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May 12, 1983
IPN-83-39

Mr. Harold R. Denton
Director of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Indian Point 3 Nuclear Power Plant
Docket No. 50-286
Technical Specification
Amendment Regarding Steam Generator
Tube Slewing

Dear Mr. Denton:

On April 29, 1983 the Authority (Messrs. Bayne, Brons Zulla, Russell, Kokolakis, et al.) met with the NRC Staff (Messrs. Lainas, Johnston, Varga, Benaroya, Polk, et al.) to discuss, among other things, activities regarding the Indian Point Unit 3 (IP3) Steam Generators. The NRC stated at this meeting that there were no major technical issues remaining with regard to the Authority's October 18, 1982 application for a technical specification amendment concerning steam generator tube slewing. Subsequent to this meeting, the Authority was notified that the NRC Staff intended to notice for public comment the Authority's amendment application since it would not be issued prior to May 6, 1983. This proposed procedure is not consistent with the recently-promulgated interim final rule (48 Fed. Reg. 14864, 14873; April 6, 1983) on license amendment procedures.

The Commission, in promulgating the interim final rule, provided that amendment requests received before the rule takes effect, if the Commission has not acted before the effective date of the rule, would be treated under pre-existing procedures. 48 Fed. Reg. 14877. Under such procedures, the Commission would not notice amendment applications for public comment if the amendment did not involve a significant hazards consideration unless the Commission decided as a matter of discretion to provide such notice. The interim final rule also indicates that even under the new procedures prior public notice of the application will not necessarily be required in an emergency situation where failure to act in a timely way would result in a shutdown. 48 Fed. Reg. 14876. For both of

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these reasons, as well as others discussed below, the Authority considers that the Commission's rules clearly call for prompt action by the Commission on the requested amendment to the technical specifications. The NRC Staff's proposal to delay acting on the application is thus inappropriate.

Application of the Interim Final Rule
to Pending Amendment Applications

The preamble to the interim final rule on notice and state consultation provides:

...with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments requested on which the Commission has not acted before the effective date of the interim final rule.

48 Fed. Reg. 14877. The Authority's application for a technical specification amendment to allow steam generator tube sleeving was submitted on October 18, 1982 (IPN-82-69). The Authority had earlier met with NRC Staff on September 21, 1982 and given a detailed presentation of the history of steam generator tube issues at IP3 and the proposed sleeving program. At that time, Jack Brons (IP3 Resident Manager) was informed that the NRC Staff had no plans to notice the Authority's application for public comment. Since then, no change in the nature of the requested amendment or in the safety considerations raised by the application has occurred to justify a reversal of the NRC Staff's position. Thus, the Authority's October 18, 1982 application should not be processed under the interim final rule since the application was submitted long before the May 6, 1983 effective date of the rule.

No Significant Hazards Consideration

Applications for amendment of technical specifications in connection with steam generator sleeving have not been considered by the NRC Staff to involve a significant hazards consideration. This policy is consistent with (1) the standards for determining whether a proposed amendment would involve a significant hazards consideration, now found in Section 50.92 of the Commission's regulations (see 48 Fed. Reg. 14871), and (2) examples of amendments that are considered likely to involve significant hazards considerations, published in the preamble to Sections 50.58 and 50.92. 48 Fed. Reg. 14870.

In addition, NRC Staff testimony submitted on January 26, 1983 in the Indian Point Special Proceeding confirms licensees' findings that steam generator tube ruptures represent a very small risk to the public. NRC Staff calculated that steam generator tube ruptures might lead to 4×10^{-6} core melt accidents per reactor year while licensees have estimated the likelihood to be 1×10^{-7} . It is also important to note that the sleeving program at IP3 is complete and therefore occupational exposure as a result of the sleeving program is no longer a consideration.

Emergency Situation/Exigent Circumstances

The NRC Appropriations Authorization Act of 1983 ("Act"), Section 12 amended the Atomic Energy Act of 1954, Section 189a, by adding, inter alia, new paragraph (2)(C):

(2)(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

IP3 has been shut down since March 25, 1982 and initial procedures leading to a startup of the plant began on Wednesday, May 11, 1983. The Authority's present schedule for starting the plant calls for heating of the reactor coolant system to begin on May 19th. Should the NRC Staff decide to notice the Authority's application for amendment of technical specifications and await the end of the 30 day comment period (or possibly even the completion of a requested hearing) before issuing the amendment, IP3 will be shutdown after May 19, 1983 for that reason alone. This situation clearly presents an emergency situation or an exigency as provided for in the Act and as discussed in the preamble to Sections 2.105 and 50.91 (48 Fed. Reg. 14876, 14877). The people of the State of New York would incur unnecessary replacement power costs on the order of \$800,000 for each day that IP3 is shutdown. There are no countervailing safety benefits for this cost.

Conclusions

The NRC Staff should not further delay the startup of IP3 in light of the nature of the amendment application and the emergency circumstances involved. After six months of reviewing the Authority's October 18, 1982 Amendment Application, it would be unreasonable to further delay the startup of IP3 pending the completion of a recently initiated notice and comment period. There are large costs and no benefits associated with this delay.

The Commission has initiated an extensive adjudicatory/investigatory proceeding concerning the Indian Point units. The Commission expressly decided on July 15, 1980, in the context of that special proceeding, that the two operating units would remain open during the pendency of the proceeding. See Memorandum and Order, dated January 8, 1981, in the Indian Point Special Proceeding. The protection of the public's health and safety has not deteriorated since the Commission made its decision on interim operation in July 1980.

In addition, the Commission's May 5, 1983 Order concerning emergency preparedness at Indian Point does not by itself establish sufficient justification for precluding startup of IP3. The Commission indicated that it would suspend operation of the Indian Point plants after May 26, 1982 only if the conditions stated in the Order are not met. The Authority intends to demonstrate to the Commission's full satisfaction why it should not suspend operation of IP3.

The Authority submits that no basis exists, either in the circumstances presented by the application for an amendment or with respect to any other aspect of plant operation, for preventing the plant from operating. In the event the Commission now fails to act in a timely manner on the Authority's application for an amendment to the technical specifications, the plant will have been effectively shut down.

Very truly yours,



Leroy W. Sinclair
President and Chief
Operating Officer

cc: Attached

cc: Mr. Steven A. Varga
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