Authority remained a licensee." *Id. at 10-11.* CAN believes that the NRC's regulatory authority over the holder of the decommissioning fund is a basic requirement of 50.75(e)(1)(i) for financial assurance.

Similarly, 10 CFR § 50.75(e)(1)(iii) is not satisfied because (1) NYPA is not regulated or licensed as a surety company, (2) NYPA is not a parent company of the Entergy applicants, and (3) NYPA is not an appropriate State or Federal agency.[3] The NRC Staff reasons that, although NYPA is not a surety company, NYPA's retention and administration of the fund can be regarded as offering a similar level of financial assurance. The SERs refer to NYPA's superior bond ratings and legislation preventing New York State from dissolving or restructuring NYPA without first ensuring that NYPA's contractual obligations are fulfilled. As with 50.75(e)(1)(i) above, the similarities Staff describes are also paired with significant dissimilarities. Staff acknowledges, for instance, that "New

[3] It should be noted that 10 CFR § 50.75(e)(1)(iii) does not set a standard defining the appropriateness of a State or Federal agency. However, one must assume that it would be an agency like the NRC, the Environmental Protection Agency, or the NYS Department of Environmental Conservation, which are mandated to protect the public health and the environment. NYPA, by contrast, has no such mandate, and in fact has undertaken to divest itself of responsibility to NRC regulations by requesting that its name be stricken from the license following approval of the applications.

York State does not explicitly guarantee the Authority's bonds and other financial issuances" (SERs at 10); in fact, the legislation cited in the SER merely states that NYS "will not limit or alter the rights ... invested in the authority" until NYPA's obligations are fully performed and completed. The fact that the future ratings of NYPA's bonds rest on the Authority's participation in an increasingly volatile and competitive energy market is far from the level of assurance offered by the comparatively stable and conservative strategy of a licensed surety company.

July 2, 1998, the NRC Staff issued SECY-1998-164, "Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors." Attached to SECY-1998-164 was Staff's regulatory analysis on implementation of the rule (Attachment 5). The applicable section of the analysis in this case, § 3.2.4, addresses the "Availability and Security of Financial Assurance Mechnisms to Supplement or Replace External Sinking Funds." Although § 3.2.4 specifically addresses the options referred to in the Staff's SER for alternative mechanisms under 10 CFR § 50.75(e)(1)(vi), nothing in § 3.2.4 contemplates the possibility of a decommissioning trust fund being held by another company or entity that is not a parent or affiliated company. Specifically, with regard to the surety or insurance options, § 3.2.4 only contemplates separate or "captive" insurers licensed as such. Furthermore, with regard to entities issuing surety bonds or letters of credit for decommissioning, the analysis notes that "the providers of financial mechanisms such as surety bonds and letters of credit have frequently required collateral for a portion or the full amount of the mechanism, and there is no reason to expect that they will relax this

requirement for mechanisms assuring the very large decommissioning costs of nuclear generating facilities." *See SECY-1998-164 at Attachment 5 § 3.2.4.*

Also, with regard to the parent company guarantee alternative, Staff's analysis notes that even "a parent company guarantee or a self-guarantee through passing a financial test" would still "pose a number of potential issues." *Id.* Of particular relevance would be the willingness of a company that has spun off or sold its nuclear facilities to another company or subsidiary to enter into such an arrangement:

> A utility that has spun off its nuclear power reactors into separately incorporated companies might be reluctant to issue a guarantee for decommissioning those plants. One of the effects of creating a generating subsidiary is to shield the transmission and distribution components and/or the owner of the corporate group from direct liability for the generating subsidiary." *Id.*

Under SECY-1998-164, the Staff's evaluation clearly implies that applicants who wanted to use the parent company guarantee method to satisfy financial assurance requirements would have to demonstrate an extremely high standard. In this light, Staff's evaluation in the SERs is inexplicably inconsistent with the evaluation in SECY-1998-164. Clearly, NYPA has decided to divest itself of its nuclear assets – while retaining other generation facilities and planning to construct new power plants[4] – because the risks or liabilities of continued ownership outweigh the potential benefits. Furthermore, NYPA is not providing a decommissioning surety or guarantee; NYPA is simply agreeing to hold onto and

[4] *See CAN Revised Contention, Exhibit #5 "New York Control Area Proposed Interconnections Map and Key"*

make payments from the decommissioning fund. Neither is NYPA a parent company or affiliate of the Entergy applicants.

Therefor, given the regulatory uncertainties involving an entity that actually has a corporate affiliation with the licensee, NYPA cannot be credited with providing the same degree of surety as a parent company. Notwithstanding NYPA's strengths noted in the SERs, approving the applications on the basis of Staff's application of 10 CFR § 50.75(e)(1)(vi) would require bending the Commission's rules, unjustifiably compromise the guidance of previous Staff evaluations, and set a dangerous precedent for future license transfer proceedings.

Approval of the Applications Would Deprive the Commission Regulatory Authority to Ensure that NYPA Satisfies NRC Requirements for Decommissioning and Site Remediation

In CAN's hearing request, CAN expressed concern that the applications granted too much authority to NYPA with respect to the disposition of decommissioning funds. The conditions on decommissioning which Staff have imposed and which are described in the SERs clarify certain ambiguities regarding NYPA's administration of the decommissioning fund. However, the staff's recommendations do not address environmental considerations nor clean up consequences potentially required of NYPA. The central unresolved problem with regard to NYPA's role and responsibilities following the transfer is the fact that the Commission relinquishes its regulatory authority over NYPA.

This is certainly true with regard to the remediation responsibilities retained by NYPA as a result of the Purchase and Sale Agreement ["PSA"], in

which Entergy states that it is not responsible for NYPA's offsite contamination. *See* PSA *at page 7.* In fact, Applicants have already anticipated certain remediation requirements for which NYPA will be responsible, as set forth in the PSA in section 5.13, "Remediation," and apparently described in Schedule 5.13, "Known Remediation Concerns." Although these anticipated remediation responsibilities are apparently unreviewed by NRC at this time,[5] CAN believes it is necessary to determine the scope of NYPA's responsibilities prior to transfer and to make provision for both financial assurance and Commission enforceability, as set forth below.

By the same token, though, it may also be true with regard to the enforceability of the conditions set by Staff to clarify NYPA's fiduciary and regulatory responsibilities with regard to the disposition of the decommissioning fund.[6] In this context, Staff's description (referred to above) of the "uncertainty in a situation in which the NRC would not retain the same type of direct regulatory authority over the Authority that the NRC would have, if the Authority remained a licensee" acknowledges the central dilemma with regard to the provisions for decommissioning (or lack thereof) in the applications. To the best of CAN's knowledge, the Commission's rules and regulations offer no guidance in the situation presented by the Applicants' proposals. CAN has reviewed Title 10 of

[5] Per December 27, 2000, conversation with Entergy's counsel Mr. Levanway, CAN was informed that Schedule 5.13 was not required to be released to CAN for review since it was not included in the applications submitted to NRC and NRC Staff did not request that it be submitted supplementally for review.

[6] These conditions amount to requiring NYPA's acceptance of NRC continued regulatory authority, but only with regard to its administration of the fund to cover Entergy's decommissioning and remediation responsibilities.

the Code of Federal Regulations, in particular those Parts and Subparts which deal with potentially related issues,[7] as well as the NRC's Final Rulemaking (RIN 3150--AG09) on the promulgation of Subpart M. While the NRC has considered many different scenarios relating to the assumption of responsibilities by license transferees, it does not appear to CAN that the NRC's existing rules and regulations contemplate scenarios in which former licensees retain responsibilities following the transfer which normally belong to licensees – including radiological remediation as a result of activities under a Part 50 license. For instance, in explaining its determination that environmental impact studies and assessments under NEPA are not necessary in Subpart M cases, the NRC refers only to the assumption of responsibilities by the transferee:

> ... under its procedures for implementing NEPA, the Commission may exclude from preparation of an environmental impact statement, or an environmental assessment, a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC proceedings. In this rulemaking, the Commission finds that the approval of a direct or indirect license transfer, as well as any required administrative license amendments to reflect the approved transfer, comprises a category of actions which do not individually or cumulatively have a significant effect on the human environment. Actions in this category are similar in that, under the AEA and Commission regulations, transfers of licenses (and associated administrative amendments to licenses) will not in and of themselves permit the licensee to operate the facility in any manner different from that which has previously been permitted under the existing license. Thus, the transfer will **usually** not raise issues of environmental impact that differ from those considered in initial licensing of a facility. In addition, the denial of a transfer would also have in and of itself no impact on the environment, since the licensee would still be authorized to operate the facility in accordance with the existing license. *RIN 3150--AG09, emphasis added.*

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[7] §§ 8.4 ("Interpretation by the General Counsel: AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act"), 20 subpart E ("Radiological Criteria for License Termination"), 50.10-12 ("License Required," "Exceptions and Exemptions," and "Specific Exemptions"), 50.30 (licensing of activities related to byproduct materials), 50.80 ("Transfer of Licenses"), and 51 ("Radiological Criteria for License Termination").

CAN is not disputing the Entergy applicants' intention to complete the decommissioning and remediation responsibilities they would assume under the operating license and the Purchase & Sale Agreement. Rather, the unresolved question with regard to both the decommissioning fund and NYPA's anticipated cleanup responsibilities is how the NRC maintains authority and enforcement power over an entity that is no longer licensed under the Commission's rules. On the basis of the existing regulations and rulemakings, the NRC does not appear to have a clear basis for maintaining regulatory authority over NYPA merely on the basis of conditions placed on ENF's, ENIP's, and ENO's licenses.

It appears to CAN that the Applicants have presented the Commission with a scenario previously uncontemplated in the existing regulations and rulemakings. Approving the applications with these problems unresolved would constitute a dangerous precedent – or even a kind of inadvertent rulemaking – which has the potential to allow license transfer applicants to carve out whole areas of responsibility for radiological remediation over which the Commission would no longer have enforcement authority, thereby endangering the public health and safety. The Commission should not allow licensees or their successors to use the license transfer as a way of escaping responsibility for cleanup.

Approval of Applicants' Decommissioning Fund Arrangements Sets a Dangerous Precedent for Other License Transfers

While the Staff's SERs thoroughly consider the possible ways that the applications *could* meet the standards of 10 CFR § 50.75(e)(1)(vi), it appears to CAN that the Staff's evaluation is too-liberal an interpretation of the regulations and disregards the guidance of a previous Staff evaluation when the existing rules were promulgated. Staff acknowledges that Applicants have created the decommissioning provisions with "the apparent purpose of attempting to limit any adverse Federal income tax consequences to the decommissioning funds." *See* SERs *at page 8, footnote #2.* However, since the Master Decommissioning Trust Agreement only allows monies to be withdrawn from the fund for the purpose of paying for decommissioning costs, the Entergy companies could not use the fund to pay for taxes on acquiring it. Hence, Entergy is asking the Commission to undermine its rules in order to protect the corporation from capital gains tax consequences. This unorthodox decommissioning agreement, and Entergy's desire to avoid tax consequences, raises concerns about whether Entergy has the financial stability to pay its capital gains tax consequences in addition to its substantial payments to NYPA to acquire the reactors. While a large capital gains tax liability might compromise ENF and ENIP's ability to complete the sale of the facilities, this consideration is not within the NRC's jurisdiction.[8]

[8] However, it should be noted that the ability of the Entergy companies to weather such a large financial burden could demonstrate financial assurance in decommissioning and other areas relevant to the license transfer applications, including the ability of the Entergy companies to assure sufficient funding for safe operation. On the other hand, ENF and ENIP's potential tax liability will only increase with time, as the size of the Decommissioning Trust grows. One might wonder whether the Entergy companies will be able to pay tax on acquiring the fund later, if they cannot afford it now while the Barclay's Bank Letter of Credit is still available.

Mysteriously, however, Staff seems to view ruling against the applications on this issue as imposing an "undue regulatory burden" on the applicants. Given the potentially precedent-setting nature of the arrangements in question, the possibility for undermining the Commission's regulatory authority to protect the public health and safety in the evolving and accelerating process of industry restructuring far outweighs that concern, even if it lay within the NRC's mandate to consider. The next license transfer could involve equally complex and anomalous agreements between corporations with far less financial surety than NYPA possesses.[9] Once an exception has been made to the letter of the Commission's rules, it can be used to justify exceptions in other cases, even if they do not meet the same standard. One can envision finding the NRC in a situation in which arrangements similar to those proposed by NYPA and Entergy are accepted on the basis of precedent alone: although the applicants might not demonstrate the same degree of assurance and stability as NYPA, NRC Staff would not have a clear set of requirements on which to deny approval. Therefore, in order to maintain the integrity of the NRC's rules and authority to protect the public health and safety, the Commission should either dismiss the applications, suspend approval until the NRC has issued new rules or generic evaluations that would allow this case to be properly evaluated, or set further conditions on approval.

[9] For instance, there are only a handful (or less) of power reactor licensees which are municipal entities like NYPA, and most power reactor licensees do not have NYPA's strong bond ratings. Based on Exhibit 3 to the applications, the Entergy applicants' parent company and affiliates cannot demonstrate the same strength. Also, the next

CONCLUSION

As set forth above, the applications do not satisfy NRC regulations requiring adequate financial assurance of funds for decommissioning, would undermine the Commission's authority to ensure radiological remediation, and set dangerous precedents for future license transfer proceedings. Therefore, CAN believes that approval of the applications would be unjustifed and the Commission should consider the following actions:

A. The Applications Should Be Dismissed or Suspended Pending Evaluation and Revision of the Applicable Rules

CAN believes there is no regulatory basis for approving Applicants' proposed arrangements for decommissioning and remediation. The issues raised regarding the disposition of the decommissioning fund and the remediation responsibilties retained by the license transferor (NYPA) are worthy of consideration through revised rulemakings with regard to both Financial Assurance Requirements for Decommissioning (SECY-1998-164) and the promulgation of Subpart M (RIN 3150-AG09). Although the issues raised above have generic importance for future license transfer proceedings, CAN is not disputing the Commission's previously rulings that an individual license transfer proceeding is not an appropriate forum for resolving generic issues. Rather, CAN is presenting the case that, in the instant case(s), Applicants have presented the NRC with an issue of generic importance for which there is neither precedent nor

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anticipated license transfer cases involve Millstone, Indian Point 2, and Nine Mile Point; none of the current owners of those facilities can equal NYPA's bond ratings.

regulatory basis for approval. In order to protect the integrity of the NRC's regulations and authority, and to ensure the public health and safety, the Commission should either dismiss the applications or suspend approval pending revisions to the applicable rules for evaluating the applications.

B. NRC Should Require that the Decommissioning Fund be Transferred to ENF and ENIP as a Condition of Approving the Applications

The Applicants' proposal requiring NYPA to retain the decommissioning fund and administer payments to the Entergy companies to cover the costs of decommissioning does not satisfy the NRC's licensing requirements for financial assurance, per 10 CFR § 50.75. As identified in the Staff's SERs, the action requested by Applicants is justified only to protect the Entergy companies from potential federal tax consequences on acquiring the Master Decommissioning Trust. Requiring that the fund be transferred to the Entergy applicants is the only alternative consistent with the Commission's existing rules and safety evaluations, per NRC Staff's determination in SECY-1998-164. However, the potential for undermining the Commission's rules and setting a dangerous precedent for future license transfer by approving the existing applications and the conditions proposed in Staff's Orders and SERs outweighs the consideration of possible financial consequences to ENF and ENIP, which the Commission is not obligated to consider.

C. NRC Should Make Stipulations on the License Transfer that –
(1) NYPA Accept the Commission's Authority with Respect to Its Remediation Responsibilities;
(2) Demonstrate Financial Assurance; and
(3) Submit Schedule 5.13 and Complete an Environmental Impact Study to Determine the Actual Scope of NYPA's Responsibilities.

If the Commission decides that it is more prudent to approve the license transfer applications, stipulations there should be placed on the applications to preserve the integrity of the Commission's rules and authority and protect the public heath and safety. The Commission denied a request made by CAN for a Decommissioning EIS in the July 31, 2000 Request for Hearing on the basis of its Subpart M rulemaking, which declared that EIS's were not necessary in license transfer cases. However, the context for this recommendation is somewhat different, as it would be a way for NRC to address the regulatory questions raised by the applications and admitted for hearing. As referred to above in RIN 3150-AG09, the NRC's rulemaking states that license transfers "will **usually** not raise issues of environmental impact that differ from those considered in initial licensing of a facility." RIN 3150-AG09 explicitly allows for the possibility that a license transfer case could raise anomalous circumstances that do require further evaluation and resolution.

The instant case clearly qualifies as such a special circumstance. Furthermore, given the potentially precedent-setting nature of this case, additional measures are necessary to determine the scope of what is at stake in granting the Applicants the relief requested. Conducting an EIS would clarify NYPA's remediation responsibilities, and with that clarification, it would set the

background by which the NRC could set conditions on the license transfer and standards for NYPA to demonstrate financial assurance. Although it is not clear that conditions on the license transfer would preserve Commission jurisdiction over NYPA, stipulating that NYPA accept the Commission's authority could least make the Commission's intention clear in case of further litigation.

For the reasons set forth above, CAN believes that the issues presented above represent genuine disputes of material fact and law.

DATED at Syracuse, New York, this 12th day of January, 2001.

Respectfully submitted:

CITIZENS AWARENESS NETWORK, INC.

BY: _____
Timothy L. Judson, Organizer for Central New York-CAN

pro se for CAN

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cc: Office of Secretary;
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THE CITIZENS AWARENESS NETWORK

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 STATEMENT ON ISSUE #2 ADMITTED FOR HEARING BY COMMISSION ORDER CLI-00-22, NOVEMBER 27, 2000 have been served upon the persons listed below by electronic mail or US Postal Mail.

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[Original signed by Timothy L. Judson
Citizens Awareness Network]

Timothy L. Judson
Citizens Awareness Network

Dated at Syracuse, New York,
this 12th day of January, 2001