

POLITICS & ELECTIONS

Inside the hardball tactics to save FitzPatrick: NY threatened to seize the nuke plant

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Jim Malatras, the state's top negotiator of the deal to save the James A. FitzPatrick nuclear power plant, sits between Gov. Andrew Cuomo and Onondaga County Executive Joanie Mahoney at a separate event Sept. 30, 2015 at the Holiday Inn in Salina. Malatras led negotiations with plant owner Entergy Corp. that took more than eight months to complete. (*Michelle Breidenbach*)

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SYRACUSE, N.Y. -- After months of fruitless negotiations aimed at saving the James A. FitzPatrick nuclear plant, a team of Gov. Andrew Cuomo's top aides had reached a breaking point in late January.

Entergy Corp. had announced it was closing the plant because it had become a money pit. State-brokered negotiations to arrange a sale to energy giant Exelon had stalled when Entergy insisted its offer had to be accepted within two weeks.

Cuomo's chief negotiator thought it might be time to give up. FitzPatrick would close in January 2017, eliminate 615 jobs, wipe out a \$74 million annual payroll, and leave a massive hole in the heart of Oswego County's economy.

Jim Malatras, the 38-year-old director of operations for Cuomo's administration, decided it was time to "throw the long ball" in a final attempt to jump-start serious negotiations.

"We floated the idea of taking the plant by eminent domain," Malatras said. "We were trying to break the logjam and get people to move."

Entergy had said the plant was losing \$100 million a year, so Cuomo's team of lawyers and finance experts figured out a legal path to seize FitzPatrick for \$1 using the New York Power Authority's right of eminent domain.

"We were pushing the concept that if they say it's worth nothing" there's probably no value to the plant, Malatras said this week. "So we would condemn the plant and give it to someone for nothing."

The state's move, which has not been previously reported, gained the attention of Entergy executives and helped break a stalemate in the negotiations, Malatras said.

"That really kick-started more serious discussions," Malatras said. "That shook up everybody who thought maybe we were a little crazy."

What followed for the next five months were daily negotiations -- by phone and at the state Capitol - among Cuomo's team, Entergy and Exelon. The result was Tuesday's agreement to keep open a nuclear plant that many thought could never be saved.

Those negotiations continued into the early morning hours Tuesday, only hours before Cuomo and the nuclear companies would announce their deal along the shores of Lake Ontario at the FitzPatrick plant in Scriba.

Under terms of the agreement, Entergy will sell the FitzPatrick plant to Exelon for \$110 million. The state will transfer a \$700 million decommissioning trust fund for the plant to Exelon, which agreed to accept all liabilities for FitzPatrick.

The deal quickly followed New York's approval on Aug. 1 of a \$1 billion package to subsidize FitzPatrick and the neighboring Nine Mile Point nuclear reactors in Oswego County, along with Ginna nuclear plant near Rochester.

The state Public Service Commission approved 12-year contracts under which the three Upstate nuclear plants are guaranteed revenue increases. The deal would provide the plants with about \$480 million in new revenue next year.

All of it was made possible by the nation's first clean-air subsidies for nuclear plants as part of the clean energy standard requiring half the state's electricity to come from renewable sources by 2030.

Exelon President and CEO Chris Crane on Tuesday thanked Cuomo for his work on the clean energy standard, and said it made it feasible for the company to keep operating both FitzPatrick and the Ginna plant, along with its Nine Mile Point plant in Scriba.

Crane and Joe Dominguez, an Exelon vice president, had spent the previous six months on the phone and shuttling back and forth to Albany for face-to-face negotiations with Malatras and Richard Kauffman, the state's energy czar, who called them daily.

Bill Mohl, Entergy's president of wholesale commodities, who represented the FitzPatrick plant's owner in the negotiations, met separately with state and Exelon officials and joined some of the bigger meetings in Albany.

Entergy officials declined to comment Thursday. Tammy Holden, speaking for Entergy, wrote in an email: "We are not going to discuss details of private negotiations."

Malatras said he made phone calls at least every other day, sometimes daily, to all of the parties as he tried to move along the negotiations. In rooms near his office, separate teams of lawyers and finance experts worked out the details.

The nuclear plant issue became the top priority for Malatras as he tried to balance his other duties, including oversight of the state's response to emergencies that included the Zika virus, an outbreak of Legionnaires' disease, and a collapsed crane on the Tappan Zee Bridge.

Cuomo personally drove his team to think creatively about FitzPatrick and nuclear energy in late 2015, before his state of the state address in mid-January. He wanted New York to become the most aggressive in the nation for hitting its clean energy goals by 2030.

"We started working on a renewable energy plan," Malatras said, "and it wasn't about just FitzPatrick. We saw this as a larger issue, and we wanted to find a way to meet our clean energy goal."

The state viewed Exelon, the nation's largest nuclear plant operator, as a natural partner in the effort and began making inquiries as early as November about potential interest in buying FitzPatrick.

A meeting at the state Capitol quickly followed with Cuomo's team and Exelon executives. Kauffman, the state's first-ever chairman of energy and finance, found several private investors who were willing to work with Exelon to help the company purchase the plant from Entergy.

Audrey Zibleman, chair of the state's Public Service Commission that oversees utilities, started working on the clean energy standards.

Trying to work out a deal

As a show of good will, Exelon made an early offer in November to buy the nuclear fuel needed to refuel FitzPatrick at the end of the year, buying time for a deal to be worked out.

"Entergy at the time was in pretty hard-ball mode," Malatras said. "They rejected it, which surprised us. But we didn't take 'no' for an answer. The governor told us to keep working to find a solution."

In December, Exelon proposed managing the plant for Entergy, and again was rejected.

Entergy came back with a sale offer for FitzPatrick. The utility gave the state and Exelon two weeks to accept or reject their terms, and once again no deal could be worked out.

The state wanted to keep everybody at the negotiating table and continued its "shuttle diplomacy" through the winter. Cuomo's clean energy standard, and the state subsidies for nuclear power, would go a long way toward building trust with both Entergy and Exelon.

"We started down the clean energy path, which was important for the nuclear plants because they couldn't compete with natural gas," Malatras said. "And it was important for us because we wouldn't have a way to make up for the loss of clean power" if FitzPatrick and Ginna closed.

The big break

After the state made its eminent domain threat in late February, negotiations took off. Thousands of technical details had to be worked out.

Among the big questions: What would be a fair purchase price for FitzPatrick? What would happen to the \$700 million decommissioning fund held by the state for when the plant reaches the end of its useful life? What would happen if federal regulators won't approve the sale?

As the deal moved toward the finish line in June, members of the state legislature who represent Oswego County helped by applying political pressure.

State Sen. Patty Ritchie, R-Oswegatchie, authored a bill aimed at speeding the process.

Her legislation, offered near the end of session, authorized the state Power Authority to use eminent domain in taking over the FitzPatrick plant.

"It was important, when it looked like we weren't getting to where we needed to be, to put the bill in to sort of force the issue," Ritchie said in an interview Thursday. "If an agreement couldn't be reached, that plan needed to be there."

Throughout the negotiations, Ritchie served as an important unofficial mediator with Entergy and state officials.

"I would say a lot of time was spent calling Entergy and then calling the governor's people, making sure everyone was up to date," Ritchie said.

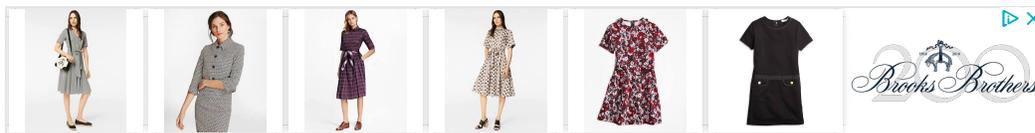
By early August, Crane, Mohl, Kauffman and Malatras were sitting together in Albany working out the final details.

"We all looked each other to say we're all serious about this," Malatras recalled. "We had a gentleman's agreement we were going to try to work these pieces out. I actually thought it would take a month or two longer."

In the end, it wasn't just about saving a nuclear plant and jobs, he said. It was about driving a larger discussion about how to transition to a carbon-free economy.

"I would say it was probably one of the most fulfilling things we've done here so far," Malatras said.

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