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64FR 19207
April 19, 1999



**New York Power
Authority**

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Senior Vice President and
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US NRC

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

May 13, 1999
JPN-99-015
IPN-99-054

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemaking and Adjudications Staff

SUBJECT: Indian Point 3 Nuclear Power Plant
Docket No. 50-286
James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
**Comments on Recommended Improvements
to the Oversight Processes for Nuclear Power Reactors**

- REFERENCES:**
1. Federal Register, April 19, 1999, 64 Fed. Reg. 19207
 2. NEI letter, R. E. Beedle to USNRC dated May 14, 1999 regarding the same subject.

Dear Sir:

The Authority is submitting the comments summarized below on the recommended improvements to the oversight process for nuclear power reactors, Reference 1.

The Authority is encouraged by the progress made over the past several months. Everyone involved, the public, the NRC staff, and industry representatives should be commended on the special efforts they made and the improvements the new process represents. The NRC staff, through several public workshops, involved the public and the industry in the critical steps of the development process. Even with the pressures of an expedited schedule, this initiative demonstrated a new level of communication and cooperation between the public, the NRC staff and licensees.

Pilot Program

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The Authority is looking forward to participating in the improved oversight Pilot Program at our James A. FitzPatrick plant. Through our participation, the Authority expects to gain "hands-on" experience with the tools and details of the improved process. We also expect to put this experience to good use and provide meaningful and insightful feedback to both the NRC and industry organizations.

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NEI Comments

The Authority has also reviewed the comments submitted on behalf of the nuclear power industry by the Nuclear Energy Institute (NEI), Reference 2. In general, the Authority endorses and supports NEI's comments. The Authority believes that some of these points are important enough to warrant amplification.

"Rolling-up" Findings into a Finding of Greater Significance

In several places, the improved oversight process alludes to future staff initiatives that could be described as "rolling-up" or combining selected findings of little or no safety significance into a single aggregate finding which could be significant. This idea is contrary to the fundamental concept underlying the new oversight process and should be deleted. This idea has the potential for undermining the progress the new process by providing an avenue by which the insignificant can be raised to the level of significant. The Authority believes that if this technique is made part of the new oversight process, licensee and regulatory resources could be diverted from more important findings.

Design Engineering

Because the performance indicators currently under consideration do not measure the capability of design engineering, baseline NRC inspections will continue to focus on this area. Consistent with the model of risk-informed, performance-based oversight, these inspections should focus on the performance aspects of risk-significant systems rather than procedural or other minor noncompliance issues associated with design engineering.

Fire Protection

For the new oversight process to be effective, fire protection must be integrated into the new oversight process using the same level of public, NRC staff and industry involvement and open communication used to develop other portions of the process. Fire protection inspection activities should be deferred for plants in the pilot program until such time risk-informed and performance-based inspections, or meaningful performance indicators for fire protection, can be developed.

Enforcement Process

The Authority believes that three other issues associated with the enforcement process should be addressed as part of this initiative. First, the Authority believes that the enforcement process should contain provisions so that licensees are not cited for matters outside their control. Secondly, the violations should not be issued for procedural non-compliance not associated with a specific regulation. And lastly, violations should not be issued for errors in licensee programs where the program includes barriers that would have prevented propagation of the error. In many instances, the regulation only requires the establishment and implementation of the program.

Corrective Action Priorities

The proposed enforcement policy includes a provision that would permit a notice of violation (NOV) to be issued when a "licensee fails to restore compliance within a reasonable time after the violation was identified." Although what constitutes a reasonable amount of time can (and should) vary, the Authority believes that this definition is too subjective. Compliance with requirements is essential. However, violations should not be issued when the actions to restore compliance are captured in a licensee's corrective action program, and have been appropriately prioritized by the program. Priority is dependent not only on the significance of the violation, but on the significance of other competing actions in the corrective action program, as well as resource limitations.

Action Matrix – Single Red Assessment Input

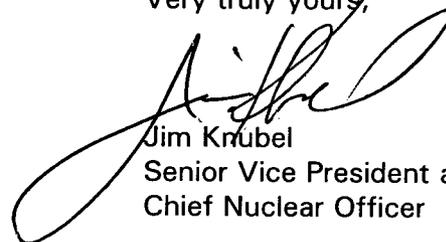
SECY-99-007 acknowledged that "licensees have the primary responsibility for ensuring the safety of the facility...and the...it is expected that a limited number of risk-significant events will continue to occur with little or no indication of declining performance." SECY-99-007A introduced a provision where a single risk-significant event (a red assessment input) would require direct NRC Executive Director for Operations or Commission involvement, team inspections and the issuance of an order, corrective action letter (CAL) or 50.54(f) letter. The NRC must take the actions it believes necessary to protect the public health and safety, and for exceptional events, actions like those proposed in the matrix might be appropriate. However, the response matrix should reflect the expected enforcement response – not the maximum. This level of response is not warranted and should not be required for most single "red-assessment" events. The response matrix should be revised to be consistent with text of the SECY regarding enforcement actions required for a single risk-significant event without other evidence of performance declines.

Draft Inspection Procedures

The Authority's preliminary review of the draft inspection procedures seems to indicate that these procedures may include some new or different staff positions. The Authority will provide detailed feedback to the NRC through NEI and other industry organizations on any significant new positions identified in the inspection procedures as part of the pilot program.

This letter does not contain any new commitments. If you have any questions regarding this matter, please contact the Director - Nuclear Licensing, Ms. C. D. Faison.

Very truly yours,



Jim Krubel
Senior Vice President and
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cc: Next page

cc: Regional Administrator
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