



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 27, 2017

Mr. Brian Sullivan
Site Vice President
Entergy Operations, Inc.
Entergy Nuclear Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

SUBJECT: ORDER APPROVING TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST FOR INDIAN POINT NUCLEAR GENERATING UNIT NO. 3 AND JAMES A. FITZPATRICK NUCLEAR POWER PLANT FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK TO ENTERGY NUCLEAR OPERATIONS, INC., AMENDMENTS TO THE MASTER DECOMMISSIONING TRUST AGREEMENT, AND ASSOCIATED LICENSE AMENDMENTS (CAC NOS. MF8286, MF8287, MF8288, AND MF8289)

Dear Mr. Sullivan:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated August 16, 2016. In the application, on behalf of itself, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear FitzPatrick, LLC, and the Power Authority of the State of New York (PASNY), Entergy Nuclear Operations, Inc. (ENO) requested that the NRC issue an Order for the transfer of control of the Master Decommissioning Trust (Master Trust), including all rights and obligations thereunder, held by PASNY for Indian Point Nuclear Generating Unit No. 3 (IP3) and the James A. FitzPatrick Nuclear Power Plant (FitzPatrick), to ENO.

In order to facilitate this transfer, ENO also requested the NRC's approval of proposed amendments to the Master Decommissioning Trust Agreement and of proposed amendments to the operating licenses of IP3 and FitzPatrick to modify existing trust-related license conditions to reflect the proposed transfer of control of the Master Trust to ENO and to delete other existing trust-related license conditions so as to apply to the licensees the requirements of Section 50.75(h) of Title 10 of the *Code of Federal Regulations* (10 CFR).

The enclosed Order approves the requested transfer of control, the proposed amendments to the Master Decommissioning Trust Agreement, and the conforming license amendments, which will be effective at the time that the transfer of control is completed.

Enclosure 2 is the draft conforming amendment to Facility Operating License No. DPR-64 for IP3. Enclosure 3 is the draft conforming amendment to Renewed Facility Operating License No. DPR-59 for FitzPatrick.

Enclosure 4 is the NRC staff's safety evaluation (SE) related to these actions. The SE will be placed in the NRC's public document room and added to the NRC's Agencywide Documents Access and Management System publicly available library.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Render', with a long horizontal flourish extending to the right.

Diane L. Render, Ph.D.
Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-286 and 50-333

Enclosures:

1. Order
2. Draft Conforming Amendment to DPR-64
3. Draft Conforming Amendment to DPR-59
4. Safety Evaluation

cc: Listserv

ENCLOSURE 1

ORDER APPROVING TRANSFER OF CONTROL OF
MASTER DECOMMISSIONING TRUST FOR
INDIAN POINT NUCLEAR GENERATING UNIT NO. 3
AND JAMES A. FITZPATRICK NUCLEAR POWER PLANT
FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK
TO ENTERGY NUCLEAR OPERATIONS, INC.,
AMENDMENTS TO MASTER DECOMMISSIONING TRUST AGREEMENT,
AND LICENSE AMENDMENTS TO MODIFY AND DELETE
DECOMMISSIONING TRUST LICENSE CONDITIONS

ADAMS Accession No. ML16337A272

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
)	
Entergy Nuclear Indian Point 3, LLC)	
Entergy Nuclear FitzPatrick, LLC)	
Entergy Nuclear Operations, Inc.)	
)	
)	
Indian Point Nuclear Generating Unit No. 3)	Docket No. 50-286
)	License No. DPR-64
)	
James A. FitzPatrick Nuclear Power Plant)	Docket No. 50-333
)	License No. DPR-59

ORDER APPROVING TRANSFER OF CONTROL OF MASTER
DECOMMISSIONING TRUST, AMENDMENTS TO MASTER
DECOMMISSIONING TRUST AGREEMENT, AND LICENSE AMENDMENTS
TO MODIFY AND DELETE DECOMMISSIONING TRUST LICENSE
CONDITIONS

I.

Entergy Nuclear Indian Point 3, LLC (ENIP3) and Entergy Nuclear Operations, Inc. (ENO) are the owner and operator, respectively, of Facility Operating License No. DPR-64 for Indian Point Nuclear Generating Unit No. 3 (Indian Point Unit 3 or IP3). IP3 is a Westinghouse pressurized-water reactor located in Westchester County, New York. Entergy Nuclear FitzPatrick, LLC (ENF) and ENO are the owner and operator, respectively, of Renewed Facility Operating License No. DPR-59 for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a General Electric boiling-water reactor located in Oswego County, New York.

II.

By the application dated August 16, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16230A308), ENO requested, on behalf of

itself, ENIP3, ENF, and the Power Authority of the State of New York (PASNY, which now does business as the New York Power Authority), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.90, "Application for amendment of license, construction permit, or early site permit," that the U.S. Nuclear Regulatory Commission (NRC or the Commission) issue an Order consenting to (1) the transfer to ENO of the beneficial interest in the Master Decommissioning Trust (Master Trust), including all rights and obligations thereunder, held by PASNY for IP3 and FitzPatrick; (2) amendments to the Master Decommissioning Trust Agreement dated July 25, 1990 (ADAMS Accession No. ML100500726), as amended (Master Trust Agreement), governing the Master Trust in order to facilitate the transfer of control of the Master Trust; (3) amendments to the operating licenses for IP3 and FitzPatrick in order to modify the existing trust-related license conditions to reflect the proposed transfer of control of the Master Trust; and (4) amendments to delete certain existing trust-related license conditions in order to apply to IP3 and FitzPatrick the generic requirements of 10 CFR 50.75(h). The NRC's approval of this application is a precondition to completing the pending application submitted jointly by Exelon Generation Company, LLC (Exelon) and ENO, dated August 18, 2016 (ADAMS Accession No. ML16235A081), requesting that the NRC issue an Order and conforming amendment consenting to the direct license transfer of Renewed Facility Operating License No. DPR-59 for FitzPatrick from ENO to Exelon.

By Orders dated November 9, 2000 (ADAMS Accession Nos. ML003767953 and ML003768011), the NRC consented to the direct license transfers of IP3 and FitzPatrick from PASNY to their current owners and operator. As described in these Orders, however, PASNY remained the custodial holder of the decommissioning trust funds for IP3 and FitzPatrick in the Master Trust, which includes the Indian Point Unit 3 Decommissioning Trust Fund (IP3 Fund) and the FitzPatrick Decommissioning Trust Fund (FitzPatrick Fund). The Decommissioning Agreement for IP3 dated November 21, 2000, among PASNY, Entergy Nuclear, Inc. (ENI), and

ENIP3, and the Decommissioning Agreement for FitzPatrick dated November 21, 2000, among PASNY, ENI, and ENF (the Decommissioning Agreements), contemplate the transfer of the decommissioning trust funds for IP3 and FitzPatrick to ENIP3 and ENF at the end of the initial terms of the IP3 and FitzPatrick operating licenses, respectively.

ENO and PASNY propose a transaction that will facilitate the transfer of control of the Master Trust to ENO, the current operator of IP3 and FitzPatrick. In addition to paying PASNY consideration for the acquisition of the Master Trust, the proposed transfer would require that ENO assume PASNY's responsibilities and obligations pursuant to the Decommissioning Agreements upon transfer of control of the Master Trust to ENO from PASNY. An Order directing the transfer of control of the Master Trust and consenting to the Master Trust Agreement amendments is required, because the terms of the Master Trust Agreement must be amended before the transfer. Under the license conditions of the operating licenses for IP3 and FitzPatrick, and the terms of the Master Trust Agreement itself, any such amendment requires the prior written consent of the Director of the Office of Nuclear Reactor Regulation. In addition, the existing license conditions do not contemplate the transfer of control of the Master Trust to ENO. Under the terms of Section 10.05 of the Master Trust Agreement, as amended, the terms of the agreement may be amended to comply with an Order issued by the NRC.

Thus, in accordance with these requirements, ENO, on behalf of ENIP3, ENF, and PASNY, requests that the NRC issue an Order directing the transfer of control of the Master Trust, consenting to an amendment to the Master Trust Agreement authorizing the transfer of control of the Master Trust to ENO, and approving license amendments that modify and delete trust-related license conditions in the IP3 and FitzPatrick operating licenses. A notice of this application was published in the *Federal Register* on September 27, 2016 (81 FR 66305). On November 1, 2016 (ADAMS Accession No. ML16306A258), a request for a hearing on the application was filed by Ms. Susan H. Shapiro, on behalf of Indian Point Safe Energy Coalition,

Hudson River Sloop Clearwater, Council on Intelligent Energy & Conservation Policy, Sierra Club Hudson Valley, Nuclear Information and Resource Service, Alliance for Green Economy, and Radiation and Public Health Project. On December 13, 2016 (ADAMS Accession No. ML16348A495), an Atomic Safety and Licensing Board denied the hearing request for failure to demonstrate standing.

Based on its review of the information in the application, and other information before the Commission, the NRC staff approves the proposed transfer of control of the Master Trust to ENO, along with the proposed amendments to the Master Trust Agreement, as amended. In addition, the NRC staff finds that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, "Nuclear Regulatory Commission"; the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the amendments can be conducted without endangering the public health and safety and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the amendments will not be inimical to the common defense and security or to the public health and safety; and the issuance of the amendments will be in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated January 27, 2017.

III.

Accordingly, pursuant to Section 161i(4) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.75, IT IS HEREBY ORDERED that the application to transfer control of the

Master Trust for IP3 and Fitzpatrick to ENO and the amendments to the Master Trust Agreement are approved.

IT IS FURTHER ORDERED that the license amendments to the operating licenses of IP3 and FitzPatrick that modify existing trust-related license conditions to reflect the transfer of control of the Master Trust to ENO and delete other existing trust-related license conditions in order to apply the generic requirements of 10 CFR 50.75(h) to IP3 and FitzPatrick, are approved. The amendments shall be issued and made effective at the time that the transfer of control of the Master Trust is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated August 16, 2016, and the NRC staff safety evaluation dated January 27, 2017 (ADAMS Accession No. ML16336A492), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01-F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are also accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, MD, this 27th day of January 2017.

FOR THE NUCLEAR REGULATORY COMMISSION



William M. Dean, Director,
Office of Nuclear Reactor Regulation.

ENCLOSURE 2

**DRAFT CONFORMING LICENSE AMENDMENT
TO FACILITY OPERATING LICENSE NO. DPR-64
INDIAN POINT NUCLEAR GENERATING UNIT NO. 3
TO MODIFY AND DELETE EXISTING TRUST-RELATED LICENSE CONDITIONS
TO REFLECT THE TRANSFER OF CONTROL OF THE
MASTER DECOMMISSIONING TRUST AND TO BECOME SUBJECT TO 10 CFR 50.75(h)**



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

ENTERGY NUCLEAR INDIAN POINT 3, LLC

AND ENTERGY NUCLEAR OPERATIONS, INC.

DOCKET NO. 50-286

INDIAN POINT NUCLEAR GENERATING UNIT NO. 3

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-64

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Entergy Nuclear Operations, Inc. (Entergy, the licensee) dated August 16, 2016, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, the license is amended by changes as indicated in the attachment to this license amendment, and paragraph 2.C.(2) of Facility Operating License No. DPR-64 is hereby amended to read as follows:

- (2) Technical Specifications

- The Technical Specifications contained in Appendices A, B, and C, as revised through Amendment No. , are hereby incorporated in the License. ENO shall operate the facility in accordance with the Technical Specifications.

3. This license amendment is effective as of the date of the transfer of control of the Master Decommissioning Trust and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

William M. Dean, Director
Office of Nuclear Reactor Regulation

Attachment:
Changes to the Operating License

Date of Issuance:

INDIAN POINT NUCLEAR GENERATING UNIT NO. 3

ATTACHMENT TO LICENSE AMENDMENT NO

FACILITY OPERATING LICENSE NO. DPR-64

DOCKET NO. 50-286

Replace the following pages of the facility operating license with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Pages

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Insert Pages

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- (4) ENO pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; Amdt. 203 11/27/00
- (5) ENO pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility. Amdt. 203 11/27/00
- C. This amended license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Sections 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:
 - (1) Maximum Power Level

ENO is authorized to operate the facility at steady state reactor core power levels not in excess of 3216 megawatts thermal (100% of rated power).
 - (2) Technical Specifications

The Technical Specifications contained in Appendices A, B, and C as revised through Amendment No. are hereby incorporated in the License. ENO shall operate the facility in accordance with the Technical Specifications.
 - (3) (DELETED) Amdt. 205 2-27-01
 - (4) (DELETED) Amdt. 205 2-27-01
- D. (DELETED) Amdt.46 2-16-83
- E. (DELETED) Amdt.37 5-14-81
- F. This amended license is also subject to appropriate conditions by the New York State Department of Environmental Conservation in its letter of May 2, 1975, to Consolidated Edison Company of New York, Inc., granting a Section 401 certification under the Federal Water Pollution Control Act Amendments of 1972.

- | | | |
|----|--|-----------------------|
| M. | (DELETED) | Amdt. 205
2/27/01 |
| N. | (DELETED) | Amdt. 49
5-25-84 |
| O. | Evaluation, status and schedule for completion of balance of plant modifications as outlined in letter dated February 12, 1983, shall be forwarded to the NRC by January 1, 1984. | Amdt. 47
5-27-83 |
| P. | Entergy Nuclear IP3 and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies to void, cancel, or modify the \$70 million contingency commitment to provide funding for the facility as represented in the application for approval of the transfer of the license from PASNY to ENIP3 and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation. | Amdt. 203
11/21/00 |
| Q. | (DELETED) | |
| R. | (DELETED) | |
| S. | (DELETED) | |
| T. | (DELETED) | |

U. (DELETED)

V. (DELETED)

W. For purposes of ensuring public health and safety, ENIP3, upon the transfer of this license to it, and upon transfer of decommissioning funds from PASNY to ENO, shall provide decommissioning funding assurance for the facility by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by ENO for the facility after the transfer of the facility license to ENIP3 may be credited towards the amount required under this paragraph.

X. ENIP3 shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENIP3 and ENO, as modified by the request to transfer decommissioning funds from PASNY, and the requirements of the order approving the transfer and order approving the transfer of decommissioning funds from PASNY to ENO, and consistent with the safety evaluations supporting such orders.

AA. The following conditions relate to the amendment approving the conversion to Improved Standard Technical Specifications:

Amdt. 205
2/27/01

1. This amendment authorizes the relocation of certain Technical Specification requirements and detailed information to licensee-controlled documents as described in Table R, "Relocated Technical Specifications

ENCLOSURE 3

**DRAFT CONFORMING LICENSE AMENDMENT
TO RENEWED FACILITY OPERATING LICENSE NO. DPR-59
JAMES A. FITZPATRICK NUCLEAR POWER PLANT
TO MODIFY AND DELETE EXISTING TRUST-RELATED LICENSE CONDITIONS
TO REFLECT THE TRANSFER OF CONTROL OF THE
MASTER DECOMMISSIONING TRUST
AND TO BECOME SUBJECT TO 10 CFR 10.75(h)**



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

ENERGY NUCLEAR FITZPATRICK, LLC
AND ENERGY NUCLEAR OPERATIONS, INC.

DOCKET NO. 50-333

JAMES A. FITZPATRICK NUCLEAR POWER PLANT
AMENDMENT TO RENEWED FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-59

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Entergy Nuclear Operations, Inc. (Entergy, the licensee) dated August 16, 2016, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, the license is amended by changes as indicated in the attachment to this license amendment, and paragraph 2.C.(2) of Renewed Facility Operating License No. DPR-59 is hereby amended to read as follows:

(2) Technical Specifications

The Technical Specifications contained in Appendices A and C, as revised through Amendment No. _____, are hereby incorporated in the renewed operating license. The licensee shall operate the facility in accordance with the Technical Specifications.

3. This license amendment is effective as of the date of the transfer of control of the Master Decommissioning Trust and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

William M. Dean, Director
Office of Nuclear Reactor Regulation

Attachment:
Changes to the Operating License

Date of Issuance:

JAMES A. FITZPATRICK NUCLEAR POWER PLANT
ATTACHMENT TO LICENSE AMENDMENT NO.
RENEWED FACILITY OPERATING LICENSE NO. DPR-59
DOCKET NO. 50-333

Replace the following pages of the renewed facility operating license with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove Page

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Insert Page

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- (4) ENO pursuant to the Act and 10 CFR Parts 30 and 70, to receive, possess, and use, at any time, any byproduct and special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration; or associated with radioactive apparatus, components or tools..
- (5) Pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This renewed operating license shall be deemed to contain and is subject to the conditions specified in the following Commission regulations in 10 CFR Chapter I: Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Sections 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70; and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional considerations specified below:

(1) Maximum Power Level

ENO is authorized to operate the facility at steady state reactor core power levels not in excess of 2536 megawatts (thermal).

(2) Technical Specifications

The Technical Specifications contained in Appendices A and C, as revised through Amendment No. _____, are hereby incorporated in the renewed operating license. The licensee shall operate the facility in accordance with the Technical Specifications.

(3) Fire Protection

ENO shall implement and maintain in effect all provisions of the approved fire protections program as described in the Final Safety Analysis Report for the facility as approved in the SER dated November 20, 1972; the SER Supplement No. 1 dated February 1, 1973; the SER Supplement No. 2 dated October 4, 1974; the SER dated August 1, 1979; the SER Supplement dated October 3, 1980; the SER Supplement dated February 13, 1981; the NRC Letter dated February 24, 1981; Technical Specification Amendments 34 (dated January 31, 1978), 80 (dated May 22, 1984), 134 (dated July 19, 1989), 135 (dated September 5, 1989), 142 (dated October 23, 1989), 164 (dated August 10, 1990), 176 (dated January 16, 1992), 177 (dated February 10, 1992), 186 (dated February 19, 1993), 190 (dated June 29, 1993), 191 (dated July 7, 1993), 206 (dated February 28, 1994), and 214 (dated June 27, 1994); and NRC Exemptions and associated safety evaluations dated April 26, 1983, July 1, 1983, January 11, 1985, April 30, 1986, September 15, 1986 and September 10, 1992 subject to the following provision:

will be incorporated in Licensed Operator training during 1997. Simulator discrepancies identified will be addressed in accordance with simulator Configuration Management procedural requirements.

F. Additional Conditions

The Additional Conditions contained in Appendix C, as revised through Amendment No. 289, are hereby incorporated into this renewed operating license. ENO shall operate the facility in accordance with the Additional Conditions.

G. ENF and ENO shall take no action to cause Entergy Global Investments, Inc. or Entergy International Ltd. LLC, or their parent companies, to void, cancel, or modify the \$70 million contingency commitment to provide funding for the facility as represented in the application for approval of the transfer of the facility license from PASNY to ENF and ENO, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

H. DELETED

I. DELETED

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N. DELETED

O. DELETED

P. For purposes of ensuring public health and safety, ENF, upon the transfer of this license to it, and upon transfer of decommissioning funds from PASNY to ENO, shall provide decommissioning funding assurance for the facility, to be held in a decommissioning trust fund for the facility by the prepayment or equivalent method, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by ENO for the facility after the transfer of the facility license to ENF may be credited towards the amount required under this paragraph.

Q. ENF shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENF and ENO, as modified by the request to transfer decommissioning funds from PASNY, and the requirements of the order approving the transfer and order approving the transfer of decommissioning funds from PASNY to ENO, and consistent with the safety evaluations supporting such orders.

R. Mitigation Strategy License Condition

Develop and maintain strategies for addressing large fires and explosions and that include the following key areas:

- (a) Fire fighting response strategy with the following elements:
 - 1. Pre-defined coordinated fire response strategy and guidance
 - 2. Assessment of mutual aid fire fighting assets
 - 3. Designated staging areas for equipment and materials
 - 4. Command and control
 - 5. Training of response personnel

- (b) Operations to mitigate fuel damage considering the following:
 - 1. Protection and use of personnel assets
 - 2. Communications
 - 3. Minimizing fire spread
 - 4. Procedures for implementing integrated fire response strategy
 - 5. Identification of readily-available pre-staged equipment
 - 6. Training on integrated fire response strategy
 - 7. Spent fuel pool mitigation measures

- (c) Actions to minimize release to include consideration of:
 - 1. Water spray scrubbing
 - 2. Dose to onsite responders

ENCLOSURE 4

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST,
AMENDMENTS TO MASTER DECOMMISSIONING TRUST AGREEMENT,
AND LICENSE AMENDMENTS TO MODIFY AND
DELETE DECOMMISSIONING TRUST LICENSE CONDITIONS
FACILITY OPERATING LICENSE NO. DPR-64 AND
RENEWED FACILITY OPERATING LICENSE NO. DPR-59
INDIAN POINT NUCLEAR GENERATING UNIT NO. 3, DOCKET NO. 50-286
JAMES A. FITZPATRICK NUCLEAR POWER PLANT, DOCKET NO. 50-333



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST,
AMENDMENTS TO MASTER DECOMMISSIONING TRUST AGREEMENT,
AND LICENSE AMENDMENTS TO MODIFY AND
DELETE DECOMMISSIONING TRUST LICENSE CONDITIONS
FACILITY OPERATING LICENSE NO. DPR-64
INDIAN POINT NUCLEAR GENERATING UNIT NO. 3, DOCKET NO. 50-286
RENEWED FACILITY OPERATING LICENSE NO. DPR-59
JAMES A. FITZPATRICK NUCLEAR POWER PLANT, DOCKET NO. 50-333

1.0 INTRODUCTION

By application dated August 16, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16230A308), on behalf of itself, Entergy Nuclear Indian Point 3, LLC (ENIP3), Entergy Nuclear FitzPatrick, LLC (ENF), and the Power Authority of the State of New York (PASNY, which now does business as the New York Power Authority), Entergy Nuclear Operations, Inc. (ENO), the current licensed operator for Indian Point Nuclear Generating Unit No. 3 (IP3) and the James A. FitzPatrick Nuclear Power Plant (FitzPatrick), (together, the Applicants) requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission):

- (1) Issue an order directing the transfer of control of the Master Decommissioning Trust (Master Trust) for IP3 and FitzPatrick from PASNY to ENO;
- (2) Consent to amendments to the Master Decommissioning Trust Agreement (Master Trust Agreement) governing the Master Trust, which would authorize the transfer of control of the Master Trust from PASNY to ENO; and
- (3) Approve amendments to license conditions in the IP3 and FitzPatrick operating licenses that would modify those that refer to PASNY as the holder of the decommissioning trusts, such that they refer to ENO, and delete those that impose facility-specific requirements on decommissioning trust agreements, such that IP3 and FitzPatrick would be subject to the Commission's generic regulations governing decommissioning trust agreements at Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.75(h).

The requested transfer of control of the Master Trust is a precondition to completing a pending application to transfer the operating license of FitzPatrick from ENF and ENO to Exelon Generation Company, LLC, dated August 18, 2016 (ADAMS Accession No. ML16235A081).

2.0 BACKGROUND

On November 9, 2000, the NRC issued orders approving the transfers of the operating licenses for IP3 and FitzPatrick from PASNY to ENO (ADAMS Accession Nos. ML003767953 and ML003768011, respectively). However, the decommissioning trust funds in the Master Trust, which includes the IP3 Decommissioning Trust Fund (IP3 Fund) and the FitzPatrick Decommissioning Trust Fund (FitzPatrick Fund), were not transferred along with the operating licenses and PASNY remains their custodial holder. The Decommissioning Agreement for IP3, dated November 21, 2000, which governs the IP3 Fund, among PASNY, Entergy Nuclear, Inc. (ENI), and ENIP3, and the Decommissioning Agreement for FitzPatrick, dated November 21, 2000, which governs the FitzPatrick Fund, among PASNY, ENI, and ENF (the Decommissioning Agreements), contemplate the possible transfer of control of the IP3 and FitzPatrick Funds to ENIP3 and ENF, respectively, at the end of the initial terms of the IP3 and FitzPatrick operating licenses.

In the application, ENO and PASNY propose a transaction that will facilitate the transfer of control of the Master Trust to ENO. In addition to paying PASNY consideration for the acquisition of the Master Trust, the proposed transfer would require that ENO assume PASNY's responsibilities and obligations pursuant to the Decommissioning Agreements upon the transfer of control of the Master Trust to ENO from PASNY. The requested order directing the transfer of control of the Master Trust and consenting to amendments to the Master Trust Agreement is required, because the terms of the Master Trust Agreement must be amended prior to the transfer of control. Under the terms of the existing license conditions and the Master Trust Agreement, any such amendment requires the prior written consent of the Director of the Office of Nuclear Reactor Regulation (NRR). In addition, the existing license conditions do not contemplate the transfer of control of the Master Trust to ENO. Under the terms of Section 10.05 of the Master Trust Agreement, as amended, the terms of the agreement may be amended to comply with an order issued by the NRC.

3.0 REGULATORY EVALUATION

Under 10 CFR 50.90, whenever a holder of an operating license desires to amend the license, application for an amendment must be filed with the Commission fully describing the changes desired, and following, as far as applicable, the form prescribed for original applications.

Under 10 CFR 50.92, in determining whether an amendment to an operating license will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses to the extent applicable and appropriate.

On December 24, 2002, the NRC issued a final rule promulgating new regulatory provisions at 10 CFR 50.75(h)(1)-(4) that govern financial assurance mechanisms for licensees that are not "electric utilities."¹ The provisions in 10 CFR 50.75(h)(1)-(4) include substantially similar decommissioning trust agreement requirements as those found in the IP3 and FitzPatrick operating license conditions. The NRC established these requirements stating that, "the NRC has always believed that it is preferable and more efficient to adopt standard rules, as opposed to applying specific license conditions on a case-by-case basis" (67 FR 78334). In the rulemaking, the NRC also addressed several comments regarding potential conflicts or inconsistencies between the provisions of 10 CFR 50.75(h)(1)-(4) and a licensee's existing decommissioning trust agreement-related license conditions. The NRC explained that, "licensees will have the option of maintaining their existing license conditions or submitting to the new requirements" and "will be able to decide for themselves whether they prefer to keep or eliminate their specific license conditions" (67 FR 78335, 78339). In order to support a licensee's option to amend and eliminate its facility-specific decommissioning trust agreement license conditions in favor of the new generic decommissioning trust agreement regulations, the Commission made a generic determination in 10 CFR 50.75(h)(4) that any license amendment that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves "no significant hazards consideration."

After the promulgation of 10 CFR 50.75(h)(1)-(4), the NRC received a comment that the rule language did not sufficiently reflect the NRC's intent that individual licensees should have the option of retaining their existing license conditions. In response, on November 20, 2003, the NRC promulgated 10 CFR 50.75(h)(5), which codified the requirement for licensees to either maintain their existing facility-specific decommissioning trust agreement license conditions or eliminate them in favor of complying with the generic decommissioning trust agreement regulatory requirements (68 FR 65386-65389). Specifically, 10 CFR 50.75(h)(5) states:

The provisions of paragraphs (h)(1) through (h)(3) of this section do not apply to any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions. If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section.

The transfers of the IP3 and FitzPatrick operating licenses in November 2000 also involved adding certain facility-specific license conditions to the IP3 and FitzPatrick operating licenses regarding the treatment of decommissioning trust funds (Conditions 2.Q – 2.V and Conditions 2.H – 2.O, respectively). Section 50.75(h)(5) of 10 CFR applies to IP3 and FitzPatrick, because ENO is not an "electric utility" as defined in 10 CFR 50.2, and the IP3 and FitzPatrick operating licenses have facility-specific decommissioning trust agreement license conditions that were established as of December 24, 2003.

¹ The term "electric utility" is defined in 10 CFR 50.2, "Definitions," as: "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of 'electric utility.'"

Consistent with 10 CFR 50.75(h)(5), ENO proposes to delete License Conditions 2.Q – 2.V of the IP3 operating license and License Conditions 2.H – 2.O of the FitzPatrick operating license, and instead submit to the generic decommissioning trust agreement requirements of 10 CFR 50.75(h).

4.0 TECHNICAL EVALUATION

4.1 Transfer of Control of Master Trust and Amendments to Master Trust Agreement

In the application, ENO, on behalf of itself, ENIP3, ENF, and PASNY, requested that the NRC (1) issue an order directing the transfer of control of the Master Trust from PASNY to ENO, (2) consent to amendments to the Master Trust Agreement authorizing the transfer of control of the Master Trust to ENO (Second Amendment to Master Decommissioning Trust Agreement), and (3) approve conforming amendments to the operating licenses for IP3 and FitzPatrick to reflect the transfer of control of the Master Trust. Thus, the proposed order would authorize the transfer of control of the Master Trust.

Pursuant to 10 CFR 50.90, ENO proposes to amend the IP3 and FitzPatrick operating licenses to implement the requested order. The revised license conditions would require the transfer of control of the Master Trust from PASNY to ENO. The license amendments would also delete the license conditions that impose specific requirements for the Decommissioning Trust Agreement, as discussed below. Instead, the licensees would be subject to the generic regulatory requirements for decommissioning trust funds in 10 CFR 50.75(h). Pursuant to 10 CFR 50.75(h)(5), ENIP3 and ENF are currently exempt from the requirements in 10 CFR 50.75(h)(1) through (h)(3). Thus, by deleting the facility-specific license conditions as contemplated by the generic finding of no significant hazards considerations in 10 CFR 50.75(h)(4), the modified terms and conditions of the Master Trust Agreement will conform with, and be subject to, the NRC's generic regulations in 10 CFR 50.75(h)(1) through (h)(3). The deletions will also eliminate references to PASNY holding the decommissioning funds for these facilities.

Under the terms of the orders and safety evaluations issued in November 2000, the IP3 and FitzPatrick operating licenses were transferred from PASNY to ENIP3 and ENF, respectively, and ENO. Additionally, PASNY was removed from both operating licenses; therefore, PASNY is no longer a licensee. However, pursuant to the November 2000 transfer orders, control of the Master Trust remained with PASNY.

The proposed transaction and amendments would provide for the transfer of control of the Master Trust from PASNY to ENO. The proposed order would remove PASNY, a non-licensee, from having any authority over the Master Trust, and, instead, consolidate control of the Master Trust with the operating licensee, ENO. The Applicants now state that it is preferable to not have a non-licensee involved in the exercise of control over the decommissioning trust funds.

While PASNY has been the custodial holder of the Master Trust since the November 2000 transfer, ENO, as the operator of IP3 and FitzPatrick, has had the financial responsibility, under 10 CFR 50.75, to provide reasonable assurance that funds will be available for the decommissioning process. Therefore, regardless of whether control of the Master Trust is transferred, ENO's financial responsibilities under 10 CFR 50.75 with respect to

decommissioning funding will not change. Additionally, by deleting the facility-specific license conditions, the licensees would be subject to the generic regulatory requirements for decommissioning trust agreements in 10 CFR 50.75(h). The NRC's regulations at 10 CFR 50.75 ensure that sufficient decommissioning funds will be available for their intended purpose regardless of whether the decommissioning trusts are controlled by an electric utility, like PASNY, or a non-electric utility, like ENO.

Based on the above, the NRC staff finds that ENO will continue to provide reasonable assurance of decommissioning funding if control of the Master Trust is transferred from PASNY to ENO. Therefore, the NRC staff concludes that the proposed transfer of control of the Master Trust from PASNY to ENO is acceptable.

ENO also requested that the NRC issue an order consenting to amendments to the Master Trust Agreement authorizing the transfer of control of the Master Trust from PASNY to ENO. Following the transfer, the amended terms of the Master Trust Agreement would apply to ENO and the Bank of New York Mellon, the Trustee, making them parties to the agreement. Under the license conditions of the operating licenses for IP3 and FitzPatrick, and the terms of the Master Trust Agreement itself, any such amendment requires the prior written consent of the Director of the Office of Nuclear Reactor Regulation. The requested order authorizing the transfer of control of the Master Trust and amendments to the Master Trust Agreement would make no substantive changes to the Master Trust, Master Trust Agreement, or the operating licenses for IP3 and FitzPatrick. These are administrative changes to the Master Trust Agreement to allow the transfer of control of the Master Trust from PASNY to ENO, which the NRC staff has already found to be acceptable. Therefore, the NRC staff finds that the amendments to the Master Trust Agreement to allow the transfer of control are acceptable.

4.2 Proposed Amendments to the IP3 and FitzPatrick Operating Licenses

The NRC staff reviewed the August 16, 2016, application, and compared the proposed changes to the IP3 and FitzPatrick operating licenses to the NRC's regulations. The NRC staff also used the applicable portions of Revision 1 to the NRR's Office Instruction LIC-107, "Procedures for Handling License Transfers" (ADAMS Accession No. ML081910478), and Revision 1 to NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (ADAMS Accession No. ML013330264), for this review.

4.2.1 Proposed Amendments to the IP3 Operating License

The proposed changes and deletions of license conditions in the IP3 operating license and the staff's evaluation of these proposed changes and deletions are described below.

License Condition 2.Q

The licensee seeks to delete IP3 License Condition 2.Q, which states:

- Q. The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to

the expenses related to decommissioning of the facility as defined by the NRC in its regulations and issuances, and as provided in this license and any amendments thereto.

While this wording is not explicitly included in the Commission's regulations at 10 CFR 50.75, the regulation in 10 CFR 50.75(h)(1)(iv) contemplates that withdrawals from the decommissioning trust fund will be made pursuant to 10 CFR 50.82(a)(8). The regulation in 10 CFR 50.82(a)(8)(i)(A) states that decommissioning trust funds may be used if the "withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in [10 CFR] 50.2." Based on this information, the NRC staff finds that License Condition 2.Q is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.R

The licensee seeks to delete IP3 License Condition 2.R, which states:

- R. The decommissioning trust agreement shall provide that no contribution to the decommissioning trust fund that consists of property other than liquid assets shall be permitted.

The regulations in 10 CFR 50.75(e) and (h) generally refer to decommissioning financial assurance payments into a trust, escrow account, or government fund, with payment by certificate of deposit or deposit of government securities, or other securities or other methods acceptable to the NRC. Based on this information, the NRC staff finds that License Condition 2.R is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.S

The licensee seeks to delete IP3 License Condition 2.S, which states:

- S. With respect to the decommissioning trust fund, investments in the securities or other obligations of PASNY, Entergy Corporation, ENIP3, Entergy Nuclear FitzPatrick, LLC, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(i)(A). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 4.B, "Restrictions on Funds; Investment in Nuclear Power Reactor Licensees" (67 FR 78336). Based on this information, the NRC staff finds that License Condition 2.S is related to decommissioning trust agreements and, thus, its

deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.T

The licensee seeks to delete IP3 License Condition 2.T, which states:

- T. The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(iv). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 3, "Notifications and Disbursements" (67 FR 78335). Based on this information, the NRC staff finds that License Condition 2.T is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.U

The licensee seeks to delete IP3 License Condition 2.U, which states:

- U. The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(iii). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 4.E, "Restrictions on Funds; Modifications to Trusts" (67 FR 78336). Based on this information, the NRC staff finds that License Condition 2.U is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.V

The licensee seeks to delete IP3 License Condition 2.V, which states:

- 2.V. The decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investment" standard as specified in

18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(i)(B). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 4.C, "Restrictions on Funds; Fund Management" (67 FR 78337). Based on this information, the NRC staff finds that License Condition 2.V is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

Inadvertently Deleted License Conditions

As previously discussed, when the NRC issued the order approving the transfer of IP3 from PASNY to ENO on November 9, 2000, a number of license conditions were included in the operating license to reflect PASNY's ownership of the Master Trust. Conforming Amendment No. 203, issued on November 21, 2000 (ADAMS Accession No. ML003776144) incorporated these license conditions into the IP3 Facility Operating License. Subsequent to issuance of the conforming amendment, the NRC staff inadvertently deleted two of the original license conditions and renamed other license conditions in the Facility Operating License. Specifically, license conditions 2.V and 2.W from the conforming amendment were deleted and license conditions 2.X, 2.Y, and 2.Z of the conforming amendment were renumbered as 2.V, 2.W, and 2.X, respectively. For simplicity, the application refers to deleted license conditions 2.V and 2.W as V1 and W1, respectively.

License Condition V1

The licensee seeks to delete license condition 2.V, which was originally approved in the November 2000 order approving the transfer of the IP3 operating license from PASNY to ENO, but was inadvertently omitted from the current IP3 operating license (referred to as license condition "V1"). License condition V1 states:

- V1. Entergy Nuclear Indian Point 3, or its successors or assigns, shall take no action that would adversely affect any contract between it and PASNY for PASNY's eventual payment of decommissioning funds from the trust.

This condition was added at the time of the transfer of the IP3 operating license from PASNY to ENO in November 2000 because the Master Trust was not transferred to ENO, and PASNY remained the custodial holder of the Master Trust. Therefore, the NRC staff finds that, with the transfer of control of the Master Trust to ENO, this license condition is no longer necessary and its deletion is acceptable.

License Condition W1

The licensee seeks to delete license condition 2.W, which was originally approved in the November 2000 order approving the transfer of the IP3 operating license from PASNY to ENO, but which was inadvertently omitted from the current IP3 operating license (referred to as license condition "W1"). License condition W1 states:

- W1. Entergy Nuclear Indian Point 3, or its successors or assigns, shall inform the NRC within 30 days of any adverse developments with respect to PASNY's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning the facility.

This condition was added at the time of the transfer of the IP3 operating license from PASNY to ENO in November 2000 because the Master Trust was not transferred to ENO, and PASNY remained the custodial holder of the Master Trust. Therefore, the NRC staff finds that, with the transfer of control of the Master Trust to ENO, this license condition is no longer necessary and its deletion is acceptable.

License Condition 2.W

The licensee seeks to modify IP3 License Condition 2.W, which states:

- W. For purposes of ensuring public health and safety, ENIP3, upon the transfer of this license to it, shall provide decommissioning funding assurance for the facility by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by PASNY for the facility after the transfer of the facility license to ENIP3 may be credited towards the amount required under this paragraph.

such that it would state (additions underlined and deletions in strike-through):

- W. For purposes of ensuring public health and safety, ENIP3, upon the transfer of this license to it and upon transfer of decommissioning funds from PASNY to ENO, shall provide decommissioning funding assurance for the facility by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulation at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by ~~ENOPASNY~~ for the facility after the transfer of the facility license to ENIP3 may be credited towards the amount required under this paragraph.

This license condition clarified that, while PASNY was the custodial holder of the Master Trust, ENO, as the operator of IP3, had the financial responsibility, under 10 CFR 50.75, to provide reasonable assurance that funds would be available for the decommissioning process. Since the requested modification of this license condition would clarify that, after the transfer of control of the Master Trust, ENO still retains this responsibility, the NRC staff finds that the modification is acceptable.

License Condition 2.X

The licensee seeks to modify IP3 License Condition 2.X, which states:

- X. ENIP3 shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENIP3 and ENO and the requirements of the order approving the transfer, and consistent with the safety evaluation supporting such order.

such that it would state (additions underlined and deletions in strike-through):

- X. ENIP3 shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENIP3 and ENO, as modified by the request to transfer decommissioning funds from PASNY, and the requirements of the order approving the transfer and order approving the transfer of decommissioning funds from PASNY to ENO, and consistent with the safety evaluations supporting such orders.

This license condition clarified that, while PASNY was the custodial holder of the Master Trust, ENO, as the operator of IP3, had the financial responsibility, under 10 CFR 50.75, to provide reasonable assurance that funds would be available for the decommissioning process. Since the requested modification of this license condition would clarify that, after the transfer of control of the Master Trust, ENO still retains this responsibility, the NRC staff finds that the modification is acceptable.

Based on the above, the NRC staff concludes that the proposed changes and deletions of license conditions in the IP3 operating license are acceptable.

4.2.2 Proposed Amendments to the FitzPatrick Operating License

The proposed changes and deletions of license conditions in the FitzPatrick operating license and the staff's evaluation of these proposed changes and deletions are described below.

License Condition 2.H

The licensee seeks to delete FitzPatrick License Condition 2.H, which states:

- H. The decommissioning trust agreement shall provide that the use of assets in the decommissioning trust fund, in the first instance, shall be limited to the expenses related to decommissioning of the facility as defined by the NRC in its regulations and issuances, and as provided in this license and any amendments thereto.

While this wording is not explicitly included in the Commission's regulations at 10 CFR 50.75, the regulation in 10 CFR 50.75(h)(1)(iv) contemplates that withdrawals from the decommissioning trust fund will be made pursuant to 10 CFR 50.82(a)(8). The regulation in

10 CFR 50.82(a)(8)(i)(A) states that decommissioning trust funds may be used if the “withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in [10 CFR] 50.2.” Based on this information, the NRC staff finds that License Condition 2.H is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.I

The licensee seeks to delete FitzPatrick License Condition 2.I, which states:

- I. The decommissioning trust agreement shall provide that no contribution to the decommissioning trust that consists of property other than liquid assets shall be permitted.

The regulations in 10 CFR 50.75(e) and (h) generally refer to decommissioning financial assurance payments into a trust, escrow account, or government fund, with payment by certificate of deposit or deposit of government securities, or other securities or other methods acceptable to the NRC. Based on this information, the NRC staff finds that License Condition 2.I is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.J

The licensee seeks to delete FitzPatrick License Condition 2.J, which states:

- J. With respect to the decommissioning trust fund, investments in the securities or other obligations of the PASNY, Entergy Corporation, Entergy Nuclear IP3, LLC, ENF, ENO, or affiliates thereof, or their successors or assigns, shall be prohibited. Except for investments that replicate the composition of market indices or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear plants is prohibited.

This license condition is addressed in the Commission’s regulations at 10 CFR 50.75(h)(1)(i)(A). The Final Rule contains additional NRC response and clarification regarding this regulation under “Comments on the Proposed Rule,” Section 4.B, “Restrictions on Funds; Investment in Nuclear Power Reactor Licensees” (67 FR 78336). Based on this information, the NRC staff finds that License Condition 2.J is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.K

The licensee seeks to delete FitzPatrick License Condition 2.K, which states:

- K. The decommissioning trust agreement shall provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of the payment. In addition, the trust agreement shall state that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(iv). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 3, "Notifications and Disbursements" (67 FR 78335). Based on this information, the NRC staff finds that License Condition 2.K is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.L

The licensee seeks to delete FitzPatrick License Condition 2.L, which states:

- L. The decommissioning trust agreement shall provide that the trust agreement shall not be modified in any material respect without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(iii). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 4.E, "Restrictions on Funds; Modifications to Trusts" (67 FR 78338). Based on this information, the NRC staff finds that License Condition 2.L is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.M

The licensee seeks to delete FitzPatrick License Condition 2.M, which states:

- M. ENF, or its successors or assigns shall take no action that would adversely affect any contract between it and PASNY for PASNY's eventual payment of decommissioning funds from the trust.

This condition was added at the time of the transfer of the FitzPatrick operating license from PASNY to ENO in November 2000 because the Master Trust was not transferred to ENO, and PASNY remained the custodial holder of the Master Trust. Therefore, the NRC staff finds that,

with the transfer of control of the Master Trust to ENO, this license condition is no longer necessary and its deletion is acceptable.

License Condition 2.N

The licensee seeks to delete FitzPatrick License Condition 2.N, which states:

- N. ENF, or its successors or assigns shall inform the NRC within 30 days of any adverse developments with respect to PASNY's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning the facility.

This condition was added at the time of the transfer of the FitzPatrick operating license from PASNY to ENO in November 2000 because the Master Trust was not transferred to ENO, and PASNY remained the custodial holder of the Master Trust. Therefore, the NRC staff finds that, with the transfer of control of the Master Trust to ENO, this license condition is no longer necessary and its deletion is acceptable.

License Condition 2.O

The licensee seeks to delete FitzPatrick License Condition 2.O, which states:

- O. The decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

This license condition is addressed in the Commission's regulations at 10 CFR 50.75(h)(1)(i)(B). The Final Rule contains additional NRC response and clarification regarding this regulation under "Comments on the Proposed Rule," Section 4.C, "Restrictions on Funds; Fund Management" (67 FR 78337). Based on this information, the NRC staff finds that License Condition 2.O is related to decommissioning trust agreements and, thus, its deletion would result in the licensee instead being governed by the applicable requirements of 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5).

License Condition 2.P

The licensee seeks to modify FitzPatrick License Condition 2.P, which states:

- P. For purposes of ensuring public health and safety, ENF, upon the transfer of this license to it, shall provide decommissioning funding assurance for the facility, to be held in a decommissioning trust fund for the facility by the prepayment or equivalent method, of no less than the amount required under NRC regulations at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by PASNY for the facility after the transfer of the facility license to ENF may be credited towards the amount required under this paragraph.

such that it would state (additions underlined and deletions in strike-through):

- P. For purposes of ensuring public health and safety, ENF, upon the transfer of this license to it, and upon transfer of decommissioning funds from PASNY to ENO, shall provide decommissioning funding assurance for the facility, to be held in a decommissioning trust fund for the facility by the prepayment or equivalent method, to be held in a decommissioning trust fund for the facility, of no less than the amount required under NRC regulation at 10 CFR 50.75. Any amount held in any decommissioning trust maintained by ~~ENOPASNY~~ for the facility after the transfer of the facility license to ENF may be credited towards the amount required under this paragraph.

This license condition clarified that, while PASNY was the custodial holder of the Master Trust, ENO, as the operator of FitzPatrick, had the financial responsibility, under 10 CFR 50.75, to provide reasonable assurance that funds would be available for the decommissioning process. Since the requested modification of this license condition would clarify that, after the transfer of control of the Master Trust, ENO still retains this responsibility, the NRC staff finds that the modification is acceptable.

License Condition 2.Q

The licensee seeks to modify FitzPatrick License Condition 2.Q, which states:

- Q. ENF shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENF and ENO and the requirements of the order approving the transfer, and consistent with the safety evaluation supporting such order.

such that it would state (additions underlined and deletions in strike-through):

- Q. ENF shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to ENF and ENO, as modified by the request to transfer decommissioning funds from PASNY, and the requirements of the order approving the transfer and order approving the transfer of decommissioning funds from PASNY to ENO, and consistent with the safety evaluations supporting such orders.

This license condition clarified that, while PASNY was the custodial holder of the Master Trust, ENO, as the operator of FitzPatrick, had the financial responsibility, under 10 CFR 50.75, to provide reasonable assurance that funds would be available for the decommissioning process. Since the requested modification of this license condition would clarify that, after the transfer of control of the Master Trust, ENO still retains this responsibility, the NRC staff finds that the modification is acceptable.

Based on the above, the NRC staff concludes that the proposed changes and deletions of license conditions in the FitzPatrick operating license are acceptable.

4.3 NRC Staff Conclusion

The NRC staff has reviewed the proposed transfer of control of the Master Trust held by PASNY for IP3 and FitzPatrick to ENO, the proposed amendments to the IP3 and FitzPatrick operating licenses, and the proposed amendments to the Master Trust Agreement. As discussed above, the licensee has proposed to delete License Conditions 2.Q through 2.V for IP3 and License Conditions 2.H through 2.L and License Condition 2.O for FitzPatrick, relating to the terms and conditions of decommissioning trust agreements, and instead conform to the regulations at 10 CFR 50.75(h). Thus, upon the approval of the amendments, the IP3 and FitzPatrick Decommissioning Trust Agreement would be governed by the applicable requirements of 10 CFR 50.75(h) instead of by facility-specific license conditions. Accordingly, the NRC staff finds that the amendments are in accordance with 10 CFR 50.75(h), consistent with 10 CFR 50.75(h)(5), and are acceptable.

Additionally, as described above, the NRC staff finds that the proposed deletion of License Conditions V1 and W1 for IP3 and License Conditions 2.M and 2.N for FitzPatrick, and the proposed modification of License Conditions 2.V and 2.W for IP3 and License Conditions 2.P and 2.Q for FitzPatrick are acceptable. The staff finds these proposed changes acceptable because they result in changes to the IP3 and FitzPatrick operating licenses that reflect the transfer of the Master Trust from PASNY to ENO.

In addition, as explained above, the NRC staff finds that ENO will continue to provide reasonable assurance that sufficient funds will be available for the decommissioning of IP3 and FitzPatrick because ENO's financial responsibilities will not change as a result of the transfer of control of the Master Trust. Moreover, by deleting the facility-specific license conditions, the licensees would be subject to the generic regulatory requirements for decommissioning trust agreements in 10 CFR 50.75(h). Accordingly, the NRC staff concludes that the proposed transfer of control of the Master Trust from PASNY to ENO is acceptable. Finally, as explained above, the NRC staff finds that the conforming amendments to the Master Trust Agreement to allow the transfer of control of the Master Trust from PASNY to ENO are also acceptable.

5.0 FINAL NO SIGNIFICANT HAZARDS CONSIDERATION (NSHC) DETERMINATION

The NRC staff's proposed NSHC determination was published in the *Federal Register* on September 27, 2016 (81 FR 66301). A request for a hearing was filed on November 1, 2016 (ADAMS Accession No. ML16306A258), by Ms. Susan H. Shapiro, on behalf of Indian Point Safe Energy Coalition, Hudson River Sloop Clearwater, Council on Intelligent Energy & Conservation Policy, Sierra Club Hudson Valley, Nuclear Information and Resource Service, Alliance for Green Economy, and Radiation and Public Health Project. On December 13, 2016 (ADAMS Accession No. ML16348A495), an Atomic Safety and Licensing Board denied the hearing request for failure to demonstrate standing.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in

advance of the holding and completion of any required hearing, where it has made a final determination that no significant hazards consideration is involved.

The NRC's regulations in 10 CFR 50.92(c) state that the NRC may make a final determination that a license amendment involves no significant hazards consideration if operation of the facility, in accordance with the amendment, would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee provided an analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested changes delete certain license conditions pertaining to the decommissioning trust agreements currently in sections 2.Q to 2.X of the IP3 Operating License and sections 2.H to 2.O of the FitzPatrick Operating License. In addition, conforming changes to 2.W and 2.X of the IP3 Operating License and 2.P and 2.Q of the FitzPatrick Operating License are necessary [to] reflect the transfer of the Master Trust from PASNY to ENO.

The requested changes are consistent with the types of license amendments permitted in 10 CFR 50.75(h)(5).

The regulations of 10 CFR 50.75(h)(4) state that "Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves 'no significant hazards consideration.'"

In addition the requested changes seek changes to the Master Trust agreement only to the extent that they replace PASNY, a non-licensee, with ENO, a licensee. No other changes to the Master Trust agreement are contemplated.

This request involves changes that are administrative in nature. No actual plant equipment or accident analyses will be affected by the proposed changes.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes to licenses that will be consistent with the NRC's regulations at 10 CFR 50.75(h) and to change the name of the entity responsible under the Master Trust for decommissioning from a non-licensee to a licensee.

No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

Response: No.

The request involves administrative changes to the licenses that will be consistent with the NRC's regulations at 10 CFR 50.75(h) and to change the name of the entity responsible under the Master Trust for decommissioning from a non-licensee to a licensee.

Margin of safety is associated with confidence in the ability of the fission product barriers to limit the level of radiation doses to the public. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff reviewed the licensee's no significant hazards consideration determination analysis. Based on this review and on the NRC staff's evaluation of the underlying license amendment request as described above, the NRC staff concludes that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff makes a final determination that no significant hazards consideration is involved for the proposed amendments and that the amendments should be issued as allowed by the criteria contained in 10 CFR 50.91.

6.0 STATE CONSULTATION

In accordance with the Commission's regulations, the New York State official was notified of the proposed issuance of the amendments. The State official had no comments.

7.0 ENVIRONMENTAL CONSIDERATION

The action involves subjecting IP3 and FitzPatrick to the Commission's generic regulations governing decommissioning trust agreements at 10 CFR 50.75(h), transferring the control of the IP3 and FitzPatrick decommissioning trusts from PASNY to ENO, and approving conforming changes to the Master Trust Agreement and operating licenses for IP3 and FitzPatrick. The environmental impacts of this action have already been generally considered by the Commission as part of its 10 CFR 50.75(h) rulemaking (67 FR 78332, Dec. 24, 2002; 68 Fed. Reg. 65386, Nov. 20, 2003). The purpose of this rulemaking was to impose requirements on decommissioning trust agreements to ensure that an adequate amount of decommissioning funds will be available for their intended purpose, regardless of whether the decommissioning trusts are controlled by an electric utility, like PASNY, or a non-electric utility, like ENO. The Commission found that these requirements would not result in any increased impact on the environment from decommissioning activities as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988) and Draft Supplement 1 (NUREG-0586, Draft Supplement 1, October 2001) and, therefore, would not introduce any impacts on the environment not previously considered by the NRC. Accordingly, since the Commission has already generally considered the environmental impacts of a non-electric utility controlling a decommissioning trust fund pursuant to 10 CFR 50.75(h), no additional environmental impact statement or environmental assessment need be prepared in connection with the action.

Additionally, a decommissioning trust is a financial instrument by which a licensee satisfies the requirement of 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," to provide reasonable assurance that funds will be available for the decommissioning process. Thus, changes to the requirements governing a decommissioning trust and its administration are changes to surety and/or recordkeeping, reporting or administrative requirements. Accordingly, the actions of changing the IP3 and FitzPatrick requirements governing decommissioning trusts from facility-specific requirements to the generic requirements of 10 CFR 50.75(h), changing the control of the IP3 and FitzPatrick decommissioning trusts from PASNY to ENO, and approving conforming changes to the Master Trust Agreement and operating licenses for IP3 and FitzPatrick meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Furthermore, the transfer of control of decommissioning trusts is within the category of actions taken for the approval of a direct license transfer and, thus, meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with this action.

8.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be

conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Principal Contributor: M. Dusaniwskyj

Date: January 27, 2017

SUBJECT: ORDER APPROVING TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST FOR INDIAN POINT NUCLEAR GENERATING UNIT NO. 3 AND JAMES A. FITZPATRICK NUCLEAR POWER PLANT FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK TO ENTERGY NUCLEAR OPERATIONS, INC., AMENDMENTS TO THE MASTER DECOMMISSIONING TRUST AGREEMENT, AND ASSOCIATED LICENSE AMENDMENTS (CAC NOS. MF8286, MF8287, MF8288, AND MF8289) DATED JANUARY 27, 2017

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