

RAS 2937

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 04/05/01
SERVED 04/05/01

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

April 5, 2001

CERTIFICATION OF RECORD TO COMMISSION

This proceeding concerns the license transfers for the James A. FitzPatrick Nuclear Power Plant and the Indian Point Nuclear Generating Unit No. 3, from the Power Authority of the State of New York (PASNY) to Entergy Nuclear FitzPatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc. It is subject to the procedural requirements set forth in 10 C.F.R. Part 2, Subpart M—"Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications" (10 C.F.R. §§ 2.1300-2.1331).

The Presiding Officer, in accordance with 10 C.F.R. § 2.1320(b)(3) and the instructions of the Commission set forth in CLI-00-22, 52 NRC 266 (2000), hereby certifies the record of this proceeding, commencing with the issuance of CLI-00-22, to the Commission for its final decision. Those instructions spelled out, inter alia, that, following the holding by the Presiding

Officer of an oral hearing (held in this proceeding on March 13-14, 2001, in White Plains, New York), and after receipt of the parties' final statements of position (see 10 C.F.R. § 2.1322(c)), the Presiding Officer, without ruling or recommending a ruling on any issues, will certify the completed hearing record to the Commission for its issuance of a final decision.

Except with respect to the Staff's Safety Evaluation Report (both proprietary and redacted versions), dated November 9, 2000, and the Staff's approval of the license transfers, also dated November 9, 2000, this certification does not include filings preceding the decision in CLI-00-22, as listed in the Memorandum from the Secretary of the Commission to the Presiding Officer, dated November 30, 2000, titled "Identification of Documents filed in Proceeding." All documents listed herein are records of the consolidated docket numbers 50-333-LT and 50-286-LT, unless otherwise specified. All such documents have been filed in both e-mail and paper-copy form, with e-mail copies filed on the "document date" listed below and paper copies mailed simultaneously or shortly thereafter. Where reference is made to published orders or decisions of the Commission or Presiding Officer, the summaries and headnotes appearing in the Nuclear Regulatory Commission Issuances are not included in the official record of the proceeding.

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
1. James A. FitzPatrick Nuclear Power Plant—Order Approving Transfer of License from [PASNY] to Entergy Nuclear FitzPatrick, LLC, and Entergy Nuclear Operations, Inc. and Approving Conforming Amendment (TAC No. MA8949)	11/9/00		ML003764772

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
2. Safety Evaluation [SER] by the Office of Nuclear Reactor Regulation [NRR], Transfer of Facility Operating License from [PASNY] to Entergy Nuclear FitzPatrick and Entergy Nuclear Operations, Inc. and Conforming Amendment, Docket No. 50-333, James A FitzPatrick Nuclear Power Plant (proprietary version)	11/9/00		*ML003764772 ¹
(Nonproprietary version, Order and SER)	11/9/00		ML003768011
3. Indian Point Nuclear Generating Unit No. 3—Order Approving Transfer of License from [PASNY] to Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. and Approving Conforming Amendment (TAC No. MA8948)(proprietary version)	11/9/00		*ML003764125
4. Safety Evaluation by [NRR], Transfer of Facility Operating License from [PASNY] to Entergy Nuclear Indian Point 3, LLC., and Entergy Nuclear Operations, Inc. and Conforming Amendment, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3 (proprietary version)	11/9/00		*ML003764125
(Nonproprietary version, Order and SER)	11/9/00		ML003767953
5. Commission Memorandum and Order (CLI-00-22), 52 NRC 266 (2000)	11/27/00	11/27/00	ML003771716
6. Licensing Board Designation of Presiding Officer (Bechhoefer), 65 Fed. Reg. 75,976 (December 5, 2000)	11/28/00	11/28/00	ML003771929
7. Notice of granting of hearing requests, 65 Fed. Reg. 78,198 (December 14, 2000)		12/14/00	
8. Presiding Officer Memorandum and Order (Filing Schedules and Procedures), LBP-00-32, 52 NRC 345 (2000)	11/30/00	11/30/00 (served 12/01/00)	ML003773447
9. Memorandum to Presiding Officer from Secretary, "Identification of Documents filed in Proceeding"	11/30/00	11/30/00	ML003774619

¹Although ADAMS Accession Numbers are being provided for documents that include proprietary information, the need to maintain confidentiality of such documents mandates that access will be granted through the ADAMS system only to persons authorized access to such information. ADAMS Accession Numbers for proprietary documents will include an asterisk (*).

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
10. Notice of Counsel for Town of Cortlandt, New York and Hendrick Hudson School District	12/04/00	12/06/00	ML003775351
11. Memorandum and Order (Supplemental Filing Schedules and Procedures)	12/05/00	12/05/00	ML003774656
12. Notice of Appearance of Steven R. Hom, Esq., for NRC Staff	12/05/00	12/11/01	ML010220095
13. Notice of appearance of Mr. Timothy L. Judson, as representative of Citizens Awareness Network	12/05/00		
14. Notice of Appearance, Service List Correction, and Service Requirements for Mr. Timothy L. Judson and Ms. Deborah Katz, representing The Citizens Awareness Network, Inc.	12/05/00	12/11/00	ML003776649
15. Notice of Appearance and Correction of Service List, for Joseph R. Egan, Esq., counsel for Nuclear Generation Employees Association (NGEA)	12/07/00	12/11/00	ML003777051
16. Notice of Appearance and Correction of Service List, for Jay E. Silberg, Esq., counsel for PASNY and Entergy Companies	12/07/00	12/11/00	ML003777038
17. Notice of Appearance of Alan D. Scheinkman, Esq. and Stewart M. Glass, Esq., for Westchester County	12/07/00	12/11/00	ML003776711
18. Notice of Appearance of Gerald C. Goldstein, Esq., as counsel for PASNY	12/07/00	12/12/00	ML003777064
19. Notice of Appearance and Correction of Service List of Douglas E. Levanway, Esq., for Entergy Companies	12/07/00	12/11/00	ML003777057
20. Notice of Appearance of John M. Fulton, Esq., as counsel for Entergy Companies	12/07/00	12/12/00	ML003776612
21. Licensees' Motion for Adjustment of Schedule	12/07/00	12/13/00	ML00337044
22. Memorandum and Order (Responses to Licensees' Motion for Adjustment of Schedule)(unpublished)	12/07/00	12/08/00	ML003775707
23. CLI-00-22, Errata Notice	12/07/00	12/07/00	ML003775439

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
24. CAN Response to Applicants' Motion for Schedule Change, Additional Motion for Schedule Change, and Motion for Change of Hearing Location	12/11/00	12/13/00	
25. Letter from Jay E. Silberg, Esq. to Presiding Officer, re: protection of proprietary information, settlement negotiations with Cortlandt/Hendrick Hudson School District, and advice concerning lack of agreement to a non-oral hearing by at least one party	12/12/00	12/18/00	ML003778173
26. Memorandum and Order (Ruling on Licensees' Motion for Adjustment of Schedule)(unpublished)	12/13/00	12/13/00	ML003778238
27. Notice of Withdrawal of Cortlandt/Hendrik Hudson School District	12/15/00	12/19/00	ML003779166
28. NYPA/Entergy Companies Response to [CAN] Motion for Schedule Change and Motion for Change of Hearing Location	12/15/00	12/18/00	ML003778775
29. NYPA/Entergy Companies' Response to Notice of Withdrawal by Town of Cortlandt, New York, and Hendrick Hudson School District	12/18/00	12/28/00	ML003782039
30. [CAN] Responses to Notice of Withdrawal by the Town of Cortlandt, New York, and Hendrick Hudson School District and Subsequent Request by Applicants to Dismiss Issue #1 Accepted by Commission Order CLI-00-22	12/18/00	12/28/00	ML003782036
31. NYPA/Entergy Companies' Reply to "[CAN] Response[] . . . to Subsequent Request by Applicants to Dismiss Issue[s] #1 Accepted by Commission Order CLI-00-22	12/20/00	12/28/00	ML003782035
32. Memorandum and Order (Approving Withdrawal of Cortlandt/Hendrick Hudson School District), LBP-00-34, 52 NRC 361 (2000)	12/22/00	12/22/00	ML003780257
33. Memorandum and Order (CAN Motion for Schedule Change and Change of Hearing Location)(unpublished)	12/22/00	12/22/00	ML003780267
34. CAN Request for Time for Submission of Revised Contention	12/27/00	1/03/01	ML010040165

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
35. NYPA/Entergy Companies' Answer to [CAN's] Request for Time for Submission of Revised Contention	12/28/00	1/03/01	ML003782039
36. Memorandum and Order (Schedule for Filing Proposed Contention based on Proprietary Data)(unpublished)	12/28/00	12/28/00 (served 12/29/00)	ML003781924
37. Nuclear Generation Employees Association (NGEA's) Notice of Withdrawal	1/8/[01]	1/11/01	ML010120290
38. [CAN's] Revised Contention on Financial Qualifications Issue in the License Transfers for James A. FitzPatrick and Indian Point Unit 3 Nuclear Power Stations per Commission's Memorandum & Order, November 27, 2000 [CLI-00-22][Proprietary version.]	1/10/01	1/12/01	*ML010230162
39. [Redacted version of above document]	2/8/01	2/13/01	ML010510393
40. Memorandum and Order (Extension of Time for Licensees to Respond to CAN Proposed Contention)(unpublished)	1/11/01	1/11/01 (served 1/12/01)	ML010170322
41. Letter from Licensees' attorney to Presiding Officer, confirming that, during a telephone call on 1/11/01, the Presiding Officer granted an extension of time for the Licensees to respond to CAN proposed contention	1/12/01	1/17/01	ML010180307
42. CAN Written Statement on Issue 2	1/12/01	1/17/01	ML010180326
43. NYPA/Entergy Companies' Initial Written Statement of Position on Issue 2	1/12/01	1/19/01	ML010220419
44. NRC Staff's Notice of Sponsoring Witnesses	1/16/01	1/17/01	ML010250388
45. [CAN] [Revised Contention #3], Errata Notice	1/16/01	1/22/01	ML010230413
46. [CAN] Revised Contention on Financial Qualifications Issue in the License Transfers . . . [Revised] Errata Notice	1/23/01	1/29/01	ML010300328
47. CAN letter to NRC Staff requesting written copies of Staff testimony	1/23/01	1/29/01	ML010300340
48. Response to [CAN's] Revised Contention on Financial Qualifications [includes Proprietary Data]	1/24/01	1/29/01	*ML010310052
Transmittal letter	1/24/01	1/29/01	ML010300360

<u>Description</u>	<u>Document Date</u>	<u>Docket Date</u>	<u>ADAMS Accession No.</u>
49. Letter transmitting [CAN's] Reply to NYPA/Entergy Companies' Response to CAN's Revised Contention on Financial Qualifications[includes Proprietary Data]	1/31/01	2/6/01	*ML010380129
50. Errata to Exhibit 2 to CAN's reply to Entergy Companies (E-mail only)	2/1/01		
51. NYPA/Entergy Companies' Response to [CAN's] Statement of Position	2/1/01	2/6/01	ML010380098
52. [CAN's] Response to Applicants' Initial Statement of Position and Written Direct Testimony on CAN Issue #2;	2/1/01	2/12/01	ML010440403
53. [CAN's] Questions Directed to Pre-filed Written Direct Testimony in Support of "NYPA/Entergy Companies' Initial Written Statement of Position"	2/1/01	2/12/01	ML010440408
54. Memorandum and Order (CAN's Revised Contention on Financial Qualifications), LBP-01-04 (Corrected Version), 53 NRC 121 (2001)	2/5/01	2/13/01	ML010370368
55. Memorandum and Order (NRC Staff Participation) (Unpublished)	2/8/01	2/8/01	ML010390469
56. Redacted Version of [CAN's] Reply to NYPA/Entergy Companies' Response to CAN's Revised Contention on Financial Qualifications (January 31, 2001)	2/8/01	2/13/01	ML010510396
57. [CAN's] Reply to NYPA/Entergy Companies' Response to CAN's Revised Contention on Financial Qualifications, ERRATA NOTICE	2/8/01	2/8/01	ML010510386
58. Notice of Oral Hearing (66 Fed. Reg. 10921, 2/20/01)	2/13/01	2/13/01	ML010450292
59. Memorandum and Order (Approving Withdrawal of Nuclear Generation Employees' Association, LBP-01-05, 53 NRC 136 (2001)	2/14/01	2/14/01	ML010570246
60. Testimony of David A. Lochbaum, Nuclear Safety Engineer, Union of Concerned Scientists, Regarding Technical Issues and Safety Matters Involved in the Proposed Transfer of the FitzPatrick and Indian Point 3 Operating Licenses to Entergy Nuclear (attached to item 62, below)	2/23/01	3/5/01	ML010650234
61. Testimony of Edward A. Smeloff (proprietary data)	2/26/01	2/28/01	*ML010600337

<u>Description</u>	<u>Document Docket ADAMS</u>		
	<u>Date</u>	<u>Date</u>	<u>Accession No.</u>
62. [CAN's] Written Statement of Position on Issue #3 Admitted for Hearing by Order of the Presiding Officer, February 5, 2001 (transmittal letter publicly available; Written Statement includes proprietary data)	2/26/01	3/05/01	ML010650219 *ML010650234
63. Letter to Presiding Officer from NRC Staff, enclosing NRC Staff Brief Regarding NRC Authority Over Decommissioning Expenditures by The Power Authority of the State of New York	2/26/01	2/27/01	ML010580388 ML010580319
64. Letter to Presiding Officer enclosing NYPA/Entergy Companies' Initial Written Statement of Position on Issue 3 (CAN's Revised Contention on Financial Qualifications) and Written Direct Testimony and Joint Affidavit of Barrett E. Green and Michael R. Kansler (includes proprietary data)	2/26/01	3/1/01	ML010610262
65. Letter from CAN enclosing [CAN's] Response to NYPA/Entergy Companies' Initial Written Statement of Position on Issue 3 and Supporting Testimony of Barrett E. Green and Michael R. Kansler (includes proprietary information)	3/5/01 3/5/01	3/13/01 3/13/01	ML010740435 *ML010740375
66. Letter enclosing NYPA/Entergy Companies' Response to CAN's Initial Statement of Position on Issue 3 (CAN's Revised Contention on Financial Qualifications)	3/5/01 3/5/01	3/13/01 3/8/01	ML010740343 *ML010720475
67. NYPA/Entergy Companies' Motion to Strike Portions of CAN's Initial Statement of Position on Issue 3 and Supporting Testimony (includes proprietary information)	3/5/01	3/8/01	*ML010720413
68. Memorandum and Order (Response to Motion to Strike), Unpublished	3/6/01	3/6/01 (served 3/7/01)	ML010650484
69. Memorandum and Order (Corrected Version, Response Motion to Strike), Unpublished	3/7/01	3/7/01	ML010660249
70. Notice of Appearance of Matias F. Travieso-Diaz, Esq., as counsel for PASNY and Entergy Companies	3/8/01	3/9/01	ML010710144
71. Notice of Appearance of Angela B. Coggins, Esq., as Counsel for the NRC Staff	3/9/01		
72. [CAN's] Response to NYPA/Entergy Companies' Motion to Strike Portions of CAN's Initial Statement of Position On Issue 3 and Supporting Testimony (includes proprietary data)	3/11/01	3/14/01	*ML010740271

<u>Description</u>	<u>Document</u> <u>Date</u>	<u>Docket</u> <u>Date</u>	<u>ADAMS</u> <u>Accession No.</u>
73. Transcript of Oral Hearing (pp. 1-168)(non-propprietary)	3/13/01	3/27/01	ML010870399
74. Transcript of Oral Hearing (pp. 169-282)(proprietary)	3/13/01	3/27/01*	ML010870148
75. Transcript of Oral Hearing (pp. 283-388)(proprietary)	3/14/01	3/27/00*	ML010870109
76. Letter, CAN to PASNY and Entergy counsel, re: access of NYPA personnel to proprietary information	3/19/01	3/21/01	ML010810318
77. Presiding Officer MEMORANDUM (Schedule for Filing Statements of Position and Proposed Transcript Corrections), unpublished	3/23/01	3/23/01	ML010820334
78. Letter, Gerald C. Goldstein, Esq., NYPA, to Mr. Timothy L. Judson, CAN, re: access of NYPA personnel to Proprietary information	3/26/01	3/29/01	ML010890361
79. NYPA/Entergy Companies' Final Statement of Position (Non-Proprietary Version)	4/3/01		
80. NYPA/Entergy Companies' Final Statement of Position (Proprietary Version)	4/3/01		
81. [CAN's] Final Written Statement of Position on Issues Nos. 2 and 3	4/3/01		
82. Proposed Transcript Corrections of NYPA/Entergy Cos.	4/3/01		
83. Transcript Corrections of Presiding Officer (Non-Proprietary Hearing Session)	4/5/01		
84. Transcript Corrections of Presiding Officer (Proprietary Hearing Sessions)	4/5/01		
85. Presiding Officer Certification of Record to Commission	4/5/01		

/RA/

Charles Bechhoefer, Presiding Officer
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 5, 2001

[Copies of this Certification have been transmitted this date by e-mail to counsel for each of the parties as well as the NRC Staff.]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
POWER AUTHORITY OF THE STATE OF)
NEW YORK, ET AL.)
)
(James A. FitzPatrick Nuclear Power Plant) Docket Nos. 50-333-LT and
and Indian Point Nuclear Generating) 50-286-LT
Unit No. 3) (consolidated)

CERTIFICATE OF SERVICE

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

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles Bechhoefer, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Steven R. Hom, Esquire
Angela B. Coggins, Esquire
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Gerald C. Goldstein, Esquire
Arthur T. Cambouris, Esquire
David E. Blabey, Esquire
The Power Authority of the State of New York
123 Main Street
White Plains, NY 10601

Timothy L. Judson
CNY-Citizens Awareness Network
140 Bassett St.
Syracuse, NY 13210

Stewart M. Glass, Esquire
Senior Assistant County Attorney
Westchester County
Dept. of Law, Room 600
148 Martine Avenue
White Plains, NY 10601

Docket Nos. 50-333-LT and 50-286-LT
(consolidated)
LB CERTIFICATION OF RECORD TO
COMMISSION

Joseph R. Egan, Esquire
Egan & Associates, P.C.
1500 K Street, NW
Suite 200
Washington, DC 20005

Thomas F. Wood, Esquire
Town of Cortlandt
153 Albany Post Road
Buchanan, NY 10511

Jay E. Silberg, Esquire
Matias F. Travieso-Diaz, Esquire
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128

Douglas E. Levanway, Esquire
Wise, Carter, Child and Caraway
401 E. Capitol St., Suite 600
P.O. Box 651
Jackson, MS 39205-0651

George E. Sansoucy, P.E.
260 Ten Rod Road
Rochester, NH 03867

John Valentino, Esquire
Green & Seifter
One Lincoln Center, 9th Floor
Syracuse, NY 13202

Nancy T. Bocassi
Hendrick Hudson School District
61 Trolley Road
Montrose, NY 10548

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

John M. Fulton, Esquire
Entergy
600 Rocky Hill Road
Plymouth, MA 02360

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of April 2001