

September 5, 2000

Mr. James Knubel
Chief Nuclear Officer
Power Authority of the State of
New York
123 Main Street
White Plains, NY 10601

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR THE POWER AUTHORITY OF
THE STATE OF NEW YORK (PASNY) REGARDING THE FITZPATRICK
NUCLEAR POWER PLANT (TAC NO. MA9823, NOED NO. 00-6-008)

Dear Mr. Knubel:

By letter dated August 28, 2000, you requested that the Nuclear Regulatory Commission (NRC) exercise discretion not to enforce compliance with the actions required in Technical Specifications (TSs) 3.0.D and 4.0.D. Your letter documented information previously discussed with the NRC in a telephone conference on August 27, 2000, at 9:10 p.m. The principal NRC staff members who participated in that telephone conference included:

NRC, Office of Nuclear Reactor Regulation

E. Adensam, Director, Project Directorate I, Division of Licensing Project Management
J. Strosnider, Director, Division of Engineering (DE)
B. Marcus, Electrical and Instrumentation and Controls Branch, DE
T. Tjader, Technical Specifications Branch, Division of Regulatory Improvement Programs

NRC Region I (RI)

G. Meyer, Chief, Branch 3, RI
R. Crlenjak, Deputy Director, Division of Reactor Projects
R. Skokowski, RI
W. Lanning, Director, Division of Reactor Safety

Principal members of your staff participating were:

PASNY

D. Poulin, Licensing
J. Hoddy, Licensing
M. Abramski, Licensing

You stated at approximately 9:30 p.m. on August 27, 2000, that if the plant had continued a controlled shutdown, PASNY would not have been in compliance with TSs 3.0.D and 4.0.D which require entry into the startup mode with all Limiting Conditions for Operations (LCOs) and surveillance requirements associated with the LCOs being met. You requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c of the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600, and be effective for the period of time it takes for the mode switch to be moved from the run mode to

the startup mode to the time all control rods are manually inserted on August 27, 2000. This letter documents our telephone conversation on August 27, 2000, at approximately 10:00 p.m. when we orally issued this NOED. We understand that the condition causing the need for this NOED was corrected, causing you to exit from the non-compliance on August 27, 2000, soon after the telephone conversation in the time required to change the mode switch from the run mode to the startup mode to the time all control rods were manually inserted.

You stated that on August 27, 2000, at approximately 9:30 a.m. a controlled shutdown was initiated due to a leak on a hydraulic control oil fitting on the electro-hydraulic control (EHC) system for the main turbine and a steam leak at the weld joint on the instrument line for the A reactor feed pump. However, the following reactor protection system (RPS) trip functions were considered inoperable because surveillance requirements had not been satisfied:

- intermediate range monitor (IRM) high flux
- IRM inoperative
- average power range monitor (APRM neutron flux-startup)

To continue shutdown through the transition from the run mode to the startup mode, the plant would not be in compliance with TSs 3.0.D and 4.0.D because the above RPS trip functions were inoperable. They were inoperable because the surveillance requirements for these trip functions specified in TS Table 4.1-1 and required in the refuel and startup modes, had not been satisfied and could not be satisfied since the test equipment to calibrate the instruments was offsite. Thus your staff estimated that testing could not be completed until approximately 7:00 p.m. on August 28, 2000. It was your belief that compliance with TSs 3.0.D and 4.0.D would have resulted in either:

- maintaining the plant in the run mode for an additional 18-hour period to complete the surveillance testing required to satisfy the surveillance requirements in TS Table 4.1-1 or,
- manually scrambling the reactor and imparting a transient demand on the EHC system.

Both options were considered undesirable because (1) it was prudent to transition from the run mode to the startup mode as expeditiously as possible because the time to complete failure of the EHC hydraulic control oil pressure boundary was unknown, and (2) manually scrambling the reactor would adversely affect the degraded EHC system and, therefore, pose a significant challenge to the main condenser as a heat sink.

The NRC staff has considered your response to each of the attributes delineated in Section C.4 of Part 9900 of the *NRC Inspection Manual* and verifies the following:

1. The TSs or other license conditions that will be violated.

You have requested a NOED granting permission to depart from the requirements of TSs 3.0.D and 4.0.D (TS 4.0.D was not discussed during the telecon on August 27, 2000, although the scope of the discussion covered TS 4.0.D) and transition from the run mode to the startup mode with the RPS trip functions for the intermediate IRM high flux, IRM inoperative, and APRM neutron flux-startup inoperable.

2. The circumstances surrounding the situation, including root causes, the need for prompt action, and identification of any relevant historical events.

The circumstances surrounding the situation are discussed above. The apparent root causes for the lack of calibrated equipment onsite to support required surveillance testing are under investigation.

3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action. This evaluation should include at least a qualitative risk assessment derived from the licensee's probabilistic risk analysis.

The safety bases for the request for the NOED are:

- LCO 3.0.4 of the Improved Technical Specifications (ITS), which was submitted by letter dated March 19, 1999, and is currently under NRC review, is similar to TS 3.0.D of the FitzPatrick TSs with modifications that would preclude the situation addressed in the request for the NOED. The ITS follows the guidance of the boiling-water reactor Standard Technical Specifications.
 - You provided a quantitative assessment of risk for: (1) a turbine trip with power conversion (turbine bypass valves/main condenser) available and a loss of feedwater and (2) a turbine trip with a loss-of-power conversion system (turbine bypass valves/main condenser) and a loss of feedwater. You determined that operation in the configuration you requested under the NOED resulted in a reduction in risk. You also concluded that any increase in risk due to transitioning modes with the inoperable trip functions was acceptable based on the permission of this action in the ITS.
4. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that no significant hazards consideration is involved.

You represented that: (1) ITS LCO 3.0.4 is functionally equivalent to the NOED version of TSs 3.0.D and 4.0.D as revised; and (2) the change in ITS is considered an administrative change meeting the intent of the current technical specifications, and is covered by the generic no significant hazards evaluation for the ITS. The NRC staff finds this acceptable because the intent of the TS was never to preclude a normal plant shutdown as clarified in ITS Section 3.0.4.

5. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.

The nature of the noncompliance is such that none of the affected plant equipment physically interfaces with the environment; therefore, there is no environmental impact.

6. Any proposed compensatory measures.

No compensatory measures are required.

7. The justification for the duration of the noncompliance.

The request for the NOED is to allow transitioning from the run mode to the startup mode with the RPS trip functions for the intermediate IRM high flux, IRM inoperative, and APRM neutron flux-startup inoperative. The duration of the non-compliance was, therefore, from the time the mode switch was moved from the run mode to the startup mode to the time all control rods were inserted. The basis for the request was to allow a controlled shutdown by manually inserting the control rods rather than manually scrambling the reactor.

8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee (PORC), or its equivalent).

The FitzPatrick PORC has approved the request and recommended to the Site Executive Officer approval of the request for the NOED.

9. The request must specifically address how one of the NOED criteria for appropriate plant conditions specified in Section B is satisfied.

You have indicated that the NOED applies to Criterion B.2.1.a of the *NRC Inspection Manual*, Part 9900. The NOED is intended to avoid undesirable transients as a result of forcing compliance with the license condition and, thus, minimize potential safety consequences and operational risks.

10. If a follow-up license amendment is required, the NOED request must include marked-up TS pages showing the proposed TS changes. The actual license amendment request must follow within 48 hours.

You indicated that a follow-up request for a license amendment providing TS sections equivalent to the ITS would be submitted within 48 hours of the verbal request for the NOED. A request for amendment, dated August 29, 2000, has been received.

11. For NOEDs involving severe weather or other natural event, acceptability of any increased radiological risk to the public and the overall public benefit.

This NOED does not involve severe weather or other natural events.

On the basis of the staff's evaluation of your request, we have concluded that the NOED was warranted because we are clearly satisfied that this action involves minimal or no safety impact, is consistent with the enforcement policy and the staff guidance, and has no adverse impact on public health and safety. Therefore, it is our intention to exercise discretion not to enforce compliance with TSs 3.0.D and 4.0.D for the period from August 27, 2000, at 10:00 p.m. until issuance of a license amendment, which was submitted by letter dated August 29, 2000. You actually exited the conditions requiring the NOED on August 27, 2000, shortly after 10:00 p.m. The requested amendment was not provided under exigent circumstances with justification for the exigency and, therefore, you need to supplement the amendment request with the

necessary justification. The staff plans to complete its review and issue the license amendment within 4 weeks of the issuance of the NOED.

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

Sincerely,

/RA/

Elinor G. Adensam, Director
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-333

cc: See next page

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Elinor G. Adensam, Director
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