

April 24, 1990

Docket No. 50-333

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Mr. John C. Brons
 Executive Vice President, Nuclear Generation
 Power Authority of the State of New York
 123 Main Street
 White Plains, New York 10601

Dear Mr. Brons:

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT - REMOVAL OF
 CYCLE-SPECIFIC PARAMETER LIMITS (TAC NO. 75871)

The NRC staff has forwarded the enclosed "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination" to the Office of the Federal Register for publication.

The proposed amendment relates to your January 12, 1990 application which was superseded by your application dated April 20, 1990, to relocate the cycle-specific parameter limits from the Technical Specifications (TS) and place them in the Core Operating Limits Report (COLR) in accordance with Generic Letter No. 88-16. The original application, dated January 12, 1990, was published in the Federal Register on March 7, 1990 (55 FR 8234). However, the original application, which described relocation of the Fuel Design Features to the COLR, would be modified by the April 20, 1990 application such that this information will not be in the COLR. Instead, the present Fuel Design Features TS description would be modified to indicate that the fuel assembly designs are those which have been previously approved by the NRC.

Sincerely,

Original signed by

David E. LaBarge, Project Manager
 Project Directorate I-1
 Division of Reactor Projects - I/II
 Office of Nuclear Reactor Regulation

Enclosure:
Notice

cc w/enclosure:
See next page

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UNITED STATES NUCLEAR REGULATORY COMMISSIONJAMES A. FITZPATRICK NUCLEAR POWER PLANTDOCKET NO. 50-333NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment was originally submitted by letter dated January 12, 1990 and noticed on March 7, 1990 (55 FR 8234). The proposed amendment has been superseded by letter dated April 20, 1990. The purpose of the proposed amendment is to relocate the cycle-specific parameter limits from the Technical Specifications (TS) and place them in the Core Operating Limits Report (COLR) in accordance with guidance contained in Generic Letter No. 88-16. The original amendment proposed to relocate the Fuel Design Features from the TS and place them in the COLR. This, however, was not in conformance with present staff interpretation of the Generic Letter and has been changed by the licensee in the April 20, 1990 application to indicate that the information will not be relocated to the COLR. The proposed TS amendment will, instead, indicate that each fuel assembly consists of fuel assemblies whose design has been approved by the NRC staff for use in BWRs.

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As a result of staff review of the proposed amendment using the guidance of Generic Letter 88-16, a number of changes to the amendment became necessary in order to comply with the staff's application of the guidance. This resulted in the need for the licensee to prepare a new amendment proposal which differs somewhat in the details of how the changes will be incorporated. Since plant startup from the present refueling outage is scheduled for May 15, 1990, the amendment must be processed prior to that date. Since this does not allow 30 days for public comment, the NRC is processing the proposed amendment on an exigent basis under the provisions of 10 CFR 50.91(a)(6) and allowing two weeks for public comment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed 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.

The proposed change to the original amendment proposal involving the Fuel Design Features section of the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change would involve removal of the designation number for the different fuel types from the Fuel Design Features section of the TS and replacing it

with more generalized wording. The fuel type designations are used and controlled by the fuel reload analysis which is prepared for each core reload. Since this process remains unchanged, the probability or consequences of an accident previously evaluated is not increased.

The proposed change to the Fuel Design Features would not create the probability of a new or different kind of accident from any accident previously evaluated since the method of control over and use of the information in the core reload analysis is not changed.

The proposed changes to the Fuel Design Features would not involve a significant reduction in a margin of safety since, again, the control over and use of the information in the core reload analysis is not changed.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this FEDERAL REGISTER notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of

written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 15, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room located at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be

permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided

that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the FEDERAL REGISTER a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles M. Pratt, 10 Columbus Circle, New York, N.Y. 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic

Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the original application for amendment dated January 12, 1990, and the April 20, 1990 letter which superseded it, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the Local Public Document Room located at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 24th day of April 1990.

FOR THE NUCLEAR REGULATORY COMMISSION

David E. LaBarge, Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

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