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

MAY 02 1991

Docket No. 50-333  
License No. DPR-59  
EA 91-053

New York Power Authority  
ATTN: Mr. R. Beedle  
Executive Vice President -  
Nuclear Generation  
123 Main Street  
White Plains, New York 10601

Dear Mr. Beedle:

SUBJECT: ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)

The enclosed Order Modifying License (Effective Immediately) is being issued to you as a result of certain NRC concerns regarding the actions of Mr. David Manning, an employee licensed as a Senior Reactor Operator at your Fitzpatrick Nuclear Facility. The Order modifies your license to prohibit Mr. Manning from being involved in activities subject to your Part 50 license. Both you and Mr. Manning have an opportunity for a hearing on this Order.

In addition, an Order is being issued on this date to Mr. Manning suspending his Part 55 license. A copy of that Order is also enclosed.

Although Mr. Manning participated in your Employee Assistance Program, these Orders are being issued because of his lack of trustworthiness as demonstrated by: (1) his attempt to conceal his use of cocaine by substituting a bogus urine sample on October 9, 1990 when selected for a random drug test in accordance with fitness for duty requirements; (2) his not informing the NRC of a drug habit when that information was required by an NRC Form 396, completed by him on April 14, 1986 and submitted to the NRC; and (3) his failure to provide a second urine sample on October 9, 1990 as required by 10 CFR Part 26 because he knew that the sample would be "dirty" with cocaine. In addition, Mr. Manning's failure to conform to the prohibition against drug use in the Commission requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator.

Questions concerning these Orders may be addressed to James Lieberman, Director, Office of Enforcement. He can be reached at 301-492-0741.

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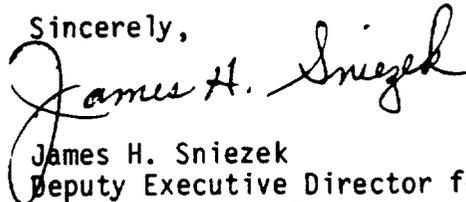
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New York Power Authority

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In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,



James H. Sniezek  
Deputy Executive Director for  
Nuclear Reactor Regulation,  
Regional Operations, and Research

Enclosures: As Stated

cc w/encls:

J. Brons, President and Chief Operations Officer  
S. Zulla, Vice President, Nuclear Engineering  
W. Josiger, Vice President, Nuclear Operations & Maintenance  
J. Gray, Director, Nuclear Licensing, BWR  
A. Klausmann, Senior Vice President, Appraisal & Compliance Services  
G. Tasick, Quality Assurance Superintendent  
G. Wilverding, Manager, Nuclear Safety Evaluation  
G. Goldstein, Assistant General Counsel  
Department of Public Service, State of New York  
State of New York, Department of Law  
Public Document Room (PDR)  
Local Public Document Room (LPDR)  
Nuclear Safety Information Center (NSIC)  
NRC Resident Inspector  
State of New York, SLO Designee

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
New York Power Authority  
Fitzpatrick

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Docket No. 50-333  
License No. DPR-59  
EA 91-053

ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)

I

New York Power Authority (Licensee) is the holder of Facility Operating License No. DPR-59, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The License authorizes the operation of the Fitzpatrick facility in Scriba, New York, in accordance with the conditions specified therein.

II

On October 9, 1990, David M. Manning (Mr. Manning), a licensed Senior Reactor Operator licensed under 10 CFR Part 55 at the Fitzpatrick facility, while on duty at the facility, was requested by the Licensee to provide a urine sample to the nurse at the plant after being randomly selected as part of the routine fitness for duty chemical testing program required of the Licensee by the NRC pursuant to 10 CFR 26.24. After receiving a sample from Mr. Manning, the nurse checked the temperature of the sample and found that the temperature was not within the range specified in 10 CFR Part 26, Appendix A, Section 2.4(g)(14), for accepting the sample. As a result, Mr. Manning was requested to provide another urine sample pursuant to the same section of Appendix A. Mr. Manning

refused to provide another sample. As a result, the Licensee, in accordance with 10 CFR 26.27(c), removed Mr. Manning from licensed operator duties for cause, placed Mr. Manning on 14 days leave, and referred Mr. Manning to an Employee Assistance Program. Although Mr. Manning has completed the inpatient portion of that program, Mr. Manning is still in an outpatient status, is subject to monthly random testing, and has not been returned to the duties authorized by his Part 55 license. However, Mr. Manning now has unescorted access and is involved in activities subject to the 10 CFR Part 50 license at the Fitzpatrick facility.

## III

On April 24, 1991, Mr. Manning was interviewed by an investigator from the NRC Office of Investigations concerning the circumstances surrounding the reasons why his initial sample was outside the acceptable temperature range, as well as his refusal to provide a second urine sample to the Licensee on October 9, 1990. During that interview, Mr. Manning indicated that when he received notice from the Licensee that he was selected to provide a urine sample for the random drug test on October 9, 1990, he retrieved a bogus urine sample from his locker which he had previously stored there and went to the men's room on the way to the test and heated the sample to what he thought would be body temperature. Mr. Manning stated that he put the sample in his pants and went to the test facility where he provided that sample to the nurse. Mr. Manning admitted that, although he was informed by the nurse, shortly thereafter, that another sample was required because the temperature was below the specifications

required by the testing program, he refused to provide another sample. Mr. Manning noted that because of his refusal to provide another sample as required by the fitness for duty program regulations, he was informed by his department supervisor, as well as the Resident Manager for the Fitzpatrick facility, that he would be placed on 14 days leave, and would be referred to the Employee Assistance Program for evaluation.

During the interview with the NRC investigator, Mr. Manning indicated that he did not want to provide the requested sample to the nurse when selected for testing on October 9, 1990 (a Tuesday) because he knew it was "dirty" from cocaine. Mr. Manning stated that he had used about 1 gram of cocaine on the Sunday before the test. Mr. Manning also noted that he had been using cocaine since 1977 and had also used "speed" during that time. Mr. Manning further indicated that on weekends he used cocaine in amounts from 1 to 3 grams.

Mr. Manning also admitted to the NRC investigator that he had previously been referred to the Employee Assistance Program as a result of a test that indicated cocaine use during an annual physical screening in August 1988. However, Mr. Manning claimed that he had not used cocaine or any other controlled substance since October 1990, that he was now drug free, and that he had attended a thirty-day inpatient substance abuse clinic.

#### IV

In accordance with 10 CFR Part 26, the Licensee established a program to provide reasonable assurance that nuclear power plant personnel are not under

the influence of any substance, legal or illegal, which affects their ability to safely and competently perform their duties, including measures for early detection of persons who are not fit to perform licensed activities.

Mr. Manning's actions described above raise significant concerns regarding his integrity and trustworthiness. Specifically, these concerns are: (1) Mr. Manning intentionally engaged in a premeditated scheme to avoid detection of his drug use and to violate the fitness for duty program required by the NRC by storing a "clean" sample in his locker (which he admitted to have begun doing about three months prior to the test), and substituting that sample for the real sample that was required when he was selected for a random test; (2) notwithstanding his admitted use of cocaine between 1977 and October 1990, Mr. Manning, in a Certificate of Medical History (Form 396) signed by him on April 14, 1986, answered "No" to Question 24, "Have you ever had or do you now have any of the following?...Drug, narcotic habit or excessive drinking" (Mr. Manning did note on the Form 396 that he was convicted of "Driving While Ability Impaired" in Oneida City Court, Oneida, New York in April 1982.); and (3) Mr. Manning refused to provide another sample to the Licensee for testing when the temperature of the initial sample was below the specifications because he knew that his sample would be "dirty" with cocaine, even though the Licensee is required by Part 26 to obtain a second sample, and Mr. Manning is required by Part 55 and his Senior Reactor Operator's license to abide by all of the requirements of the Facility License. In addition, Mr. Manning's failure to conform to the prohibition against drug use in the Commission requirements, which have the purpose of protecting the public health and safety, demonstrates an intentional disregard for the important obligations of a licensed operator. The above actions

demonstrate a lack of trustworthiness by Mr. Manning and an inability or unwillingness to comply with the Commission's requirements. Therefore, the NRC does not have the necessary reasonable assurance that Mr. Manning will carry out Part 50 activities safely, in a trustworthy manner, and observe all applicable requirements including obligations relating to the Licensee's fitness for duty requirements.

## V

Mr. Manning's actions described above are unacceptable and, accordingly, I have issued a separate Order suspending his 10 CFR Part 55 license. Furthermore, as a result of his actions, I lack the requisite reasonable assurance that, with Mr. Manning involved in any activities licensed under 10 CFR Part 50, the Licensee's current operations can be conducted such that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health and safety require that License No. DPR-59 be modified to prohibit Mr. David M. Manning from involvement in licensed activities under this license. Furthermore, pursuant to 10 CFR 2.204, I find that the public health and safety require that this Order must be effective immediately.

## VI

Accordingly, pursuant to Sections 103, 161b, 161c, 161i, and 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's

regulations in 10 CFR 2.204 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

License No. DPR-59 is modified by adding the following condition:

Mr. David M. Manning shall not participate in any licensed activity under License No. DPR-59 without prior written approval of the Regional Administrator, Region I. If such approval is sought, the Licensee shall provide a statement as to its basis for concluding that Mr. Manning will properly carry out licensed activities in light of his past conduct and lack of trustworthiness as described in this Order.

The Regional Administrator, NRC Region I, may relax or terminate this condition for good cause shown.

#### VII

The Licensee, Mr. Manning, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of the date of this Order. The answer may set forth the matters of fact and law on which the Licensee, Mr. Manning, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may also request a hearing. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission,

ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Manning requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Mr. Manning, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing, the provisions specified in Section VI above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If an answer to this Order is submitted as provided above but a hearing is not requested, the Order may be relaxed or rescinded as provided in section

VI. However, unless the Order is relaxed or rescinded, the Order is final as provided above.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in cursive script that reads "James H. Sniezek". The signature is written in black ink and is positioned above the typed name and title.

James H. Sniezek  
Deputy Executive Director for  
Nuclear Reactor Regulation,  
Regional Operations and Research

Dated at Rockville, Maryland  
this 2nd day of May 1991

New York Power Authority

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