

December 24, 1991

Docket No. 50-333

Mr. Ralph E. Beedle
Executive Vice President - Nuclear Generation
Power Authority of the State of New York
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White Plains, New York 10601

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Dear Mr. Beedle:

SUBJECT: NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR HEARING, JAMES A. FITZPATRICK NUCLEAR POWER PLANT (TAC NO. M82295)

The Commission has requested the Office of the Federal Register to publish the enclosed "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing." This notice relates to your application for amendment dated December 19, 1991, that requested changes to Technical Specification Sections 3.12.F and 4.12.F and their associated Bases regarding fire barrier penetration seals. Your application also requested administrative changes to the Technical Specifications that provide clarifying information associated with proposed stated changes.

Sincerely,
Original signed by:
John E. Menning for
Brian C. McCabe, Project Manager
Project Directorate I-1
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

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Enclosure:
Notice

cc w/enclosure:
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Power Authority of the State of New York

James A. FitzPatrick Nuclear
Power Plant

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UNITED STATES NUCLEAR REGULATORY COMMISSIONPOWER AUTHORITY OF THE STATE OF NEW YORKDOCKET NO. 50-333NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE, 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 would revise Technical Specification (TS) Sections 3.12.F and 4.12.F, "Fire Barrier Penetration Seals," and the associated Bases to be more consistent with the NRC's Standard Technical Specifications (STS) NUREG-0123, "Standard Technical Specifications for General Electric Boiling Water Reactors," dated Fall 1980. Specifically, TSs 3.12.F.1.a and 4.12.F.1.a would be revised to clarify which fire barriers are covered by the associated Limiting Conditions for Operation (LCO) and what actions are required when a fire barrier penetration is found not in the as-designed condition, respectively. Furthermore, TS 3.12.F.1.b would be revised to allow the use of hourly fire watch patrols supplementing operable fire detectors in lieu of continuous fire watches when a fire barrier penetration is deemed non-functional. The proposed revision will change TS 3.12.F.1.b to read:

"With one or more of the required fire barrier penetrations non-functional, within one hour establish a continuous fire watch on at least one side of the affected penetration or verify the operability of fire detectors on

at least one side of the non-functional fire barrier and establish an hourly fire watch patrol. Restore the non-functional fire barrier penetration(s) to functional status within 7 days or, in lieu of any other report required by Specification 6.9.A, prepare and submit a Special Report to the Commission pursuant to Specification 6.9.B within 30 days outlining the action taken, the cause of the non-functional penetration and plans and schedule for restoring the fire barrier penetration(s) to functional status."

Bases Section 3/4.12.F would also be revised to reflect the changes to the associated LCOs and Surveillance Requirements and to provide clarifying information.

Administrative changes would also be made as a part of the proposed amendment.

This proposed amendment is being processed on an exigent basis to reduce unnecessary personnel exposure and adhere to accepted ALARA principles. Specifically, on August 2, 1991, during a meeting with the NRC's staff concerning FitzPatrick's fire protection program, the licensee committed to complete a full baseline barrier seal inspection not later than 30 days after startup from the 1993 refueling outage. As a baseline inspection, this inspection uses inspection requirements more detailed than previously employed at FitzPatrick and a new acceptance criteria. On November 8, 1991, the first fire barrier penetration seal was inspected. Engineering evaluations of the seals inspected have resulted in a significantly higher failure rate than anticipated by the licensee. In accordance with TS 3.12.F.1.b, when a fire barrier penetration seal is determined to be non-functional, a continuous fire watch is established on one side of the fire barrier. As a result of the non-functional fire barrier penetration seals found to date during the baseline inspection, approximately 28 continuous fire watches have been established. Furthermore, as more fire barrier penetration seals are

determined to be non-functional during this baseline inspection, additional personnel will be required to stand continuous fire watch. Because many of these penetrations are in radiation and high radiation areas, the posting of continuous fire watches (as opposed to hourly roving fire watches) results in unnecessary personnel exposures and is contradictory to ALARA principles. The use of roving hourly fire watches would provide an estimated reduction in personnel exposure of approximately 20 person-rem during the remainder of the baseline inspection. On December 19, 1991, the NRC granted a Temporary Waiver of Compliance allowing hourly fire watch patrols in areas with operable fire detection capability in lieu of continuous fire watches when a fire barrier penetration is determined to be non-functional. This Temporary Waiver of Compliance will remain in effect until the NRC has completed its review of the associated application for an exigent technical specification amendment.

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. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire barriers, and does not change the ability of fire protection equipment to perform its intended functions. The compensatory actions implemented by the Authority constitute a level of protection equivalent to that required in the existing FitzPatrick Technical Specifications and identical to that previously accepted by the NRC staff.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire barriers, and do not change the ability of fire protection equipment to perform its intended functions. These changes will not introduce any new fire hazards. A functional fire detection system on one side of the barrier plus an hourly patrol or a continuous fire watch constitutes an equivalent level of protection.

3. involve a significant reduction in the margin of safety.

The proposed changes involve no hardware changes, no changes to the functions of the fire barrier penetration seals or the fire barriers, and does not change the ability of fire protection equipment to perform its intended functions. The probability of a fire will not be increased nor will the ability of the fire detection and suppression systems to detect and extinguish a fire be degraded as a result of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no 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, DC 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, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 30, 1992 , 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 a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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, NW., Washington, DC 20555 and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, 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 immediately 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, DC 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, DC 20555, 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

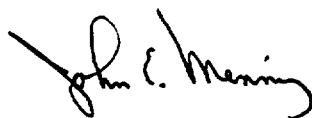
be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles H. Pratt, 1633 Broadway, New York, New York 10019, attorney for the licensee.

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 application for amendment dated December 19, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 24th day of December 1991.

FOR THE NUCLEAR REGULATORY COMMISSION



John E. Menning, Acting Project Manager
Project Directorate
Division of Reactor Projects -
Office of Nuclear Reactor Regulation