

March 18, 2005

Mr. Tim Judson
Central New York Nuclear Security Coalition
P.O. Box 3123
Oswego, NY 13126

Dear Mr. Judson:

On October 27, 2004, you filed a Petition on behalf of the Central New York Nuclear Security Coalition that was addressed to Mr. Luis Reyes, Executive Director for Operations of the Nuclear Regulatory Commission (NRC). Your Petition requested that the NRC take enforcement action against Entergy Nuclear Operations, Inc., the licensee for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). The Petition has been referred to the Office of Nuclear Reactor Regulation, pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). In the Petition, you requested that NRC suspend the license to operate FitzPatrick pending completion of certain actions relating to safety-related pump rooms in the screenwell house. Specifically, you requested: (1) that physical tests of the ventilation and heatup rates of the pump rooms under simulated fire conditions be conducted, with verification of test results by an independent third party, followed by an open public meeting where the results are presented and reviewed; (2) that the floor/ceiling penetrations between the basement level pump rooms and the first floor be sealed; (3) that alternate cooling and ventilation be provided for emergency service water (ESW) and fire safety-related pump rooms; and (4) that the adequacy of completed actions be verified by NRC Region I Division of Reactor Safety fire protection inspection team, as the agency planned to do in 1997. You further stated that these actions are necessary for the licensee to complete commitments made by the New York Power Authority (NYPA, the former licensee) in Licensee Event Report (LER) 91-021. Aside from these immediate actions, you submitted a "Demand for Information" to obtain any documents that were not provided in response to a prior request from the Citizens Awareness Network under the Freedom of Information Act (FOIA).

As the basis for your request, you stated that a number of different fire scenarios, whether accidentally or deliberately caused by acts of malice, could disable certain cooling water and fire safety-related pumps. In addition, you stated that, if the ventilation dampers close to prevent the spread of fires from room to room in the screenwell building, there is no alternative source of ventilation or cooling for the rooms housing the pumps. Further, you indicated that modifications made to the closing mechanisms for the dampers would cause the rooms to be at a higher temperature before the dampers close. Thus, you asserted that the rooms would be effectively preheated by the time the dampers close. As a result, you contend that the pumps could overheat in 10 minutes or less. Lastly, you stated that some of the basement pump rooms have open penetrations in the ceilings, covered only by grates. You indicated that these open penetrations make it possible for burning material to fall through and spread the fire between rooms.

You, and several other Petitioners, participated in a teleconference with our Petition Review Board (PRB) on December 7, 2004, to discuss your Petition. During this teleconference, you requested that documentation, provided independently by one of the Petitioners to the NRC's Office of the Inspector General (OIG), be included as a supplement to the Petition. The PRB

has considered the results of the December 7 discussion in its determination regarding your requested enforcement actions and whether or not the Petition, as supplemented, meets the criteria for consideration under 10 CFR 2.206.

In accordance with Section C(2) of Part II of NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," the NRC staff has concluded that your submittal does not meet the criteria for consideration under 10 CFR 2.206 because you have raised issues that have already been the subject of staff review and evaluation at FitzPatrick and that have already been resolved. In this regard, the staff found that you did not present any significant new information which would cause us to reconsider the prior resolution of the issues. Your issues had been previously reviewed and evaluated by the NRC staff under its Allegation Review Process. The following paragraphs summarize the actions that were previously taken to review the concerns addressed in your Petition.

The safety-related pump room ventilation issue was brought to our attention during a discrimination complaint filed with the NRC in 1997. It was one of over a dozen technical issues that were raised during the discrimination investigation process in 1997. The NRC referred the technical issues to NYPA for investigation. NYPA replied by letter dated September 16, 1997. An NRC inspector performed an independent review of the issues to confirm the NYPA response and determine whether further NRC action was warranted. NRC considered the safety-related pump room ventilation issue closed after that review.

The pump room ventilation issue was again raised during a discrimination complaint filed with the Department of Labor (DOL) in 2003. An NRC regional fire protection specialist reviewed the "Fitzpatrick Screenwell Smoke and Hot Gas Analysis" that was referenced in a letter to the NRC on March 28, 1995 (ADAMS Legacy Library Accession No. 9503310022). This analysis had been performed for NYPA to determine if a postulated fire in the screenwell house which degraded or disabled the ventilation for the pump rooms, would cause the ESW, residual heat removal service water, or fire pumps to overheat. The analysis determined that with certain additional combustible controls for the screenwell house, pump performance would not be degraded, even with the loss of the ventilation systems during a postulated fire. The specialist also reviewed the combustible material control procedure to ensure that appropriate limits on amounts and placements of material had been incorporated in order to prevent a fire from adversely affecting the safety-related pump rooms. Another specialist inspected the screenwell house at that time to verify that combustible limits were being correctly implemented. NRC again considered the matter closed.

As part of the agency's Reactor Oversight Process, NRC resident inspectors make periodic tours of areas important to safety, evaluating combustible material controls, fire detection systems, fire area boundaries, and fire suppression equipment condition. During one of these tours, the resident inspector identified a quantity of material in the screenwell house in excess of that allowed by procedure. This resulted in a noncited violation in NRC Inspection Report No. 50-333/04-04, and the discrepant conditions were corrected (see ADAMS Accession No. ML043170428).

NRC recognizes that large conflagrations in certain plant areas, beyond those for which the facility fire protection systems are designed, have the capability to challenge plant safety. In response to the September 11, 2001, terrorist attacks, NRC has issued a series of advisories, orders, and regulatory issue summaries to enhance security, fire protection and emergency

planning programs industrywide. In particular, licensees have improved their capabilities to respond to an event that results in damage to large areas of a plant from explosions or fires. The details are sensitive and not publicly available, but a general summary of NRC's activities in the security arena since September 11, 2001, is available at <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/security-enhancements.html>.

In summary, the NRC staff determined that the issues raised in your Petition have been thoroughly reviewed and resolved. In addition, you have not presented any significant new information which warrants a reconsideration of the issues. Therefore, the staff has concluded that your submittal does not meet the criteria for consideration under the 10 CFR 2.206 process.

With regard to your Demand for Information for documents not released in response to your previous FOIA request, we have determined that those documents were withheld under the provisions of 10 CFR 9.17 (a)(7), as you were informed at the time. We have reviewed the documents and determined that the exemption from disclosure still applies. As a result, those documents are not being released at this time.

In your Petition, you also asserted that NRC oversight was inadequate in that the NRC never followed up to ensure that NYPA fixed the problem. With regard to the potential safety problems reported to the NRC in an allegation, you stated that the NRC merely accepted NYPA's responses without question. Although we believe our actions have been appropriate and have adequately resolved the concerns through independent review of the issues, your comments and assertions about NRC staff performance have been referred to the NRC's OIG for consideration and appropriate action.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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FitzPatrick Nuclear Power Plant

cc:

Mr. Gary J. Taylor
Chief Executive Officer
Entergy Operations, Inc.
1340 Echelon Parkway
Jackson, MS 39213

Mr. Michael R. Kansler
President
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. John T. Herron
Sr. VP and Chief Operating Officer
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Theodore A. Sullivan
Site Vice President
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Mr. Kevin J. Mulligan
General Manager, Plant Operations
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Mr. Danny L. Pace
Vice President, Engineering
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Brian O'Grady
Vice President, Operations Support
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. John F. McCann
Director, Nuclear Safety Assurance
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Resident Inspector's Office
James A. FitzPatrick Nuclear Power Plant
U. S. Nuclear Regulatory Commission
P.O. Box 136
Lycoming, NY 13093

Ms. Charlene D. Faison
Manager, Licensing
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Michael J. Colomb
Director of Oversight
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. William Maquire
Director, Nuclear Safety Assurance
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Mr. Andrew Halliday
Manager, Regulatory Compliance
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

Supervisor
Town of Scriba
Route 8, Box 382
Oswego, NY 13126

FitzPatrick Nuclear Power Plant

cc:

Mr. Charles Donaldson, Esquire
Assistant Attorney General
New York Department of Law
120 Broadway
New York, NY 10271

Mr. Ron Toole
BWR SRC Consultant
1282 Valley of Lakes
Box R-10
Hazelton, PA 18202

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Ms. Stacey Lousteau
Treasury Department
Entergy Services, Inc.
639 Loyola Avenue
Mail Stop L-ENT-15E
New Orleans, LA 70113

Oswego County Administrator
Mr. Steven Lyman
46 East Bridge Street
Oswego, NY 13126

Ms. Deb Katz, Executive Director
Nuclear Security Coalition
c/o Citizens Awareness Network
P.O. Box 83
Shelburne Falls, MA 01370

Mr. Peter R. Smith, President
New York State Energy, Research,
and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Mr. Paul Eddy
New York State Dept. of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

Mr. John M. Fulton
Assistant General Counsel
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10601

Mr. Ken L. Graesser
BWR SRC Consultant
38832 N. Ashley Drive
Lake Villa, IL 60046

Mr. Jim Sniezek
Nuclear Management Consultant
5486 Nithsdale Drive
Salisbury, MD 21801