

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

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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

**NYPA/ENTERGY COMPANIES'
INITIAL WRITTEN STATEMENT OF POSITION**

I. INTRODUCTION

Pursuant to the Commission's Memorandum and Order, CLI-00-22 (November 27, 2000), the Presiding Officer's Memorandum and Order (Filing Schedules and Procedures), LBP-00-32 (November 30, 2000) and Memorandum and Order (CAN Motion for Schedule Change and Change of Hearing Location), dated December 22, 2000, and 10 C.F.R. § 2.1321(a), the Power Authority of the State of New York ("NYPA") and Entergy FitzPatrick, LLC and Entergy Indian Point 3, LLC ("Entergy Owners"), and Entergy Operations, Inc. (collectively "NYPA/Entergy Companies") submit their Initial Written Statement of Position in this proceeding.

The Commission's Memorandum and Order, CLI-00-22, slip op. at 50, admitted the following as Issue 2 in this proceeding:

Whether the transfer applicants' plan for handling decommissioning funds for the FitzPatrick and Indian Point nuclear plants – whereby control of the decommissioning funds will remain with [NYPA] but responsibility for decommissioning the plants will reside with the Entergy companies – provides reasonable assurance of adequate decommissioning funding, within the meaning of 10 C.F.R. §§ 50.75(b) and 50.75(e)(1)(vi),¹

As explained by the Commission, this issue was based on assertions by intervenor Nuclear Generation Employees Association relating to the retention by NYPA of the decommissioning funds for the FitzPatrick and Indian Point 3 facilities after the transfer of the facilities to the Entergy Companies. CLI-00-22, slip op. at 25-26. On January 8, 2001, Nuclear Generation Employees Association voluntarily and with prejudice withdrew from this proceeding. Ordinarily, this would result in the dismissal of the issue sponsored by the Association. See Memorandum and Order (Approving Withdrawal of Cortlandt/Hendrick Hudson School District), LBP-00-34 (December 22, 2000). In this case, however, the Commission found that another intervenor, Citizens Awareness Network, Inc. ("CAN"),

raises related issues: whether NRC approval of the transfers will deprive the Commission of authority to require [NYPA] to conduct remediation under decommissioning, and whether, under these circumstances, [NYPA] would no longer have access to the decommissioning trust fund for the remediation it would need to complete.

CLI-00-22, slip op. at 26, n. 25. The Commission went on to observe that "[t]hese issues relate to the admitted issue involving 10 C.F.R. § 50.75, supra, and CAN may address them at the

¹ Issue 1, concerning Entergy Indian Point LLC's liability for certain financial obligations of Entergy FitzPatrick LLC, was dismissed, without prejudice, based on the withdrawal from this proceeding of the issue's sponsors, the Town of Cortlandt and the Hendrick Hudson School District. Memorandum and Order (Approving Withdrawal of Cortlandt Hendrick Hudson School District), dated December 22, 2000.

hearing in that context.” As demonstrated below, NYPA/Entergy Companies respectfully submit that the approved license transfers do not deprive the Commission of authority to require NYPA to conduct decommissioning and do not deprive NYPA of access to the decommissioning trust fund for any decommissioning that it may be required to undertake. As further demonstrated below, NYPA/Entergy Companies’ decommissioning funding plan provides reasonable assurance of adequate decommissioning funding.

II. INITIAL STATEMENT OF POSITION

1. NRC regulations, 10 C.F.R. § 50.75(e)(1)(vi), provide that an acceptable method for providing decommissioning funding assurance is:

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.

The methods specified in paragraphs (e)(1)(i) through (v) of 10 C.F.R. § 50.75 include prepayment, external sinking funds, sureties, guarantees, insurance or contractual obligations by the licensee’s customers.

2. The minimum amount of money required to demonstrate reasonable assurance of funds for decommissioning is specified by the formula set forth in 10 C.F.R. § 50.75(c).

3. The NYPA/Entergy Companies’ applications for the transfer of the facility operating licenses for the Indian Point 3 and FitzPatrick facilities were based upon compliance with the decommissioning funding assurance method of 10 C.F.R. § 50.75(e)(1)(vi).

Applications for Transfer of Facility Operating license (Encl. 1 to letters dated May 11, 2000 from NYPA to NRC and May 12, 2000 from Entergy to NRC) (“Application”).

4. The funds for decommissioning the Indian Point 3 and FitzPatrick facilities are held in a Master Decommissioning Trust, comprised of a separate fund for each facility. Application at 11; Written Direct Testimony and Affidavit of George W. Collins (“Collins Testimony”) at 2.

5. The Master Decommissioning Trust was (prior to the transfer of the facilities), and continues to be (following the transfer) administered by The Bank of New York. Application at 13. The Bank’s fiduciary duties require that it hold and expend the funds for the purpose of decommissioning the Indian Point 3 and FitzPatrick units. Collins Testimony at 2.

6. NYPA, after the transfer of the units to the Entergy Companies, retained the decommissioning trust funds and the obligation that the funds remain at all times committed to the decommissioning of the units. Application at 2, 11; Collins Testimony at 3, Written Direct Testimony and Affidavit of Joseph T. Henderson (“Henderson Testimony”) at 2. On the occurrence of specified events, NYPA may elect to transfer its interest in either or both funds to the respective Entergy Owners. These events are the expiration of the operating license, dismantlement of the unit, or the funds becoming taxable. Application at 2, 11; Collins Testimony at 3-4.

7. At the time of the closing of the sale of the units and as of the present time, the amount of money in each of the decommissioning funds exceeds the required minimum amounts established by NRC. Application at 13-15; Collins Testimony at 2-3.

8. As long as the trusts are held by NYPA, the trusts and any income they earn will continue to be tax-free. Collins Testimony at 6; see, generally Henderson Testimony.

9. A decommissioning agreement between NYPA and the Entergy Owners establishes NYPA's contractual obligations with respect to the decommissioning of the units. Exhibit O-1 to Encl. 4 to letters dated May 11, 2000 from NYPA to NRC; Collins Testimony at 4. The decommissioning agreement provides that NYPA is not obligated to pay more for decommissioning than the amount in the decommissioning funds. Under certain circumstances, the amount that NYPA has agreed to pay for decommissioning may be decreased, if for example Entergy were to acquire units adjacent to FitzPatrick (i.e., the Nine Mile Point units) or to Indian Point 3 (i.e. Indian Point Units 1 and 2). Application at 2; Collins Testimony at 4-5.

10. If, in the future, NRC requirements call for additional monies to be deposited, the Entergy Owners would be obligated to make such contributions to additional decommissioning funds to be created by the Entergy Owners to meet such requirements. Collins Testimony at 5.

11. Notwithstanding the limitations on NYPA's obligation for additional decommissioning funding, the decommissioning funding for Indian Point 3 and FitzPatrick meets the reasonable assurance standard and provides at least equivalent assurance to other decommissioning funding assurance mechanisms set forth in 10 C.F.R. § 50.75(e)(1)(i) – (v).

12. Because the amount held by the decommissioning funds meets the NRC minimum funding levels, the present mechanism provides equivalent assurance to prepayment, notwithstanding the holding of the funds by NYPA. Application at 14; Collins Testimony, p. 6.

13. The fully funded decommissioning funds provide at least equivalent assurance to parent-company guarantees, third-party guarantees or sureties. Application at 14.

14. Regardless of whether NYPA or the Entergy Owners holds the funds, a variety of contract, trust and license limitations set forth in the Application assure the funds will be

available for decommissioning, with at least the same degree of assurance as the other mechanisms specified in 10 C.F.R. § 50.75(e). For example:

- a. The Trust agreement limits the use of assets in the funds to decommissioning expenses of the units as defined by NRC. Application at 12; Collins Testimony at 3.
- b. The Trust Agreement permits no contribution of property to the trusts other than liquid assets. Application at 12
- c. The Trust Agreement prohibits investments in securities of NYPA or Entergy companies and limits investments in entities owning nuclear power plants. Id.
- d. No disbursements from the funds may be made until the trustee has first given the NRC 30 days written notice of the payment and no disbursements may be made if the trustee receives prior written objection from the NRC. Id.; Collins Testimony at 3.
- e. No material modification can be made to the trust without NRC's prior written consent. Application at 12, 13; Collins Testimony at 4.
- f. NYPA's interest in the trusts can only be transferred to the licensed owner of the unit responsible for decommissioning and is not subject to claims of NYPA's creditors. Application at 13.

Finally, NYPA as a corporate municipal instrumentality and political subdivision of the State of New York, has a strong public interest in protecting the interests of its citizens, as well as its bondholders and ratepayers. Application at 11.

15. In addition to the commitments set forth in the Application and implemented prior to closing, NYPA agreed to make further modifications to the decommissioning trust agreements to provide further assurance with respect to decommissioning financing, which modifications were effected prior to the license transfers:

- a. a provision stating that the provisions or purpose of the trust agreement may be enforced by NRC against NYPA and the Trustee with respect to disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of NRC's decommissioning requirements.
- b. a provision prohibiting NYPA from terminating any fund established under the Master Trust except after obtaining written consent from the Director, Office of Nuclear Reactor Regulation or the Director, Office of Nuclear Material Safety and Safeguards.

Safety Evaluations by the Office of Nuclear Reactor Regulation for the Indian Point 3 and FitzPatrick facilities, dated November 9, 2000 ("SER") at 11.

16. NYPA further agreed in writing to waive any right to deny, contest or challenge the NRC's jurisdiction over NYPA with respect to the Indian Point 3 and FitzPatrick plants to the extent that there may arise in the future any matter warranting action by the Commission to ensure compliance with NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust funds and retained by NYPA. This

waiver applies until NYPA transfers the respective decommissioning funds to the Entergy Owners or until the decommissioning of the respective unit has been completed in accordance with NRC regulation and guidance, whichever occurs first. Id. at 11-12.

17. NYPA further agreed in writing, that for purposes of compliance with NRC requirements, sole responsibility for decommissioning the Indian Point 3 and FitzPatrick units rests with the Entergy Owners, and NYPA's responsibility under NRC jurisdiction with respect to the units is limited solely to the holding and disbursement of funds for the decommissioning of the two facilities. This commitment applies for the same duration as the waiver described in the preceding paragraph. Id.

18. The equivalence finding of 10 C.F.R. § 50.75(e)(i)(vi) is required to be based upon a determination by the NRC. The NRC Staff has thoroughly examined the decommissioning funding mechanism adopted by NYPA/Entergy Companies in this proceeding and has made a reasoned and supported equivalence determination. That determination is based upon the commitments in the Application and the additional conditions required by the NRC Staff. See, generally, SER at 8-14.

19. The NRC Staff determinations support the conclusion that the decommissioning funding mechanisms established by NYPA/Entergy Companies meet the requirement of 10 C.F.R. § 50.75(e)(1)(vi).

- a. The amount of the decommissioning trust funds meets the requirements of the prepayment decommissioning funding assurance using the formulas in 10 C.F.R. § 50.75(c). SER at 9.

- b. Because of NYPA's status as a corporate municipal instrumentality and a political subdivision of the State, and New York State's pledge not to limit or alter NYPA's rights until NYPA's contractual obligations are satisfied, a trust held by NYPA could provide more assurance than trusts held by an investor-owned utility. SER at 10, 12.

- c. The additional conditions which required NYPA to make two additional modifications to the decommissioning trust agreements regarding NRC enforcement rights against NYPA and limitations on trust termination provide additional assurance for decommissioning funding, as does NYPA's waiver of rights to challenge NRC jurisdiction and the allocation of rights and responsibilities between NYPA and the Entergy Owners. SER at 11.

- d. The trustee's fiduciary duties, the prefunded character of the decommissioning funds and similarities with third-party guarantees provide additional assurance of the availability of decommissioning funds when needed. SER at 12.

- e. The seven conditions included in the orders approving the license conditions, including those added as conforming license conditions, together with the Bank of New York continuing to hold the decommissioning trusts under NYPA's current management, provide reasonable assurance of decommissioning funding. SER at 12-14.

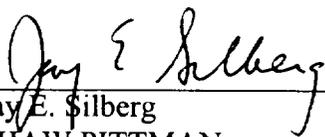
20. Each of these conditions, limitations and commitments is incorporated in the orders approving the license transfers. Order Approving Transfer of License and Conforming Amendment, Docket No. 50-286, 65 Fed. Reg. 70843 (November 28, 2000); Order Approving Transfer of License and Conforming Amendment, Docket No. 50-333, 65 Fed. Reg. 70845 (November 28, 2000).

III. CONCLUSION

For the reasons set forth above, NYPA/Entergy Companies respectfully submit that their plan for handling decommissioning funds for the FitzPatrick and Indian Point 3 plants provides reasonable assurance of adequate decommissioning funding, within the meaning of 10 C.F.R. §§ 50.75(b) and 50.75(e)(1)(vi).

January 12, 2001

Respectfully submitted,



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Written Direct Testimony and Affidavit of George W. Collins

State of New York)
)
County of Westchester)

I, George W. Collins, being duly sworn, depose and state that the contents of the following Written Direct Testimony and Affidavit of George W. Collins are true, correct, accurate and complete to the best of my knowledge, information and belief.

Q.1. Please state your name and business address.

A.1. My name is George W. Collins. My business address is 123 Main Street, White Plains, New York 10601.

Q.2. By whom are you employed and in what capacity?

A.2. I am employed by the Power Authority of the State of New York (the "Authority") as Treasurer. My responsibilities include management of the Authority's investment portfolio, the Authority's debt, the Authority's interest rate swap program and the Risk Management Department. As part of a steering committee, I also have oversight responsibilities for hedging procedures for fossil fuels and electricity. I am also responsible for managing the Authority's nuclear plant Decommissioning Funds and overseeing the selection process for the Investment Managers for the Funds.

Q.3. Please state your professional and educational background?

A.3. I assumed my current position in 1995, and have been with the Authority since 1986. Prior to joining the Authority, I was the Assistant Treasurer at Goldfields American Corporation and a Divisional Controller at Philips Electronics. I have a Bachelor of Administration degree from the University of Missouri.

Q.4. What is the purpose of your testimony?

A.4. The purpose of my testimony is to demonstrate that the arrangement between the Authority and Entergy Nuclear FitzPatrick LLC ("Entergy FitzPatrick") and the Authority and Entergy Nuclear IP3 ("Entergy IP3," and collectively with Entergy FitzPatrick, the "Entergy Owners") provides reasonable assurance of adequate decommissioning funding for the FitzPatrick Nuclear Plant and the Indian Point 3 Nuclear Plant, respectively.

Q.5. Describe the trust that has been established by the Authority relating to the two plants?

A.5. In 1990, the Authority established a Master Decommissioning Trust (the "Master Trust") pursuant to a Master Decommissioning Trust Agreement (the "Trust Agreement"), dated as of July 25, 1990, with the Bank of New York, as Trustee, which created two Trusts, one for each plant, with a Decommissioning Fund for each plant. The exclusive purpose of the Master Trust was to create an external source of funding to provide for the costs associated with the decommissioning of the nuclear plants, so as to comply with applicable NRC regulations.

Q.6. Do the amounts currently in the Decommissioning Funds under the Master Trust meet NRC decommissioning funding requirements?

A.6. Yes. The current amounts in the Decommissioning Funds for FitzPatrick and Indian Point 3 as of November 30, 2000 (audited) are \$343 million and \$314 million, respectively.

The current NRC minimum decommissioning cost estimates for the plants, as determined pursuant to NRC regulations (10 CFR Section 50.75(c)), are as follows:

<u>FitzPatrick</u>	<u>Indian Point 3</u>
\$360 million	\$297 million

In calculating these minimum decommissioning cost estimates, I have used the required adjustment factors for 1999, which result in a calculated decommissioning cost estimate of \$360 million for FitzPatrick and \$297 million for Indian Point 3, and have escalated these amounts by a 3% inflation factor for the period from January 1, 2000 to December 31, 2000. This latter adjustment was used because the adjustment factors set forth in the NRC regulations (10 CFR Section 50.75 (c)) for the year 2000 were not as yet available.

I then increased these current cost estimates by an assumed 3% inflation factor to the expiration of each of the licenses (December 12, 2015 for Indian Point 3 and October 17, 2014 for FitzPatrick) to produce the following cost estimates at license expiration:

<u>FitzPatrick</u>	<u>Indian Point 3</u>
\$558 million	\$476 million

To determine the minimum current decommissioning fund amounts necessary to achieve these license expiration decommissioning cost estimates, I discounted these license expiration estimates using a 5% discount factor, consisting of a 3% inflation rate and a 2% "real" return, as allowed by the NRC back to November 30, 2000. These calculations produce the following results:

Minimum Fund Amount For <u>FitzPatrick</u>	Minimum Fund Amount For <u>Indian Point 3</u>
\$283 million	\$229 million

As can be seen, the amounts in the Decommissioning Funds exceed these minimum fund amounts as of November 30, 2000.

Q.7. Were you involved in the negotiations between the Authority and the Entergy Owners which resulted in the Decommissioning Agreement between the Authority, Entergy FitzPatrick, and Entergy Nuclear, Inc. and the Decommissioning Agreement between the Authority, Entergy IP3 and Entergy Nuclear, Inc., both executed at the closing of sale of the nuclear plants?

A.7. Yes.

Q.8. What is the status of the Master Trust after the execution of the Decommissioning Agreements?

A.8. The Authority remains the beneficiary of the Master Trust until certain specified events occur, as described below, at which time the Authority has the option of assigning each individual Trust to the relevant Entergy Owner. However, regardless of the identity of the beneficiary, the sole purpose of the Trust is and will remain the same, namely, the provision of monies for the decommissioning of the nuclear plants.

Q.9. Describe those amendments to the Trust Agreement that were entered into at the closing of the sale of the nuclear plants whose terms have increased NRC oversight of the Master Trust?

A.9. The Trust Agreement has been amended to require the following:

First, no disbursements or payments from the Master Trust, other than for ordinary administrative expenses, shall be made by the Trustee until the Trustee has first given the NRC 30 days' notice of the payment. No disbursements or payments from the Master Trust shall be made if the Trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation of the NRC.

Second, the Trust Agreement may not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation of the NRC.

Third, the provisions or purpose of the Trust Agreement may be enforced by the NRC against the Authority and the Trustee with respect to the disbursement of the Master Trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements.

By these modifications, the NRC has substantially increased its oversight and control over the Master Trust.

Q.10. In the Orders approving the license transfers, were there additional provisions that supplemented the NRC's oversight over the Master Trust?

A.10. The Orders required that the Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to the nuclear plants to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of amounts in the Decommissioning Funds until the earlier of the transfer of such Funds to the Entergy Owners or the completion of the decommissioning of the plants.

Q.11. Describe the decommissioning arrangement established by the Decommissioning Agreements?

A.11. Each of the Entergy Owners entered into a Decommissioning Agreement with the Authority and Entergy Nuclear, Inc., relating to responsibility for decommissioning the nuclear plant acquired by it. Under the Decommissioning Agreements, the Authority will remain the beneficiary of each of the Decommissioning Funds established for the two plants under the Trust Agreement until certain events occur, as discussed below.

Under each plant's Decommissioning Agreement, the Authority has contractual decommissioning responsibility with respect to the plant until license expiration, a change in the tax status of the plant's Decommissioning Fund, or any early dismantlement of the plant, at which time the Authority will have the option to terminate its decommissioning responsibility. The Authority's decommissioning responsibility is limited to the lesser of the Inflation Adjusted Cost Amount (described below) or the amount in the plant's Decommissioning Fund.

If the Authority terminates its decommissioning responsibility, it must transfer the plant's Decommissioning Fund to the Entergy Owner owning the plant, except that monies in the Decommissioning Fund in excess of the Inflation Adjusted Cost Amount, described below, would be paid to the Authority or, if such release of excess Decommissioning Fund monies is not possible, alternative payment arrangements, not involving Decommissioning Fund monies, between the Authority and the Entergy Owner set forth in the Decommissioning Agreement would go into effect.

Q.12. Explain what is meant by the Inflation Adjusted Cost Amount?

A.12. The Inflation Adjusted Cost Amount for a plant means a fixed estimated decommissioning cost amount set forth in the plant's Decommissioning Agreement which was determined as a result of negotiations between the parties, adjusted up or down in accordance with the effect of increases and decreases in the NRC minimum

decommissioning cost estimate amounts applicable to the plant. If the FitzPatrick or Indian Point 3 Entergy Owner purchases or operates, with the right to decommission, another plant at the FitzPatrick or Indian Point 3 site, as the case may be, then the Inflation Adjusted Cost Amount would decrease by \$25 million or \$50 million in the case of the FitzPatrick site (depending upon whether one or two of the adjoining Nine Mile Point plants are purchased or operated) and by \$50 million in the case of the Indian Point 3 site.

Q.13. What do the Decommissioning Agreements provide if the Authority is required to decommission a plant pursuant to the relevant Agreement?

A.13. If the Authority is required to decommission FitzPatrick or Indian Point 3 pursuant to the relevant Decommissioning Agreement, Entergy Nuclear, Inc. would be obligated to enter into a fixed price contract with the Authority to decommission the plant, the price being equal to the lesser of the Inflation Adjusted Cost Amount or the plant's Decommissioning Fund amount.

Q.14. Will the Authority be obligated to make any more contributions to the Master Trust?

A.14. Under the Decommissioning Agreements, the Authority will not be obligated to make any further contributions to the Decommissioning Funds. If, in the future, NRC requirements call for additional monies to be deposited, the Entergy Owners would be obligated to make such additional contributions to additional decommissioning funds to be created by the Entergy Owners to meet such requirements.

Q.15. The suggestion has been made that the Authority and the Entergy Owners' decommissioning approach has resulted in limitations on the availability of funds which may prevent the Entergy Owners from meeting minimum regulatory requirements. Could you comment on this assertion?

A.15. As noted above, the Decommissioning Funds currently meet NRC funding requirements.

As to the issue of the availability of these funds, I will assume that the assertion relates to the situation where the Authority is the beneficiary of the Decommissioning Funds. In this situation, the Authority has a contractual responsibility to decommission the plants, to the extent of the amounts in the Funds, and would use the Decommissioning Funds to perform the decommissioning.

Although the Decommissioning Agreements allow for a release of monies to the Authority from the Funds representing the excess of monies in the Funds above the Inflation Adjusted Amount, it must be emphasized that the NRC has maintained jurisdiction over the Authority for the purpose of utilizing the monies in the Decommissioning Funds for decommissioning purposes. Moreover, as I stated above, prior notice must be given to the NRC before any disbursements or payments from the Master Trust can be made and no release of funds will be made if prior written objection is received from the NRC.

In addition to the other safeguards discussed above, these conditions serve to ensure that there will be adequate monies in the Decommissioning Funds and that these monies in the Decommissioning Funds will be used for decommissioning.

Q.16. Is it your view that the decommissioning arrangement created by the Decommissioning Agreements provides reasonable assurance of decommissioning consistent with applicable NRC requirements?

A.16. Yes. As noted above, the Master Trust is funded in amounts meeting NRC funding requirements and may be used only for decommissioning purposes, with the amendments to the Trust Agreement and the provisions of the license transfer orders providing enhanced NRC oversight over the disposition of the Trust monies.

To the extent the Authority retains the Master Trust, it is contractually obligated to decommission the units, and would use the Trust funds to do so. Further, if the Authority is required to decommission the plants, Entergy Nuclear Inc. would be obligated to carry out the decommissioning of each plant at the price specified in the applicable Decommissioning Agreement, which would not exceed the amount in the relevant Decommissioning Fund. Although the Authority's responsibility to decommission each plant would not exceed the amount in the applicable Decommissioning Fund, the Entergy Owner would still have overall responsibility to decommission.

Consequently, even when the Authority retains the Master Trust, the situation is comparable to that which would be present if the Entergy Owner were the beneficiary of the Trust, in that in both cases the funds in the Master Trust will be available for the decommissioning of the plants.

Q.17. What is the tax status of the Authority?

A.17. The Authority is exempt from Federal and State income taxation, including income generated by the Decommissioning Funds while the Authority is the beneficiary of the Master Trust.

Q.18. Does this complete your testimony?

A.18. Yes, it does.

Subscribed and Sworn
to before me this 10th
day of January, 2001.
Eileen P. Flay
Notary Public

George W. Collins
George W. Collins

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

Before Administrative Judge:

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POWER AUTHORITY OF THE STATE OF
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and Indian Point Nuclear Generating Unit No.
3)

Written Direct Testimony and Affidavit of Joseph T. Henderson

STATE OF LOUISIANA)
)
PARISH OF JEFFERSON)

I, Joseph T. Henderson, being duly sworn, depose and state that the contents of the following Written Direct Testimony of Joseph T. Henderson are true, correct, accurate and complete to the best of my knowledge, information and belief:

Q: Please state your name and title.

A: My name is Joseph T. Henderson. I am Vice President and General Tax Counsel for Entergy Corporation.

Q: Please give us some information on your educational and professional background.

A: I graduated from the University of Pittsburgh with a Bachelor of Arts degree in 1979. I received my Juris Doctor from George Washington University in 1982 and received a Master of

Laws in Taxation from Georgetown University in 1985. I also received a Master of Science in Accountancy from the University of Houston in 1989. I worked for Tax Analysts, Inc. in Arlington, Virginia, as a member of the editorial staff from 1981 to 1984. I then worked for Shell Oil Company in Houston, Texas, from 1984 to 1999 with the last position held being Associate General Tax Counsel. I came to Entergy Corporation in New Orleans, Louisiana, as Vice President and General Tax Counsel in March of 1999.

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to discuss the tax treatment of the decommissioning trust being maintained by the Power Authority of the State of New York (the "Authority") following the acquisition of the FitzPatrick Nuclear Power Station and the Indian Point 3 Nuclear Power Station by Entergy Nuclear FitzPatrick, LLC ("Entergy FitzPatrick") and Entergy Nuclear Indian Point 3, LLC ("Entergy IP3") (collectively, the "Entergy Owners").

Q: Please describe the tax treatment of the Authority's decommissioning trust following the acquisition.

A: When the Entergy Owners acquired FitzPatrick Nuclear Power Station and the Indian Point 3 Nuclear Power Station, the acquisition did not include the decommissioning trust associated with those plants. The decommissioning trust is specifically listed as an "Excluded Asset" in section 2.2(g) of the Purchase and Sale Agreement. The Authority retained any and all "rights, title, and legal and beneficial interests" in the decommissioning trust. Consequently, the Entergy Owners do not have an ownership interest in the trust and should not be taxed on the trust's earnings.

Q: What about the liability of the Authority for taxes on the earnings of the trust?

A: The Authority is a tax-exempt entity, so it should not be subject to tax on the earnings

of the trust.

Q: Under the Decommissioning Agreement, the Authority has the option under several different scenarios to transfer the trust funds to the Entergy Owners. If the trust funds are transferred, will this create a tax liability for the Entergy Owners?

A: This should not create a tax liability. The Internal Revenue Service ("IRS") has consistently taken the position that the transfer of decommissioning trusts in connection with nuclear acquisitions does not create a tax liability for the purchaser. Entergy received a private letter ruling from the IRS to this effect with regard to its acquisition of the Pilgrim Nuclear Power Station (Private Letter Ruling 199952074 (Sept. 28, 1999)). The IRS has consistently taken the same position with other nuclear acquisitions. See Private Letter Rulings 20004040 (October 29, 1999); 200034007 (May 18, 2000); 200034008 (May 18, 2000); 200034009 (May 18, 2000); and 200037020 (June 9, 2000).

Q: In the event that the transfer of the trust does create a tax liability, by whom would that liability be borne?

A: In the event that the transfer of the trust does create a tax liability, which is not likely under current tax law, the liability would be borne by Entergy and not by the trust. Thus, there is no danger that the trust funds would be depleted by income taxes as a result of the transfer.

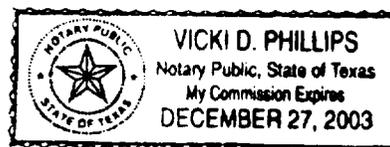


Joseph T. Henderson

Sworn to and Subscribed before me,
this the 11th day of January, 2001.



Notary Public



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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NYPA/Entergy Companies’ Initial Written Statement of Position,” “Written Direct Testimony and Affidavit of George W. Collins,” and “Written Direct Testimony and Affidavit of Joseph T. Henderson” were served on the persons listed below by electronic mail, with conforming copies by U.S. mail, first class, postage prepaid, this 12th day of January, 2001.

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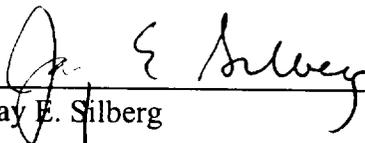
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