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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK and)
ENTERGY NUCLEAR INDIAN POINT 2, LLC,)
and ENTERGY NUCLEAR OPERATIONS, INC.)
)
(Indian Point Nuclear Generating)
Units Nos. 1 and 2))
_____)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Nos. 50-003-LT
and 50-247-LT
(consolidated)

License Nos. DPR-5
And DPR-26

**PETITION FOR LEAVE TO INTERVENE
AND REQUEST FOR HEARING
IN THE CONSIDERATION OF APPROVAL OF THE PROPOSED
LICENSE AMENDMENT AND TRANSFER OF
INDIAN POINT 2 NUCLEAR POWER PLANT OPERATING LICENSE
AND THE INDIAN POINT 1 PROVISIONAL OPERATING LICENSE
TO ENTERGY NUCLEAR INDIAN POINT 2, LLC, AND
ENTERGY NUCLEAR OPERATIONS, INC.
AND REQUEST FOR ADDITIONAL TIME**

By a public notice issued in the Federal Register on January 29, 2001, the Commission gave notice of a single application for the transfer of and proposed amendment to the operating licenses held by Consolidated Edison Company of New York, Inc. ("Con Edison") for its Indian Point 2 Nuclear Plant ("IP2"), Docket No. 50-003, License No. DPR-5, and Indian Point 1 Nuclear Plant ("IP1"), Docket No. 50-247, License No. DPR-26. The transferees for IP1 and IP2 are Entergy Nuclear Indian Point 2, LLC, ("ENIP2") and Entergy Nuclear Operations, Inc. ("ENO")(collectively, "Applicants" or "ENIP2/ENO"). The notice established the dates of February 20, 2001, and February

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28, 2001, as the deadlines for the submission of petitions for interventions and hearing requests, and the submission of comments, respectively.

The Town of Cortlandt, New York, and the Hendrick Hudson School District ("Petitioners") respectfully submit, pursuant to 10 CFR §§2.1312, 2.1325, and 2.711 (2000), this joint petition for leave to intervene and a request for a hearing in the above captioned proceeding ("License Transfer Proceeding") for the transfer of and the proposed amendment to the licenses for the Indian Point 2 Nuclear Power Plant and Indian Point 1 Nuclear Power Plant.

Licenses for "production facilities" such as the IP1 and IP2 facilities cannot be transferred without the express consent of the Commission (10 CFR 50.80(a)). An application for transfer of a license must include all of the information that would be required for an initial application pursuant to sections 50.33 and 50.34. (50.80(b)). Furthermore, the application must also include information regarding the nature of the transaction, and why it is desirable, i.e., in the public interest, to transfer the license. The Commission also has the discretion to require the Applicants to supply additional information pertaining to safeguards against the "hazards from radioactive materials and the Applicants's qualification to protect against such hazards" (50.80(b)).

Petitioners maintain that the application is deficient because of its failure to meet these criteria, and, in any event, the application to transfer should not be approved because it is not in the public interest, because of the specific problems discussed below.

EXTENSION OF TIME REQUEST

In light of the deficiencies and the redacted information, Petitioners also request that the current deadlines of February 20 and 28, established by the Commission's Federal Register notice of January 29, 2001, be extended to the later occurring event of April 1, 2001 or until 30 days after ENIP2 and ENO have supplied to Petitioners an unredacted copy of the transfer application and any and all information responses provided to the Commission's Staff.

Additional time is needed to amend or augment the request for hearing submitted herein for several reasons. The most significant reason is that information has been redacted that "is not available in public sources and [can] not be gathered readily from other publicly available information." December 12, 2000 Transfer Application at 7 (Affidavit of Michael R. Kansler) As stated in the Kansler affidavit, the redacted documents relate to the financial projections of ENIP2 and ENO for operation of IP2 and the related maintenance of IP1. Given that the only source of revenues for the maintenance and operation of IP2 and the maintenance of IP1 will be those revenues generated by IP2, the financial projections for IP2 warrant careful scrutiny.

The minimum extension date of April 1, 2001, is necessary as it will allow Petitioners to modify or augment their proposed issues for hearing after consideration of information now being provided in the Commission's on going proceeding for the transfer of IP3's license and a separate proceeding involving a petition with regard to IP2's outage. Furthermore, the extension of time will allow Petitioners to modify or augment the issues presented for hearing upon consideration of information now being gathered in a separate proceeding before the New York State Public Service

Commission (PSC) for the sale and transfer of the IP1 and IP2 assets, See Joint Petition of Consolidated Edison Company of New York, Inc., and Entergy Nuclear Indian Point 2, LLC For Authority Under Section 70 Of The Public Service Law To Transfer Certain Generating And Related Assets And For Related Relief, Case 01-E-0040 ("PSC Asset Sale Petition"). In the PSC Asset Sale Petition, the ALJ has set a procedural schedule calling for the submission of: 1) initial comments concerning the sale by March 16, 2001 and 2) replies to the comments on March 26, 2001. In addition, some intervenors in this proceeding have already commenced the submission of Information Requests to the Applicants and the responses thereto are expected to illuminate further the inadequacies of the petitions before the PSC and the Commission. ENIP2 and ENO commenced on January 22, 2001, a proceeding before the PSC that requests "light-handed regulation."

In addition to the License Transfer Proceeding and the PSC Asset Sale Petition, there are ongoing proceedings before the Commission, which includes a 2.206 petition, and the PSC (Case 00-E-0612) regarding the IP2 Outage. Furthermore, there will be a separate proceeding before the Federal Energy Regulatory Commission and possibly before the Federal Trade Commission as the Commission has clarified its policy with regard to the appropriateness of investigating antitrust concerns that may be raised by nuclear license transfers. See Vermont Yankee, CLI-00-20, 52 NRC at ____, slip op. at 11. All of these proceedings ("Multiple Proceedings") must be resolved by action favorable to the acquisition of the nuclear plants by ENIP2 in order for a closing to occur. Hence, the request of ENIP2 for Commission action by May 1, 2001 is optimistic at best and should not influence the Commission in granting the request of Petitioners for additional time.

Petitioners respectfully submit that the requested extension of time is necessary in order to avoid being forced to make mere "notice pleadings," which will not satisfy the requirements of 10 C.F.R. § 2.1308. See Nine Mile Point, CLI-99-30, 50 NRC at 342 (and cited authority). However, in the absence of the redacted material being furnished to Petitioners, Petitioners are forced to request waiver of the Commission's standards under 10 C.F.R. § 2.1308 and to have the Commission accept any and all assertions or conclusions, no matter how generalized they may be, until the stated concerns raised herein can be augmented or amended after receipt of the redacted information. Without such a waiver, the Commission's threshold admissibility requirements are a "fortress to deny intervention." See FitzPatrick-IP3, CLI-00-22, 52 NRC ___, Slip op. at 20 (citing Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999), quoting Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

Petitioners also note that the requested extension of time is not a request to defer Commission action until the other multiple proceedings are concluded. Instead it will facilitate an effort by the petitioners to gather information not readily available to the public that is expected to shed some light on the adequacy of the License Transfer Application to support a claim that ENIP2/ENO can operate the IP1 and IP2 safely. Cf. IP3-FitzPatrick, CLI-00-22, 52 NRC ___, slip op. at 10 (Commission determination that the pendency of parallel proceedings before other forums is not adequate grounds to stay a license transfer adjudication. Citing Niagara Mohawk Power Corp. (Nine Mile Point, Units 1 and 2), CLI-99-30, 50 NRC 333, 343-44 (1999)).

By notice dated February 13, 2001, Petitioners were informed that an oral hearing would be held in the license transfer proceedings for the IP3 and FitzPatrick

facilities, Docket Nos. 50-333-LT and 50-286-LT (consolidated) on Tuesday, March 13, 2001. As noted in the February 13 notice, the issues to be considered at the March 13 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).]

Petitioners' request for hearing herein raises issues that are similar to those to be addressed at the March 13 hearing. However, without the redacted information, Petitioners's efforts to complete a comprehensive review of the documents submitted in the application for transfer of IP1 and IP2 and to prepare additional comments, supporting affidavits and other materials that may be required to supplement the Petitioners's petition for intervention and hearing, are hindered. As the Commission noted in footnote 23 to its November 27, 2000 order, IP3-FitzPatrick, CLI-00-22, 52 NRC __, slip at 27:

Subpart M calls for "specificity" in pleadings. See Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129, 131-32 (2000). However, in the unusual setting here, where critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an

issue until the petitioner has had an opportunity to review this information and submit a properly documented issue.

In Petitioners's previous effort to raise issues for hearing, *i.e.*, the IP3-FitzPatrick license transfer proceeding, several issues were found wanting for lack of specificity even though at the time of the issues's "specification," Petitioners did not have access to redacted information. Hence, in order to avoid a similar prejudice to their efforts to formulate issues in this transfer proceeding, Petitioners request additional time to formulate *de novo* issues for hearing after receipt of the redacted information. The reasonableness of such a request was recognized in the February 5, 2001 order of the ALJ in the IP3-FitzPatrick transfer proceeding, wherein the ALJ determined in a challenge by the applicant to the submission of several issues after receipt of redacted information:

In determining the acceptability of this proposed issue or contention, I differ in certain respects from the premises that the Licensees read as incorporated into CLI-00-22. In particular, I believe that the Commission perceived access to proprietary data as necessary to formulate a contention challenging the cost and revenue projections of the Licensees, but not requiring that proprietary data be actually incorporated into the contention itself. Although certain aspects of the contention could perhaps have been formulated earlier on the basis of non-proprietary information, the Intervenor could not have been able to formulate the entire issue or to have determined whether certain of its claims incorporated therein are meaningful without at least having had access to the proprietary data. In CAN's words, "[t]he issues CAN raised which were not based directly on proprietary information were pertinent either (1) because their full significance could not be ascertained independently of the proprietary information that was only recently provided to CAN and its supporting expert, Edward A. Smeloff; or (2) because the non-proprietary information is necessary to understand whether the proprietary information provides reasonable financial assurance to warrant approval of the applications."¹

In that connection, although the Licensees would portray the issue

1. CAN reply, dated January 31, 2001, at 3-4.

as five separate issues, I interpret CAN as posing a single issue with five subparts or bases. Further, along the same line, where the non-proprietary bases of the issue are being considered, the Commission did not limit the issue's bases to information arising after the time when information supporting the proposed contention was being submitted. The issue sanctioned by CLI-00-22 seeks to create a complete picture of the alleged potential revenue shortfall, without regard to the precise minute that the separate bases may have become available to CAN. True, CLI-00-22 does not permit litigation of issues that the Commission has already rejected. But it also does not contemplate a characterization of all asserted facts as falling within the parameters of such rejected issues, particularly where, as here, the same facts may undergird an essentially different issue. Moreover, because the issue relies in part on certain information existing at the time issues were first defined, combining that information with later-arising or later-available information does not convert the particular aspects of the issue based on pre-existing information as late-filed issues that are subject to the more stringent acceptance criteria (see 10 C.F.R. § 2.1308(b)) applicable to such issues.

I note that, under 10 C.F.R. Part 2, Subpart G, any issues submitted after the initial filing date for contentions would be considered late-filed. See, e.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235 (1996). But the appearance of information for the first time in a document not available when contentions initially were to be filed would satisfy the "good cause for delay" aspect of the late-filed contention criteria, assuming the proposed contention was filed shortly after the information became available. Id. at 255; but cf. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045, 1048 (1983)(unavailability of licensing-related document does not establish good cause for late filing of a contention if information was publicly available early enough to provide the basis for the timely filing of that contention).

Here, under 10 C.F.R. Subpart M, similar criteria might govern, absent Commission direction to the contrary. According to CAN, however, the Commission in CLI-00-22 has so directed. The Commission noted that CAN had not had access to the proprietary information it needed to formulate its issue with sufficient particularity, and it set a schedule (which has been modified to some degree by the Presiding Officer) for filing, using "usual specificity requirements." CLI-00-22, 52 NRC at 300 (2000). CAN timely submitted its issue under that revised schedule. In the circumstances, therefore, CAN's proposed issue should be, and is being, evaluated.

It is apparent to Petitioners that any attempt to formulate issues for hearing prior to receipt of the redacted information and responses to additional information requests from Commission Staff is done at their peril. For example, ENIP2 and ENO have

evidently based their financial projections upon an assumed plant capacity factor of 85% being achieved and maintained throughout the time period used for their project costs and revenues. As noted herein, a similar claim in the IP3-FitzPatrick license transfer proceeding is set for hearing on March 13, 2001. However, there is no discussion of the operating history of IP2 in the transfer proceeding, let alone an explanation of why this plant capacity factor is significantly higher than the capacity factor of 73.5% assumed, with adjustments for outages, in the Con Edison September 19, 1997 Agreement and Settlement in New York PSC Case No. 96-E-0897, p. 31. The reasonableness of this assumption is questioned by the Petitioners' experts; however, their ability to "test" the reasonableness of this and other financial assumptions has been hindered by the redacted information. See Letter from George E. Sansoucy to Paul V. Nolan, Esq., dated February 20, 2001 ("Sansoucy Letter"), attached hereto.

For the reasons noted above, Petitioners request additional time.

PETITION FOR INTERVENTION

Petitioners respectfully submit herein their petition to intervene and reserve the right to supplement it within the additional time period requested. In support thereof, the names and addresses of the persons authorized to receive notices and communications, pursuant to 10 CFR §2.708(e) and §2.1306(b)(1), are as follows:

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IP1 and IP2 are located within portions of the Town of Cortlandt and the Hendrick Hudson School District. The license presently held by Con Edison for IP2, unless extended or renewed, expires in 2013. With respect to IP2 and IP1, which is in SafeStore, it is the understanding of Petitioners that the decommissioning plan's goal is for the sites to be returned to Greenfield status with unrestricted use thereof. This understanding includes an expectation that dry-cask storage on-site will be of limited duration, and that the entire IP2 and IP1 facilities will be dismantled and removed off-site. The instant transfer application makes several references to future decommissioning of IP1 and IP2. See e.g., Transfer Application at 13. However, and despite referencing the January 31, 1996 Commission Order accepting the decommissioning plan for IP1, there is no mention that the Applicants have an agreement to share 50% of the savings in excess decommissioning funds with Con Edison should ENIP2 "decommission the [IP1 and IP2] site in a manner different than currently contemplated." PSC Asset Sale

Petition, at 11. See also PSC Asset Sale Petition, Affidavit of George Jee, p. 4.

Certainly, the redacted projections need to be examined for the present and future treatment of the decommission fund in light of the Applicants agreement to divide the spoils to be made from the altering the decommissioning plan for IP1 and by extension thereof the plan for IP2. Clearly the financial capability of ENIP2 to honor the current decommission plan for IP1 and the operating license for IP2 will have a direct impact upon Petitioners.

Petitioners respectfully assert that they have the standing based upon those same factors cited by the Commission in its IP3-FitzPatrick November 27, 2001 order, CLI-00-22, 52 NRC ____, slip at 19:

Cortlandt and the Hendrick Hudson School District collectively seek standing in the Indian Point 3 license transfer proceeding on the grounds that the Indian Point 3 plant is located within the boundaries of both governmental entities and that the plant's safe operation and decommissioning is of great concern to the safety and long-term economic well-being of the Town and School District communities. We find that, for these reasons, Cortlandt has demonstrated standing with respect to the Indian Point 3 license transfer application. See Vermont Yankee, CLI-00-20, 52 NRC at ____, slip op. at 5. Moreover, Cortlandt is the locus of the Indian Point 3 plant and therefore is in a position analogous to that of an individual living or working within a few miles of a plant whose license may be transferred.

For the above stated reasons, Petitioners request intervention in the License Transfer Proceeding based upon their standing and status as municipal entities. Furthermore, it cannot be seriously disputed that Petitioners have standing to represent their constituents, who would clearly be adversely affected by any shortcomings in the application, and/or by any inability of the Applicants to adequately handle the responsibilities of maintaining a nuclear power plant. Obviously, a determination by the Commission that addresses the alleged shortcomings in the application will respond to

the concerns of the community with respect to prospective harm that may result from an inadequate and incomplete application. Therefore, Petitioners have standing to intervene in this proceeding and have demonstrated the requisite interest under §2.1308.

REQUEST FOR HEARING

The instant license transfer proceeding is unique because it includes the transfer of a facility which has been shut down and in "safe storage" mode since 1974. IP1, one of the first commercial nuclear reactors in the United States, was shut down because it did not have an emergency core cooling system. As a result, this facility is obviously not generating any electrical power, and constitutes a liability, rather than an asset. Although IP1 is not generating power, the owner of it still has the legal obligation of maintaining the site, protecting against radiation exposure, and planning for the ultimate decommissioning of the facility.

Furthermore, the transfer of IP2 also poses unique problems because, even though it is scheduled to run through 2013, the pool for spent nuclear fuel only has sufficient capacity to accommodate additional spent fuel assemblies until 2004.⁴ The problem of capacity to dispose of spent fuel assemblies would arise regardless of whether the facility was owned by its present owner, Con Edison, or transferred to Applicants. However, Petitioners respectfully maintain that if the facilities are to be transferred, the proposed new owner, ENIP2, must, as part of the transfer application, describe the measures that it

2. Draft Supplemental Environmental Impact Statement ("DSEIS") prepared by Con Edison, dated January 19, 2001, with respect to the transfer of Indian Point units 1 and 2 to Entergy, pursuant to section 70 of New York State Public Service Law, page 23.

intends to use to address the storage adequacy issue, and, more critically, must demonstrate that it has the financial and technical capability to do so. This is especially true since ENIP2, unlike the present owner, Con Edison, is not an investor-owned utility, and will, in all likelihood, be subject to lightened regulation by the New York State Public Service Commission.

Petitioners respectfully request hearing of the following issues and reserve their right to supplement this request within the time period sought by their extension request. Specifically, Petitioners, as detailed below and in the Sansoucy Letter, seek to litigate issues pertaining to: 1) whether the application submitted contains the requisite information under §§50.33 and 50.34 (incorporated by reference in §50.80), 2) whether the Applicants (ENIP2 and ENO) and/or their subsidiaries have the financial ability to operate the IP1 and IP2 plants, 3) whether the Applicants have provided adequate financial security for the ultimate decommissioning of IP1 and IP2, pursuant to the requirements of §50.75(e), 4) whether the Applicants will be able to continue to operate after 2004, when IP2 will run out of space for on-site storage of spent fuel, 5) whether the Applicants has the resources to resolve ongoing environmental problems, that have been documented by the previous owner Con Edison, but have not yet been remediated, and 6) whether the emergency radiological plans are adequate for the increase population in the vicinity of the facilities, and 7) whether the proposed transfer is in the public interest.

Financial Ability.

Issue for Hearing.

Whether the application is deficient because it fails to contain the information

specifically required by §50.33(f) with respect to the information necessary to demonstrate the financial ability to operate nuclear facilities?

The application for the transfer of IP1 and IP2 is extremely similar, and in many cases identical, with the application that was previously submitted by Entergy Nuclear Indian Point 3, LLC ("ENIP3") and ENO for the transfer of IP3 ("IP2-FitzPatrick License Transfer Proceedings"). In particular, the financial information, including redactions, is identical, and suffers from the same deficiencies that Petitioners previously identified in their Petition to Intervene with respect to the transfer of IP3.

The information submitted by the Applicants pertaining to their financial qualifications is insufficient to meet the specific criteria of 10 CFR 50.33(f). Furthermore, the available information poses questions, and raises concerns, that should properly be adjudicated in a public hearing, especially since crucial financial data has been redacted. The redaction of the financial information precludes the public from full participation in this proceeding, and raises a barrier to the Petitioners' ability to plead financial issues with specificity.

With respect to the transfer of the IP3 facility, in CLI-00-22 (November 27, 2000), the Commission held that intervenors, including the instant Petitioners, were entitled to "an opportunity to formulate a challenge to Entergy's costs and revenue projections... after a protective order is entered making Entergy's confidential financial data available" (Page 20). In IP3, Petitioners alleged that the applicant did not have the necessary level of financial qualifications to operate two nuclear facilities, (IP3 and the FitzPatrick facility) because of the joint and several liability agreement.

However, the principle remains the same in this case; Petitioners are entitled to an opportunity to review the financial information to formulate relevant issues with

respect to the inadequacy of the Applicants's financial resources, and, in particular, to demonstrate that the Applicants do not have "reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license."

(50.33(f)(2))

Information pertaining to estimates of operating costs for the first five years of operation of the facility, specifically required by 50.33(f)(2), has been redacted from the application. However, a review of the limited information that is publicly available indicates that Entergy is likely to have serious, if not insurmountable, problems and difficulties in meeting necessary expenses.

According to the purchase agreement, Entergy agreed to sell power to Con Edison at a fixed price of 3.9 cents per kilowatt-hour until 2004. Part of the consideration for this rate was obviously an adjustment of the \$502 million purchase price for the facility. However, according to the January 10, 2001 affidavit of George Jee, Director of Corporate Planning of Con Edison, and project manager for the divestiture of nuclear assets (submitted as an attachment to the DSEIS), Con Edison receives \$46.80 per megawatt hour in June, July and August, and \$36.40 per megawatt hour during the remainder of the year (p. 6, ¶ 14). Mr. Jee estimates that Con Edison will save between \$60 and \$100 million as a result of the purchase power agreement between Con Edison and Entergy, an amount which should properly be added to the purchase price.

Inasmuch as IP2 is proposing to enter into a contract for the sale of electricity to Con Edison through 2004, and, inasmuch as the sale of electricity can reasonably be assumed to be the sole source of operating revenue from IP2, the maximum revenue for the newly formed ENIP2 can be calculated with some precision. That number is 990

megawatts x 8760 hours per year x 85 % capacity factor (assumed by Applicants) x \$39 per megawatt hour. This is equal to approximately \$287 million per year.

Although the Applicants have, for no apparent reason, redacted information on the estimated operating costs, from the publicly available NRC application, some information with respect to annual operating costs is available from the DSEIS prepared by Con Edison in support of their request for approval of the transfer of generating assets from the PSC in PSC Asset Sale Petition proceeding.

Appendix C to the joint petition of Con Edison and ENIP2 for authority to transfer IP 2 contains a "statement of revenues expenses and taxes related to the assets being invested." This document indicates that Con Edison's expenses were \$225 million for 1997, \$282 million for 1998 and \$226 million for 1999, for an average of \$244 million. The taxes for these years were \$24 million, \$23 million and \$25 million respectively. This means that the total expenses plus taxes were \$249 million for 1997, \$305 million for 1998, and \$251 million for 1999, for a three-year average of \$268 million. However, this historical information is just that and can not be substituted for the redacted project costs and revenues. Hence, this discussion is engaged in only to show the need for additional information and the redacted information, and to call into question the feasibility of the financial ability of the Applicants to operate the IP1 and IP2 plants safely and in the public interest.

However, if we assume an annual increase in expenses of 3 percent from 1998 through 2001, the estimated expenses for 2001 will increase by $.09 \times \$244$ million, approximately \$22 million, to \$268 million. This means that the estimated total expenses and taxes will equal \$290 million, more than the anticipated revenues.

Furthermore, as noted below, IP2 is likely to incur significant additional expenses

in the next few years, as a result of the need to address: 1) the problem of storage for spent fuel, 2) ongoing environmental problems, and 3) the unresolved and well publicized issues resulting from its recent unplanned outages.

In addition, the potential inadequacy of ENIP2's and ENO's financial resources also implicates both the ability of the Applicants to adequately fund the decommissioning and Greenfielding of the Indian Point site, and to respond appropriately in the event of an accident or default.

The Applicants's reliance upon financial projections that are predicated upon undisclosed (redacted) cost and revenue assumptions and/or unsubstantiated operating assumptions such as a plant capacity factor of 85% is untenable. See Sansoucy Letter. In light of the financial feasibility concerns noted in the Sansoucy Letter, any short fall in revenue projects could quickly exceed the proffered credit enhancements, i.e., established \$20 million⁵ and \$35 million lines of credit offered by Entergy Global Investments, Inc., and Entergy International Ltd. LLC, respectively, and jeopardize the ability of ENIP2 to safely operate IP1 and IP2. The Petitioners are mindful of the Commission's numerous statements about the appropriateness of assailing the use of credit lines as a hearing issue when they are in addition to a showing that the Applicants have met the minimum financial requirements. In response to the Commission's concerns, Petitioners note that at p. 5 of the PSC Asset Sale Petition, ENIP2/ENO state that the \$20 million will be available "to provide any necessary working capital" and that the \$35 million is "to provide additional financial resources as needed for the safe operation and maintenance of IP1 and IP2."

3. Entergy Global Investments, Inc., has offered two \$20 million lines of credit to Entergy FitzPatrick and Entergy Indian Point, respectively. The ability of EGI to make similar lines available to ENIP2 is not discussed in the transfer application.

Therefore, the credit lines at issue here are not in addition to the minimum financial requirements, they are part of these minimums. Clearly, any use of a \$20 million line of credit to fund working capital puts directly at issue the financial feasibility of the Applicants to operate and/or maintain the plants safely under the negotiated power purchase agreement and projected costs.

Furthermore, there is nothing in the application, or in any of the enclosures or attachments to it, that provide any guidance as to whether these sums will be adequate for any liabilities that may arise, or for that matter, as to the resources of the entities that are offering these lines of credit.

As the application notes, ENIP is a newly formed entity (Application pg. 7). The Commission has the specific authority to require financial information for such newly formed entities pursuant to §50.33(f)(4). ENIP has only one prospective asset, the Indian Point facility itself. ENO, which does not appear to have any assets besides operation and maintenance agreements, will operate the Indian Point facility, and will be paid for its services by ENIP at cost (Application pg. 8). IP1 and IP2 will be owned and operated by two entities, one of which apparently has no assets, and the other of which has only one asset, IP 2, and a significant liability in IP1.

The application also advises that these two entities will have access to a line of credit of \$20 million from an affiliate company named Entergy Global Investments, Inc. and an additional \$35 million line of credit from Entergy International Ltd., LLC. (In contrast, the application for transfer of IP 3 provided for a line of credit of \$50 million; even though the transferee did not have the additional responsibility of managing IP1, a defunct facility).

It appears that pages 7 through 9 of the application do contain information, as is explicitly required by 50.33(f)(2), regarding the Applicants's estimate for the total annual

operating costs for the first five years of operations. However, it appears that this information has been redacted, and is therefore not available to the public or to the Petitioners. The redaction of this information makes it difficult, if not impossible, to conduct a proper review of whether the proposed transferee has adequate financial resources.

Furthermore, the credit agreement (Enclosure 7), the financial statement for Entergy International and Entergy Global Investments, Inc. (Enclosure 8), and, most critically, the financial statement for ENIP2 (Enclosure 9) have all been redacted from the application. The information that is included in the application, the bond ratings for selected Entergy subsidiaries (Enclosure 3), is hardly reassuring. Standard and Poor's rates the bonds of six affiliates of Entergy between BBB- to BBB+ for the years 1997 through 1999. Moody's rates these bonds between Baa2 and Baa3 for the last three years. The failure of any Entergy affiliate to obtain any rating beginning with an "A" does not speak well for the ability of a new Entergy affiliate, ENIP, with no assets other than the Indian Point facility itself, to meet its financial obligations.

It is respectfully submitted that if the limited liability format is to be used by an applicant, then the financials of affiliates should not be submitted as part of a transfer application in the absence of a showing that the limited liability corporation has insufficient financial resources and can call upon the resources of the affiliates by contract. In such a circumstance any limits upon this ability should be clearly set forth in the transfer application.

Five Year Projections. Petitioners respectfully submit that the projects provided at pp. 8 and 9 of the Transfer Application are deficient on their face. As noted in a February 5, 2001 order of the ALJ in the IP3-FitzPatrick License Transfer Proceeding;

Under 10 C.F.R. § 50.33(f)(2), an applicant for an operating license (including organizations such as ENF and ENIP) must submit “information that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license” (emphasis supplied). The section goes on to require that an applicant submit “estimates for total annual operating costs for each of the first five years of operation of the facility.”

There is no doubt that the Commission requires, at a minimum, the proffering of five-year cost and revenue projections. The redacted tables provided at p. 8 of the Transfer Application commence with year 2001 and end with year 2005. The table at p. 9 starts with year 2000 and ends with year 2005. As this is 2001, a projection for year 2000 is inappropriate -- it is not the first year of operation by IP2/ENO. More so as it is expected that the first full year of operation for ENIP2 will be, at best, 2002. Hence, and ignoring the redacted data for the moment, the projections offered at pp. 8 and 9 are short by one year.

Employees. Under the Asset Sale, ENO is to offer employment to all plant employees, honor the collective bargaining agreement and provide equivalent compensation and benefits to continuing non-union management for three years. PSC Asset Sale Petition at p. 12. The collective bargaining agreement expires on June 26, 2004. See PSC Asset Sale Petition, Affidavit of George Jee, p. 4. The three year period for non-union managers and the expiration of the union agreement in 2004, call into question the reasonableness of the redacted cost projects, the 85% plant capacity factor, and the ability of IP2/ENO to safely operate and maintain the IP1 and IP2 plants. See Sansoucy Letter.

The deficiencies of the application with respect to financial information constitute grounds for the Commission to reject the application and to require the submission of further information, or at the very least, to order the Applicants to make the redacted information available for public review and comment. Disputed factual questions with

respect to this information go to the heart of whether the Applicants are in compliance with the Commission's regulations, and are plainly admissible.

Decommission Fund Levels and Responsibilities.

Issue for Hearing

Whether the application contains the information sufficient to comply with the requirements of §50.33 (k) (1) pertaining to the adequacy of its funding for the decommissioning of the facility?

There is insufficient information available at present to ensure that the decommission fund is sufficient to ensure that the IP1 site will be decommissioned timely, completely, and expeditiously upon expiration of the current license for IP2. Indeed, there are questions with regard to IP2 just by virtue of the Statement of IP2 that IP2's license may be extended and alternative decommission plans implemented. See PSC Asset Sale Petition, Affidavit of George Jee, p. 4. See also Sansoucy Letter. As the application notes, 50.75(b) requires a reactor licensee to provide decommissioning funding to provide assurance that there will be adequate resources to fund the decommissioning of a nuclear facility by one of the methods described in 10 CFR 50.75(e). The Applicants propose to meet this requirement by prepaying a deposit in an amount sufficient to cover the decommissioning costs that are anticipated (10 CFR 50.75(e)(i)).

According to the application, Con Edison is proposing to transfer all of the money in the decommissioning trusts that it has maintained to Entergy as part of the sale of IP

1 and 2, together with additional funds to equal a total of \$430 million.⁶ Although the derivation of the \$430 million figure is not explained in the application, it appears that this sum represents the present value, discounted at the rate of two percent real rate of return, of the NRC minimum amount of \$558 million at the expiration of the licenses in 2013.⁷ However, this amount is plainly insufficient to fund the decommissioning.

An affidavit of Edward Rasmussen, dated January 11, 2001, is annexed to the DSEIS. Mr. Rasmussen advises that, as part of sales process, Con Edison commissioned ScienTech NES, Inc. to prepare a new decommissioning costs study. According to this study, the cost of decommissioning IP1 and IP2, in current dollars, is \$578 million.⁸ Furthermore, Con Edison, and, by implication, Entergy, is committed to restore the IP1 and IP2 property to Greenfield conditions. The ScienTech NES study estimates that this will result in an additional cost of \$47 million.

Therefore, it appears that the proposed decommissioning fund, even though it may meet the "NRC minimum amount" is \$67 million less than the amount that can reasonably be expected to be necessary to fund the decommissioning of the two facilities. It should also be noted that the total decommissioning cost of \$625 million is based upon an assumption that the decommissioning of IP1, IP2, and IP3 will all be done by one owner.

Furthermore, Petitioners respectfully request that the Commission take note of the present uncertainty in the financial markets, and the widespread perception that

⁶ In the unlikely event that the total value of the new trusts, as of the date of sale, is in excess of \$430 million, the purchase price of the two facilities will be adjusted downward, so that, in any event, the sum of \$430 million will be transferred to Entergy for a decommissioning fund.

⁵ The calculation of this "NRC minimum" amount is not explained.

⁶ Mr. Rasmussen states that this amount is \$20 million more than the current NRC minimum.

United States is on the verge of a recession. A change in financial conditions may make it impossible for the fund to appreciate at the estimated two percent real growth rate assumed by current regulations. It is perhaps worth noting that Con Edison, in managing the two trust funds which will provide the bulk of the money to be transferred to Entergy for decommissioning, has only been able to accumulate approximately \$415 million as of June 2001, and estimates that it will need to provide an additional \$15 million to fulfill its requirements to adequately fund the decommissioning of IP1 and IP2 (Rasmussen affidavit, p. 5, ¶ 8).

Mr. Rasmussen also notes that Con Edison presently collects more than \$23 million per year for decommissioning and spent nuclear fuel management (p. 6, ¶ 11). The source of this money is not identified, and there is nothing to indicate that Entergy will be able to collect this same amount of money from this unnamed source. Therefore, it appears that a significant source of funding for the decommissioning of IP1 and 2 will no longer be available after the transfer of the licenses.

Under all of the above circumstances, Petitioners respectfully maintain that the Applicants have failed to demonstrate the ability to adequately fund the decommissioning of IP1 and IP2. Even if the Applicants have demonstrated technical compliance with the bare minimum of the regulatory requirements contained in 50.75, it should be clear that they do not have adequate resources to fund the decommissioning from their dedicated fund.

It should be noted that the circumstances of the decommissioning of IP1 and IP2 are dramatically different from the circumstances with respect to the decommissioning of IP3. In the case of IP3, the applicable decommissioning funds were significantly higher than the minimum required by the NRC, and, in any event, funds were to continue to be

managed by the prior owner, the New York State Power Authority. Here, the formally responsible party, Con Edison, an investor-owned utility, is apparently signing off completely, and the full responsibility for the decommissioning will be borne by the new licensee, ENIP2, a corporation with no assets besides the facilities to be decommissioned.

The Atomic Energy Act protects public health and safety from radiologically-caused injury, and thereby requires that licensees demonstrate financial qualifications to afford this protection. See 10 CFR §50.80(b). Thus, the issues raised herein by Petitioners are within the scope of the IP1 and IP2 transfer proceeding, as required by 10 CFR §50.80(b). The issue of financial qualification is relevant and material to the findings necessary to grant the license transfers. A genuine dispute exists with regard to the financial feasibility of IP2/ENO to operate the plants safely as the underlying contracts, e.g., power purchase agreement and reasonableness of the cost and revenue projects clearly rely upon one or more lines of credit. See Sansoucy Letter.

On-Site Storage Capacity.

Issue for Hearing

Whether the application is deficient because it fails to demonstrate the capacity to handle on-site nuclear waste after its storage capacity is fully utilized in 2004?

As noted above, even though the application is silent with respect to the issue, §3.16 of the DSEIS advises that “at current burn levels, however, the units spent fuel pool can only accommodate additional spent fuel assemblies until 2004.” We are told by the DSEIS that this problem will be addressed through the continuation of the

engineering and licensing of the Independent Spent Fuel Storage Installation to be located somewhere in the western United States. A consortium of nuclear utilities have been working on the development of such project since 1994, and will presumably have such an installation online some day. Petitioners respectfully urge the Commission to take notice of the difficulties in siting such a facility, and urge that, for the purposes of the instant transfer application, the Commission assume that no such facility will be available in 2004.

If adequate resources for spent nuclear fuel are not developed, it would appear that IP2 will have to be shut down at some point in 2004 or 2005. According to Mr. Rasmussen, "the NES study commissioned by the company also estimated cost of spent fuel management. Assigning variables as to on-site vs. off-site storage, the timing for the opening of a repository by the DOE to accept the high-level waste materials and the rate of acceptance for such materials, the NES study concluded that the costs (in year 2000 constant dollars) of spent fuel management could range from a low of \$147 million to a high of \$362 million." Mr. Rasmussen does not state whether this figure represents the annual cost of spent fuel management, or represents a onetime expense. (Rasmussen affidavit, p. 6, ¶ 10).

In any event, given the apparently thin profit margins described above (the difference between anticipated operating revenues for the years 2001 -2004 and the historical operating costs for the years 1997 through 1999), it does not appear that ENIP2 will have adequate financial resources to fund the handling of spent fuel management, even at the low end of the anticipated expenses.

Anticipated Environmental Expenses at IP2.

Issue for Hearing

Whether the Applicants have the resources to adequately fund the environmental remediation that will be required at the Indian Point site?

In addition to the operating expenses that have been incurred for the last few years, the operator of IP1 and IP2, whether it is the current owner, Con Edison, or the proposed transferee, ENIP2, is likely to incur significant environmental expenses. As detailed in the DSEIS, Con Edison retained Earth Tech, Inc., to perform a Phase I and Phase II Environmental Site Assessment for IP2 in the year 2000. This assessment, which alone cost \$162,000, has resulted in the identification of environmental problems and in discussions pertaining to "potential actions and remediation that may be required ..." (DSEIS, p. 14). We are also told, in the DSEIS, that the Phase II analysis included a radiological survey of the IP2 site, but we are not told the results of that survey.

Significantly, the proposed transfer of IP2 has "precipitated the Phase I and Phase II environmental assessments ..." At a minimum, the Applicants should be required to disclose the Phase II report to the NRC, and explain what the estimated costs that will be incurred as a result of any remediation required. If, as Petitioners respectfully believe, that remediation costs in the tens of millions of dollars, the ability of Entergy to adequately fund operation costs could be severely impacted.

The State Pollutant Discharge Elimination System ("SPDES") water discharge permit for Indian Point No. 2 was scheduled to be renewed in 1992. (The troubled history of this permit renewal is described in Appendix A to the DSEIS.) A new permit has not been issued for over eight years, apparently because the New York State

Department of Environmental Conservation has been trying to work out an appropriate means of implementing a 1980 agreement between NYSDEC, the United States Environmental Protection Agency, various electric utilities, including Con Edison, and intervenors, to resolve complex issues pertaining to environmental mitigation measures. The difficult nature of this problem is illustrated by the fact that the 1980 agreement has still not been fully implemented, and, for over nine years, a new SPDES permit has not been issued. Once again, the cost of compliance with any agreement that may be reached needs to be explained, before a determination can be made with respect to the adequacy of ENIP2's financial resources to operate IP2.

Radiological Emergency Response Plans

Issue for Hearing

Whether the application is deficient because it fails to provide a radiological and emergency response plan, required by section 50.33 (g) to account for the increased population and development of the immediate vicinity of the IP1 and IP2 facilities?

50.33 (g) requires an applicant to submit radiological emergency response plans as part of its application. In this case, the Applicants apparently rely on the existing plans, which were initially prepared when the facilities were first licensed, in 1962 and 1974. However, the application does not address the fact that there has been considerable commercial and, more importantly, residential development in the vicinity of the two facilities.

The IP 1 and IP 2 facilities are located approximately twenty-five miles from New York City. In the last twenty-five years, there has been a significant expansion

of suburban bedroom communities in Northern Westchester County. As a result, the population of the immediate vicinity of the facilities at substantially increased. In the event of a nuclear accident, the evacuation of the population would be significantly more problematic than that it would have been in the past, because of this increased population density.

The application is deficient because it fails to address this fact, and because it fails to consider the probability that a new evacuation plan will have to be designed. Furthermore, it is possible that this evacuation plan will require significant additional expenses, possibly including the construction of new and improved highways to facilitate the rapid transportation of residents away from a nuclear accident. The application is further deficient because it fails to state how such plans will be funded. Given the apparent financial inadequacy of the Applicants, it is difficult to imagine how it will be able to provide any resources to meet any commitment that may be imposed with respect to emergency planning.

The Proposed Transfer is not in the Public Interest.

Issue for Hearing

The proposed transfer will enable an investor owned utility, subject to regulation by the PSC, to transfer a generating asset (IP2) together with a defunct liability (IP1) to a wholesale electric generating company. Even more significant, the assets transferred have serious potential liabilities, both in terms of potential radiological exposure, and undisclosed environmental hazards, and the proposed transferee does not appear to have adequate financial resources to cover either ongoing expenses or

decommissioning. Such a transfer is plainly not in the public interest.

CONCLUSION

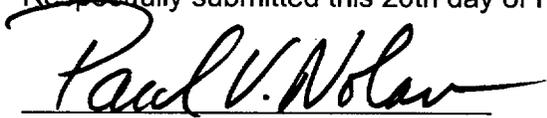
For the foregoing reasons, the Petitioners request that the Commission extend the deadlines for the submission of issues to be presented at hearing and to file comments until the later occurring date of April 1, 2001, or 30 days after receipt of the redacted information and any information provided to Commission staff so that Petitioners may supplement their request for hearing with an affidavit(s) and additional comments and issues upon having additional time to review the complete application and submission of additional information. Without that information, Petitioners respectfully submit that they are precluded from raising issues that are germane to the inquiry of whether:

Entergy Indian Point 2, LLC has the funds necessary to operate the Indian Point 1 and 2 plants safely, within the meaning of 10 C.F.R. §§ 50.33(f)(2), 50.33(f)(3) and 50.80(b).

However, to extent noted previously in this petition, Petitioners respectfully submit that there are significant issues, specifically including, but not limited to the financial ability, of the Applicants to operate and manage the two Indian Point facilities. In particular there appears that there are significant liabilities, most notably with respect to the existence of IP1, problems that may have been identified in the environmental assessment which is not included in the application, as well as the inadequacy of the decommissioning fund and the failure to account for the need to manage spent fuel after on-site resources are used up in 2004.

Petitioners believe that the above issues should be deemed admissible, even given the limited information available. However, Petitioners respectfully maintain that, at the very least, they should have an opportunity to review of the financial information pursuant to a negotiated protective order, and should be entitled to discovery with respect to the issues described above, which are apparently referenced in papers filed before the New York State Public Service Commission, but which have not been included in the documents filed with the application for license transferred to the Commission.

Respectfully submitted this 20th day of February 2001.



Paul V. Nolan, Esq.

Counsel to the Town of Cortlandt, New York and the
Hendrick Hudson School District

CERTIFICATE OF SERVICE

I, Paul V. Nolan, Esq., Counsel to the Town of Cortlandt, New York and the Hendrick Hudson School District, hereby certifies that on the 20th day of February 2001, service of the foregoing Petition; was made by first class mail and e-mail (before 4:30 PM) to the Secretary the parties noted in January 29, 2001 public notice. See attached service list. Courtesy copies have also been provided as noted on the Service List.

Dated this 20th day of February, 2001.



Paul V. Nolan, Esq.

Counsel to the Town of Cortlandt, New York and the
Hendrick Hudson School District

5515 North 17th Street
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Docket Nos. 50-003 and 50-247
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February 20, 2001

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February 20, 2001

Paul V. Nolan, Esquire
5515 North 17th Street
Arlington, VA 22205**RE: Review of Indian Point 1 & 2 License Transfer Application**

Dear Mr. Nolan:

As you requested, we have reviewed the redacted December 12, 2000 application to transfer licenses for the Indian Point Station Unit 1 (DPR-5) and Indian Point Nuclear Generation Unit 2 to Entergy Nuclear Indian Point 2, LLC ("Entergy Nuclear IP2") and Entergy Nuclear Operations, Inc., ("ENO").

We have a number of concerns relative to the application and underlying sales. These concerns are complicated by the fact that critical financial and operating information have been redacted from the publicly available application. This information includes:

- Financial qualifications of Entergy Nuclear IP2 and ENO.
- The Operating Agreement for the facility.
- The Credit Agreements for the facility.
- The financial projections related to the operation of IP2.¹

This information is necessary to evaluate whether Entergy Nuclear IP2 and ENO will have the financial capability and qualifications to comply with its license and applicable safety regulations. Because this information is redacted from the application, we cannot determine whether the application meets the criteria for approval set forth in 10 C.F.R. 50.80 (c).

The following is a list of concerns that we identified based upon our review of the redacted application and other information. Upon review of the unredacted information identified above, we will provide you with specific comments regarding the application.

¹Letter of John F. Groth dated December 12, 2000, pages 2-3; Affidavit of Michael R. Kansler, para. 1.

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1. Financial capability of Entergy Nuclear IP2.

We are concerned that Entergy Nuclear IP2 will not have the financial capability to operate the facility in compliance with its license and applicable safety requirements. The Application states that "Entergy Nuclear IP2 and ENO expect to operate IP2 at an average annual capacity factor² of 85%³." It is unclear how ENO will achieve this capacity factor. Our review of the historic operational statistics suggests that the facility may fail to achieve this proposed capacity factor which could significantly undermine Entergy Nuclear IP2's ability to operate the facility in compliance with its license and applicable safety requirements.

The attached Table 1 contains operational statistics for the Indian Point 2 facility obtained from Consolidated Edison's FERC Form 1 statements for the years 1995 to 1999. Table 1 shows that the facility has a five year average capacity factor of 57.66%, significantly below the 85% capacity factor proposed in the application. Table 1 also shows that during this period, the total costs to operate the facility have varied widely from a high of \$91.15 per MWH in 1998 to a low of \$16.85 per MWH in 1996.

Entergy Nuclear IP2 is expected to expend significant capital on the purchase of IP2. Because financial terms have been redacted from the application, we are unable to evaluate the proposed financial structure for the transaction. However, we note Entergy Nuclear IP2 is required to pay \$502,000,000 for the facility at closing, subject to certain adjustments.⁴ Based on this purchase price, an estimated ten percent cost of capital to finance the purchase, and a ten year recovery period, which corresponds to the expiration of the license in 2013, we estimate the annual capital requirement to be approximately \$74,270,000.

The combined operating costs and capital requirements have been calculated on a dollar per MWH basis at line 29 of Table 1. The combined costs of operation in Table 1 suggest that if the facility continues to operate at its historic capacity factor and incur similar operating expenses, Entergy Nuclear IP2 will not have sufficient income to operate the facility in compliance with its license and applicable requirements.

²Capacity factor - The ratio of the total energy generated by a generating unit for a specified period to the maximum possible energy it could have generated if operated at the maximum capacity rating for the same specified period, expressed as a percent.

³See Enclosure 1, *Application for Transfer of Facility Operating Licenses* at page 8.

⁴*Generating Plant and Gas Turbine Asset Purchase and Sale Agreement*, paras. 3.02 (b) & (c) (the "Asset Purchase and Sale Agreement").

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Page 3

Under the *Power Purchase Agreement* Entergy Nuclear IP2 is required to sell all energy from the facility to Consolidated Edison at \$ 46.80 per MWH in the months of June, July and August (peak) and \$36.40 per MWH for the remainder of the year (off-peak).⁵ On page 8 of the Application, this value is annualized to \$39.00 per MWH.

The potential revenue surplus or shortfall for each year in Table 1 is illustrated at lines 31 and 32 for the facility. The gross revenue is arrived at by multiplying the adjusted price of \$39.00 per MWH by the annual generation for each year in Table 1 to calculate the gross income revenue for each of the years as well as the five year average. These total operating expenses calculated at line 29 are subtracted from the gross revenue figure to calculate the surplus or shortfall. The figures calculated in Table 1 illustrate that on average over the five year period, the facility's total cost of operation was approximately 20% higher than the anticipated revenues using the annualized \$39 per MWH. The 20% operating costs excess does not include any annual capital contributions necessary to maintain the facility's integrity or annual expense of funding the facility's decommissioning. The inclusion of these annual expenditures would widen the facility's 20% average shortfall.

Because critical financial projections and other information has been redacted from the application, we cannot determine whether the application meets the criteria for approval set forth in 10 C.F.R. 50.80 (c). However, under the terms of the proposed transfer and the historic operating statistics in Table 1, it is foreseeable that Entergy Nuclear IP2 may be financially unable to perform necessary maintenance and improvements to the facility in compliance with its license and applicable requirements.

2. Plant Performance

Our concerns regarding the financial capability of Entergy Nuclear IP2 are exacerbated by the operational and compliance history of the facility.

By letter dated November 29, 2000, the NRC staff noted that "Plant performance for the most recent quarter was in the Multiple/Repetitive Degraded Cornerstone...."⁶ NRC staff stated that the degraded cornerstone rating was the result of "performance problems identified during" two separate events in August 1999 and February 2000, and that earlier problems at the facility "constituted a red finding, an issue of high safety significance." Based on these findings, the NRC

⁵ *Power Purchase Agreement*, paras. 1(b), 1(g).

⁶ Letter of Regional Administrator to A. Alan Blind, November 29, 2000.

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staff concluded that "[further adjustments to NRC Inspections or additional agency actions may be needed in the upcoming months" as inspection results become available.

These findings further call into question whether the facility will be capable of achieving the high capacity factor required to operate profitably under the proposed terms of the license transfer.

3. License Extension

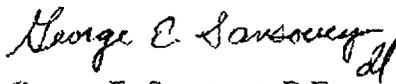
Indian Point 2 as well as Indian Point 3 may be candidates for license extension. The Commission should address the kind, quantity and location of spent fuel storage for the plant complex because spent fuel storage may increase the capital requirements of the facility. These costs should be considered in the context to the current transfer.

4. Decommissioning Fund

Because potentially significant financial information has been redacted from the application, it is not possible to estimate the ability of Energy Nuclear IP2 to make required payments to the Decommissioning Fund. Additional information is required to determine whether the proposed transfer satisfies the requirements of 10 C.F.R. 50.80.

We hope that the issues we have identified will assist you in this matter. If you have any questions, please do not hesitate to contact us.

Very Truly Yours,


George E. Sansoucy, P.E.

JR/dl

Attachment

**ATTACHMENT - TABLE 1
OPERATIONAL DATA
INDIAN POINT 2 FACILITY**

LINE NO.	DESCRIPTION	1999	1998	1997	1996	1995	5 YEAR AVG.
1	General Information						
2	Year Originally Constructed				1962		
3	Nameplate Capacity (MW)	1008	1008	1008	1013	1013	1010
4	Plant Hours Connected to Load	7,666	2,699	3,639	8,262	-	5,567 ¹
5	Average No. of Employees	697	679	658	639	-	668
6	Net Generation (MWH)	7,268,798	2,460,109	3,140,007	7,813,229	4,858,541	5,108,137
7	Capacity Factor	82.32%	27.86%	35.56%	87.81%	54.75%	57.66%
8	Operations						
9	Supervision & Engineering	\$26,291,183	\$36,363,701	\$17,579,924	\$13,915,540	\$15,481,670	\$21,926,404
10	Coolants & Water	1,147,355	758,789	1,047,773	1,051,881	909,160	982,994
11	Steam Expenses	474,946	1,080,950	1,078,200	1,044,271	1,021,928	939,879
12	Electric Expenses	476,662	1,167,946	1,172,558	1,117,392	1,089,029	1,004,717
13	Miscellaneous	67,513,839	74,061,430	54,761,350	35,057,029	44,644,962	55,207,722
14	Rents	298,818	301,685	315,258	281,826	298,825	299,282
15	Subtotal	96,202,813	113,734,501	75,955,063	52,467,939	63,444,674	80,360,998
16	Maintenance						
17	Supervision & Engineering	\$11,967,106	\$39,600,219	\$22,733,354	\$16,071,384	\$20,325,141	\$22,139,441
18	Structures	(7,223)	366,014	1,864,035	216,784	219,174	531,757
19	Reactor Plant	3,977,064	16,381,764	34,145,056	9,095,425	31,326,270	18,985,116
20	Electric Plant	1,395,258	915,843	8,446,552	502,387	9,429,489	4,137,906
21	Miscellaneous	7,219,412	22,589,735	20,335,168	9,138,444	15,206,686	14,897,989
22	Subtotal	\$24,551,617	\$79,853,575	\$87,524,165	\$35,024,424	\$76,506,760	\$60,692,109
23	TOTAL O & M	\$120,754,430	\$193,588,076	\$163,479,228	\$87,492,363	\$139,951,434	\$141,053,107
24	FUEL COST	\$41,749,156	\$30,663,476	\$6,497,427	\$44,150,415	\$28,680,354	\$30,348,166
25	TOTAL O & M PLUS FUEL	\$162,503,586	\$224,251,552	\$169,976,655	\$131,642,778	\$168,631,788	\$171,401,272
26	TOTAL COST O & M PLUS FUEL \$/MWH	\$22.36	\$91.16	\$54.13	\$16.85	\$34.71	\$33.55
27	ESTIMATED CAPITAL REQUIREMENTS	\$74,270,000	\$74,270,000	\$74,270,000	\$74,270,000	\$74,270,000	\$74,270,000
28	ESTIMATED CAPITAL REQUIREMENT \$/MWH	\$10.22	\$30.19	\$23.65	\$9.51	\$15.29	\$14.54
29	TOTAL COST \$/MWH	\$32.57	\$121.34	\$77.79	\$26.35	\$49.99	\$48.09
30	PROJECTED REVENUE \$/MWH ²	\$39.00	\$39.00	\$39.00	\$39.00	\$39.00	\$39.00
31	PROJECTED REVENUE SHORTFALL OR SURPLUS \$/MWH (Line 30 - Line 29)	\$6.43	(\$82.34)	(\$38.79)	\$12.65	(\$10.99)	(\$9.09)
32	% DIFFERENCE (Line 31 ÷ Line 29)	19.73%	(67.86)%	(49.86)%	47.98%	(21.99)%	(18.91)%

Source: PERC Form 1

¹Four year average.²Estimated revenue from page 8 of application.