

RAS 2744

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**DOCKETED 02/13/01
SERVED 02/14/01**

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

February 13, 2001

NOTICE OF ORAL HEARING

This proceeding involves applications by the Power Authority of the State of New York (PASNY) to transfer its ownership interest in, and operating/maintenance responsibility for, the Indian Point Nuclear Generating Unit No. 3 and the James A. FitzPatrick Nuclear Power Plant to Entergy Nuclear Indian Point 3, LLC (ENIP), or, as applicable, Entergy Nuclear FitzPatrick, LLC (ENF), and, respectively, Entergy Nuclear Operations, Inc. The proceeding is governed by the provisions of 10 C.F.R. Part 2, Subpart M (§§ 2.1300-2.1331).

In its Memorandum and Order dated November 27, 2000, CLI-00-22, 52 NRC 266, the Commission, inter alia, granted the request for hearing of the Citizens Awareness Network (CAN) and the request to participate as a governmental entity of Westchester County. A notice of the granting of the hearing requests, as specified by 10 C.F.R. § 2.1308(d)(1), was published in the Federal Register at 65 Fed. Reg. 78,198 (December 14, 2000).

Please take notice that, as set forth in 10 C.F.R. § 2.1309, an oral hearing will be held in this proceeding on Tuesday, March 13, 2001, at the Auditorium, White Plains Public Library, 100 Martine Avenue, White Plains NY 10601, beginning at 9:30 a.m. and extending until 6:00 p.m. To the extent necessary, the hearing will continue at the same location from 9:30 a.m. to 12 noon on Wednesday, March 14, 2001. Issues to be considered at the hearing are:

1. (Issue 2)-- 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 PASNY 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). [See CLI-00-22, 52 NRC at 319.]
2. (Issue 3)-- Whether the license transfer applications provide adequate financial assurance for the safe operation of FitzPatrick and Indian Point 3 because the applications do not demonstrate an appropriate margin between anticipated operating costs and revenue projections, and the Entergy applicants do not provide evidence of access to sufficient reserve funding, specifically with respect to the subparts or bases approved in LBP-00-04 (corrected version dated February 5, 2001), [See LBP-00-04 (corrected version), 53 NRC __, __ (2001) (slip op. at 20).]

Issue 2 (essentially a legal issue) will be the first issue considered, on Tuesday morning, March 13, 2001. CAN will present its position initially, followed by the Licensees and the NRC Staff and rebuttal by CAN. Issue 3 will follow, with the Licensees presenting their witnesses first, followed by CAN and the NRC Staff and rebuttal by the Licensees.

The names and addresses of participants are as follows:

1. Entergy Companies and PASNY:

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2. CAN:

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Syracuse, NY 13210

Deborah Katz, Executive Director
Citizens Awareness Network
PO Box 83
Shelburne Falls, MA 01370

3. Westchester County:

Stewart M. Glass, Esq.
Senior Assistant County Attorney
County of Westchester
Department of Law, Room 600
148 Martine Ave.
White Plains, NY 10601

4. NRC Staff (not a party, but presenting the Safety Evaluation Report (SER) and responding to questions posed by the Presiding Officer)

Steven R. Hom, Esq.
Office of the General Counsel, 0-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Presiding at the oral hearing will be Administrative Judge Charles Bechhoefer, whose jurisdiction commenced with his designation as Presiding Officer on November 28, 2000, see 65 Fed. Reg. 75,976 (December 5, 2000), and will terminate with his certification of the record to the Commission, following his receipt of the parties' final statements of position. The designated Presiding Officer has no authority to render a final or recommended decision with respect either to the license transfer itself or the issues admitted for hearing. See 10 C.F.R. § 2.1309(b)(3).

The following filing schedules have been adopted with respect to each issue:

1. Initial Statements of Position and Written Direct Testimony (together with supporting affidavits)

Issue 2: January 12, 2001 (11:59 p.m.)--papers already filed.

Issue 3: February 26, 2001 (11:59 p.m.)

2. Written responses to direct testimony, and rebuttal testimony (with supporting affidavits); Proposed questions on written direct testimony

Issue 2: February 1, 2001 (11:59 p.m.)--papers already filed.

Issue 3: March 5, 2001 (11:59 p.m.)

3. Proposed questions directed to written rebuttal testimony

Issue 2: February 12, 2001 (11:59 p.m.)--papers already filed.

Issue 3: March 8, 2001 (11:59 p.m.)

The oral hearing will be open to members of the public, except that, where necessary to consider proprietary data (Issue 3), the hearing will be open only to those authorized access to such data.

/RA/

Charles Bechhoefer
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 13, 2001

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NUCLEAR REGULATORY COMMISSION

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POWER AUTHORITY OF THE STATE OF)
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(James A. FitzPatrick Nuclear Power Plant)
and Indian Point Nuclear Generating)
Unit No. 3))

Docket Nos. 50-333-LT and
50-286-LT

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF ORAL HEARING have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Washington, DC 20555-0001

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of February 2001