

DCS



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

AUG 09 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: MODIFICATION OF ORDER ISSUED BY NRC MAY 2, 1991

This letter is in response to your May 31, 1991 response to the Order Modifying License (Effective Immediately) issued by the NRC on May 2, 1991 and the letter you faxed to me on August 8, 1991, supplementing your original response. In the August letter you outlined the follow-up drug testing frequency that has been applied to Mr. Manning in the past, and the testing program you intend to apply to Mr. Manning in the future.

As I told you during our telephone conversation on August 6, 1991, after careful review of your May 31, 1991 response, and after further medical consultation, the Staff has finalized the conceptual approach outlined in our July 16, 1991 response. On that same day, a copy of what the Staff would consider as an acceptable follow-up program was faxed to you. Your response was the letter dated August 8, 1991. After full consideration of your August 8, 1991 response, I have decided, for the protection of the public health and safety, to issue the enclosed modified order which incorporates the terms of the follow-up drug testing program contained in the fax to you on August 6, 1991.

In addition, an Order is being issued on this date to Mr. Manning modifying the order issued to him on May 2, 1991. A copy of that Order is also enclosed.

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*  
James H. Sniezek  
Deputy Executive Director for  
Nuclear Reactor Regulation,

Regional Operations, and Research

*C/P-3*  
*et/3*

Enclosures: As stated

9108150149 910809  
PDR ADDCK 05000333  
G PDR

*DPR 11*

New York Power Authority

**AUG 09 1991**

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  
Department of Law, State of New York  
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

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

MODIFICATION OF 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 C.F.R. Part 50. The License authorizes the operation of the FitzPatrick facility in Scriba, New York, in accordance with the conditions specified therein.

II

On May 2, 1991, an Order Modifying License (Effective Immediately) was issued to the Licensee to prohibit participation by a licensed Senior Reactor Operator, David M. Manning, in Part 50 licensed activities without the prior written approval of the NRC Regional Administrator, Region I.

The Licensee responded to this Order on May 31, 1991, by requesting that the NRC reconsider the matter and rescind this Order. To support this request, the Licensee asserted that the decision as to who is fit to work at the FitzPatrick plant is properly the management

responsibility of the Licensee and that the facts and law do not support issuance of this Order.

Stating that the rehabilitation of the employee is one of the objectives of 10 C.F.R. Part 26, the Licensee asserted that reinstatement to duties is part of rehabilitation and that this Order had usurped the Licensee's authority in that decision. The Licensee further stated that decisions concerning reliability and trustworthiness have traditionally been the responsibility of management and that the NRC has recognized a licensee's competence to make these determinations. Therefore, the Licensee argued that there is no basis for the NRC to overturn the Licensee's decision to reinstate Mr. Manning's grant of unescorted access.

The Licensee argued that Mr. Manning's untrustworthiness was symptomatic of the substance abuse problem for which he underwent treatment and concluded that "in the absence of a substance abuse problem . . . there is no reason to assume that Mr. Manning would attempt to cheat in a random drug test, misrepresent a drug habit on a Certificate of Medical History, or otherwise attempt to deceive the NRC or fail to comply with NRC requirements", adding, "[t]he Authority [Licensee] believes that the successful rehabilitation of Mr. Manning . . . eradicated the substance abuse problem, including the deceit that accompanied it."

In conclusion, the Licensee stated that this Order defeats the entire purpose of an otherwise successful rehabilitation, stating that there was "ample basis to conclude that Mr. Manning was rehabilitated."

### III

The Staff has carefully reviewed the Licensee's response and the arguments made in it and consulted a medical expert in the field of drug rehabilitation. The Staff agrees that denial, including attempts to conceal use of illegal drugs, may be a symptom of the drug use itself, and that reinstatement to productive work is an important step in the process of rehabilitation.

However, the Staff does not agree, based on expert medical advice, that Mr. Manning's progress to date indicates that he is rehabilitated or that the symptoms that may be associated with drug use, including denial, have been completely eradicated. Rehabilitation requires long-term abstinence accompanied by counseling and participation in support groups, among other measures. Since Mr. Manning's efforts to date, however successful, represent only detoxification and short-term abstinence, the Staff is not prepared to conclude that he is rehabilitated and to permit his return to Part 55 licensed duties. The Staff has determined, for the reasons set forth in the initial Order and in Licensee's answer that Mr. Manning may perform Part 50 licensed activities only if he can provide continuing assurance that he has not returned to using drugs.

IV

Therefore, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. 2.204 and 10 C.F.R. Part 50, THE ORDER OF MAY 2, 1991 IS HEREBY MODIFIED TO REQUIRE THAT:

- 1) The provisions of the Order Modifying License (Effective Immediately) issued on May 2, 1991, 56 Fed. Reg. 22022 (May 15, 1991), directing that David M. Manning be removed from 10 C.F.R. Part 50 licensed activities, are modified to allow Mr. Manning to be returned to Part 50 activities provided Licensee complies with the following provisions:
  - a) for three years from the date of Mr. Manning's return to Part 50 licensed activities, the Licensee will conduct random drug tests of David M. Manning and observe the collection of urine samples provided by Mr. Manning in accordance with Section 2.4(f) of Appendix A, 10 C.F.R. Part 26 and its established procedures. The period between each drug test must not exceed 90 days, with a new 90-day period beginning the day after a test is conducted;
  - b) for three years from the date of Mr. Manning's return to Part 50 licensed activities, the Licensee will conduct observed drug tests of Mr. Manning on the first day back from any unexcused or

unanticipated absence of 24 hours or more, or after any scheduled absence of more than three calendar days;

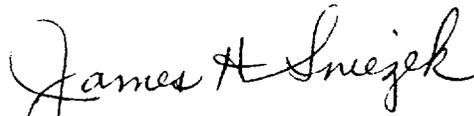
- c) Licensee must notify the NRC Region I Regional Administrator of any positive result within 24 hours.

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

V

In its answer to the May 2, 1991 Order Modifying License (Effective Immediately), the Licensee requested a hearing. In response, an Atomic Safety and Licensing Board was established and a proceeding is underway. Thus, in accordance with 10 C.F.R. §§ 2.717(b) and 2.718, any further answers by the parties shall be as directed by the presiding Licensing Board.

FOR THE NUCLEAR REGULATORY COMMISSION



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

Dated at Rockville, Maryland  
this 9<sup>th</sup> day of August 1991

New York Power Authority

Distribution

SECY

CA

JTaylor, EDO

JSniezek, DEDR

TMartin, RI

JLieberman, OE

RRosano, OE

Regional Coordinators

RI, RII, RIII, RIV, RV

JGoldberg, OGC

JMoore, OGC

BHayes, OI

TMurley, NRR

JPartlow, NRR

WRussell, NRR

JRoe, NRR

FIngram, GPA/PA

DWilliams, OIG

EJordan, AEOD

EA File

Day File

Region I Docket File

OE  
RPRosano  
8/ /91

D:OE  
JLieberman  
8/9/91

OGC mE  
LChandler  
8/9/91

NRR  
JGPartlow  
8/ /91

RI  
TTMartin  
8/ /91

DEDR  
JSniezek  
8/9/91