

RAS 2727

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

DOCKETED 02/08/01

SERVED 02/08/01

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

February 8, 2001

MEMORANDUM AND ORDER
(NRC Staff Participation)

In CLI-00-22, the Commission pointed out that the NRC Staff is not participating as a party to this proceeding but would appear at the oral hearing to present into evidence the Staff's Safety Evaluation Report (SER). 52 NRC 266, 286, 325 (2000). See 10 C.F.R. § 2.1316(b). By notice dated January 16, 2001, the Staff designated two witnesses (Messrs. Robert S. Wood and Michael J. Davis) for that purpose.

In LBP-01-04, dated February 5, 2001, 53 NRC __ (2001), the Presiding Officer admitted portions of a proposed contention on financial qualifications (designated as Issue 3). With respect to an interpretation of NRC's rules concerning filing requirements for cost and revenue estimates with respect to newly formed entities--and, indeed, when an organization should be deemed to be a newly formed entity--the Presiding Officer invited the Staff to submit its views. 53 NRC at __, n.10 (slip op. at 12, n.10).

Issue 2, approved by the Commission in CLI-00-22, also includes a matter as to which

Staff views might be useful in resolving the issue, specifically, the NRC's authority to control decommissioning expenditures of the New York Power Authority subsequent to the divestiture to Entergy Companies of the two reactors under review. The Presiding Officer believes it would be useful for the Commission, in resolving Issue 2, to have the benefit of the Staff's views of its own authority. The Presiding Officer accordingly requests the Staff to present a witness and/or file a brief on this subject.

The Presiding Officer expresses no view as to whether the already identified Staff witnesses should address this question, or whether another witness should be designated. To the extent the Staff wishes to identify another individual to address this question, and to file testimony and/or a brief, it should do so by Monday, February 26, 2001 (11:59 p.m. est). Because other parties have to some extent already addressed this question, responses need not be filed, but parties' questions regarding the Staff presentation will be entertained by the Presiding Officer at the oral hearing.

IT IS SO ORDERED.

/RA/

Charles Bechhoefer, Presiding Officer

Rockville, Maryland
February 8, 2001

[Copies of this Memorandum and Order have been transmitted this date by e-mail to counsel for or representatives of each of the parties.]

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NUCLEAR REGULATORY COMMISSION

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NEW YORK, ET AL.)
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(James A. FitzPatrick Nuclear Power Plant)
and Indian Point Nuclear Generating)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (NRC STAFF PARTICIPATION) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB MEMORANDUM AND ORDER
(NRC STAFF PARTICIPATION)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of February 2001