

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

### In the Matter of Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Order Approving Transfer of License and Conforming Amendment

#### I.

The Power Authority of the State of New York (PASNY or the Authority) is the holder of Facility Operating License No. DPR-64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3 or the facility) at steady-state power levels not in excess of 3025 megawatts thermal. The facility, which is owned by PASNY, is located in Westchester County, New York. The license authorizes PASNY to possess, use, and operate the facility.

#### II.

Under cover of letters dated May 11, 2000, and May 12, 2000, PASNY, Entergy Nuclear Indian Point 3, LLC (Entergy Nuclear IP3), and Entergy Nuclear Operations, Inc. (ENO), submitted an application requesting approval of the proposed transfer of the IP3 operating license to Entergy Nuclear IP3 to possess and use and to ENO to possess, use, and operate IP3, and approval of a conforming amendment to reflect the transfer. The application was supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Entergy Nuclear IP3, a Delaware corporation, is a wholly owned indirect subsidiary of Entergy Corporation and a wholly owned indirect subsidiary of Entergy Nuclear Holding Company #1. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. After completion of the proposed transfer,

Entergy Nuclear IP3 would be the owner of IP3 and ENO would be the operator of IP3. The conforming amendment would remove the current licensee from the facility operating license and would add Entergy Nuclear IP3 and ENO in its place, as appropriate.

The applicants propose that, after the sale and transfer of IP3 to Entergy Nuclear IP3, the Authority would retain all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facility, while the trust fund would remain at all times committed to the decommissioning of IP3. The September 21, 2000, supplement to the application, filed by the Authority on behalf of itself and the other transfer applicants, includes the following proposals and commitments relating specifically to the Authority's retention of the decommissioning trust fund for IP3:

(1) The Authority will waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to IP3 to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority.

(2) Upon the transfer of IP3, and pursuant to Section 7 of the decommissioning agreement between Entergy Nuclear IP3, Entergy Nuclear, Inc., and the Authority, Entergy Nuclear IP3 shall have the sole discretion to permanently cease operations of IP3. For purposes of compliance with NRC requirements, by operation of the transfer Entergy Nuclear IP3 and ENO shall have sole responsibility for decommissioning IP3, and the Authority's responsibility under Commission jurisdiction with respect to IP3 will be limited solely to the holding and disbursement of funds for the decommissioning of the unit. Entergy Nuclear IP3 and ENO will have control over all physical decommissioning activities. The Authority's waiver and decommissioning responsibility as described above only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear IP3 or until the decommissioning of IP3 has been completed in accordance with NRC

regulations and guidance, whichever shall first occur.

In addition, the November 3, 2000, supplement to the application proposes that the relevant trust agreement will provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements.

Approval of the transfer of the facility operating license and the conforming license amendment was requested by PASNY, Entergy Nuclear IP3, and ENO, pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or to submit written comments was published in the **Federal Register** on June 28, 2000 (65 FR 39954). Pursuant to such notice, the Commission received a hearing request dated July 14, 2000, from the Nuclear Generation Employees Association and William Carano, Thomas Pulcher, and Richard Wiese, Jr.; a hearing request dated July 17, 2000, from the Utility Workers Union of America, AFL-CIO, Local 1-2; a hearing request dated July 26, 2000, from the Town of Cortlandt Manor, New York, and the Hendrick Hudson School District; a hearing request dated July 31, 2000, from the County of Westchester, New York; and a hearing request dated July 31, 2000, from the Citizens Awareness Network. These requests are currently pending before the Commission.

Pursuant to 10 CFR § 2.1316, during the pendency of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the staff's findings in its safety evaluation. Notice of the staff's action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Nuclear Regulatory Commission shall give its consent in writing. After reviewing the information in the application and all supplements thereto (collectively, the application)

and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear IP3 and ENO are qualified to be the holders of the license to the extent proposed in the application, and that the transfer of the license to Entergy Nuclear IP3 and ENO is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility 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 proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated November 9, 2000.

### III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of the license as described herein and in the application to Entergy Nuclear IP3 and ENO is approved, subject to the following conditions:

(1) Before the completion of the sale and transfer of IP3, Entergy Nuclear IP3 and ENO shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that they have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) For purposes of ensuring public health and safety, Entergy Nuclear IP3, upon the transfer of the IP3 license to it, shall provide decommissioning funding assurance for IP3 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 the Authority for IP3 after the transfer of the IP3 license to Entergy Nuclear IP3 may be credited towards the amount required under this paragraph.

(3) If the assets of any decommissioning trust maintained by the Authority for IP3 are retained in such trust following the transfer of the IP3 license to Entergy Nuclear IP3 and ENO instead of being transferred to any trust established by Entergy Nuclear IP3, the Authority shall maintain the assets as retained in such trust in accordance with the application for the transfer of the IP3 license.

(4) 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 IP3 as defined by the NRC in its regulations and issuances, and as provided in the IP3 license and any amendments thereto.

(5) 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.

(6) With respect to the decommissioning trust fund, investments in the securities or other obligations of the Authority, Entergy Corporation, Entergy Nuclear IP3, 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.

(7) 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.

(8) 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.

(9) The decommissioning trust agreement shall provide that the provisions or purpose of the trust agreement may be enforced by the NRC against the Authority and the trustee with respect to the disbursement of the trust funds to the extent necessary to ensure compliance with or satisfaction of the NRC's decommissioning requirements. The NRC shall not be a beneficiary of the trust or of any of the trust funds, unless required by law to be so for the sole purpose of enforcing the provisions or purpose of the trust agreement as set forth above.

(10) Article VI of the decommissioning trust agreement shall require that, notwithstanding the provision of Section 6.01(ii)(a) of the current decommissioning trust agreement, PASNY may not terminate any fund established under the Master Trust for IP3 except after requesting and obtaining written consent from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate.

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

(12) Entergy Nuclear Indian Point 3, or its successors or assigns, shall inform the NRC within 30 days of any adverse developments with respect to the Authority's ownership of the decommissioning trust that could reasonably be expected to lead to a significant diminution of funds available for decommissioning IP3.

(13) The appropriate section of the decommissioning trust agreement shall provide 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.

(14) The Authority shall waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to IP3 to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, and remain subject to the Commission's jurisdiction under Section 161 of the Atomic Energy Act to issue orders to protect health and to minimize danger to life or property regarding any and all matters

concerning compliance with the Commission's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority, until such time as the Authority transfers the decommissioning trust fund to Entergy Nuclear IP3 or the decommissioning of IP3 has been completed in accordance with NRC regulations and guidance, whichever occurs first.

(15) Entergy Nuclear IP3 shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of the license for IP3 and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order.

(16) 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 IP3 as represented in the application, without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(17) After receiving all required regulatory approvals of the transfer of IP3, the transfer applicants shall immediately inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and state therein the closing date of the sale and transfer of IP3. This notice shall be given to the Director, Office of Nuclear Reactor Regulation at least three business days before the closing date of the sale and transfer of IP3. If the transfer of the license is not completed by November 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application submitted under cover letters dated May 11 and May 12, 2000, and supplements dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000, and the safety evaluation dated November 9, 2000, which are available for public inspection at the NRC's Public

Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 9th day of November 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00-30283 Filed 11-27-00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

### In the Matter of Power Authority of the State of New York; (James A. FitzPatrick Nuclear Power Plant); Order Approving Transfer of License and Conforming Amendment

#### I.

The Power Authority of the State of New York (PASNY or the Authority) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick or the facility) at steady-state power levels not in excess of 2536 megawatts thermal. The facility, which is owned by PASNY, is located in Oswego County, New York. The license authorizes PASNY to possess, use, and operate the facility.

#### II.

Under cover of letters dated May 11, 2000, and May 12, 2000, PASNY, Entergy Nuclear FitzPatrick, LLC (Entergy Nuclear FitzPatrick), and Entergy Nuclear Operations, Inc. (ENO), submitted an application requesting approval of the proposed transfer of the FitzPatrick operating license to Entergy Nuclear FitzPatrick to possess and use and to ENO to possess, use, and operate FitzPatrick, and approval of a conforming amendment to reflect the transfer. The application was supplemented by letters dated June 13, June 16, July 14, September 21, October 26, and November 3, 2000.

Entergy Nuclear FitzPatrick, a Delaware corporation, is a wholly owned indirect subsidiary of Entergy Corporation and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #1. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and a direct wholly owned subsidiary of Entergy Nuclear Holding

Company #2. After completion of the proposed transfer, Entergy Nuclear FitzPatrick would be the owner of FitzPatrick, and ENO would be the operator of FitzPatrick. The conforming amendment would remove the current licensee from the facility operating license and would add Entergy Nuclear FitzPatrick and ENO in its place, as appropriate.

The applicants propose that, after the sale and transfer of FitzPatrick to Entergy Nuclear FitzPatrick, the Authority would retain all rights, title, and legal and beneficial interest in the decommissioning trust fund for the facility, while the trust fund would remain at all times committed to the decommissioning of FitzPatrick. The September 21, 2000, supplement to the application, filed by the Authority on behalf of itself and the other transfer applicants, includes the following proposals and commitments relating specifically to the Authority's retention of the decommissioning trust fund for FitzPatrick:

(1) The Authority will waive any right to deny, contest or challenge the NRC's jurisdiction over the Authority with respect to FitzPatrick to the extent that there may arise in the future any matter warranting action by the NRC to ensure compliance with the NRC's decommissioning requirements regarding the disposition and use of the amounts accumulated in the decommissioning trust fund and retained by the Authority.

(2) Upon the transfer of FitzPatrick, and pursuant to Section 7 of the decommissioning agreement between Entergy Nuclear FitzPatrick, Entergy Nuclear, Inc., and the Authority, Entergy Nuclear FitzPatrick shall have the sole discretion to permanently cease operations of FitzPatrick. For purposes of compliance with NRC requirements, by operation of the transfer Entergy Nuclear FitzPatrick and ENO shall have sole responsibility for decommissioning FitzPatrick, and the Authority's responsibility under Commission jurisdiction with respect to FitzPatrick will be limited solely to the holding and disbursement of funds for the decommissioning of the unit. Entergy Nuclear FitzPatrick and ENO will have control over all physical decommissioning activities. The Authority's waiver and decommissioning responsibility as described above only applies until the Authority transfers the decommissioning trust funds to Entergy Nuclear FitzPatrick or until the decommissioning of FitzPatrick has been completed in accordance with