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**Beyond Nuclear---The Alliance for a Green Economy--
Center for Health, Environment & Justice--Citizens' Environmental
Coalition---Peace Action New York State---CNY Citizens' Awareness
Network---Syracuse Peace Council---Peace Action Central New York**

March 20, 2012

Mr. Bill Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
By Email: Bhalchandra K. Vaidya, NRC Petition Manager, bhalchandra.vaidya@nrc.gov

**Joint Petitioners' Supplement 1
March 9, 2012 Petition for Emergency Enforcement Action
RE: James A. FitzPatrick Nuclear Power Plant Refusal to Install the
Direct Torus Vent System as Recommended by NRC Generic Letter 89-16**

Mr. Borchardt:

Beyond Nuclear, The Alliance for a Green Economy, Center for Health, Environment & Justice, Citizens' Environmental Coalition, Peace Action New York State, CNY Citizens' Awareness Network, Syracuse Peace Council and Peace Action Central New York, hereafter referred to as "the joint petitioners," submit the following Supplement 1 to their March 9, 2012 Petition for Emergency Enforcement Action.

The joint petitioners submit in supplement to their petition the attached NRC letter dated May 13, 2011, "JAMES A. FITZPATRICK NUCLEAR POWER PLANT - NRC TEMPORARY INSTRUCTION 2515/183 INSPECTION REPORT 05000333/201 1008."¹

The Temporary Instruction provides the NRC inspection results in the "Followup to the Fukushima Daiichi Nuclear Station Fuel Damage Event."

¹ "James A. FitzPatrick Nuclear Power Plant-NRC Temporary Instruction 2515/183 Inspection Report 05000333/2011008," US NRC to Entergy Nuclear Northeast, May 13, 2011, ML11133045
http://www.beyondnuclear.org/storage/mark-1-campaign/fof/fitzpatrick/FITZ%20 nrc_05132011_TI-183%20IR%202011008.pdf

TEMPLATE: EDO-01

RIDS: EDO-01

The joint petitioners draw attention to what is described at page 8 of the enclosure as an “*apparent beyond design and licensing basis vulnerability*” involving the FitzPatrick operator’s refusal to install the Direct Torus Vent System as recommended by NRC in Generic Letter 89-16.

The results of the NRC walk down completed on April 29, 2011 are briefly described at pages 8-9 as follows;

“The licensee identified an apparent beyond design and licensing basis vulnerability, in that current procedures do not address hydrogen considerations during primary containment venting. This issue was documented in CR-JAF-2011-01529. As an immediate corrective action, the licensee revised TSG-9 to provide a caution for operators to consider the presence of hydrogen.

“The inspectors identified a beyond design and licensing bases vulnerability, in that FitzPatrick’s current licensing basis did not require the plant to have a primary containment torus air space hardened vent system as part of their Mark I containment improvement program. The current licensed configuration is a hard pipe from primary containment to the suction of the standby gas treatment system, which is located outside the reactor building in an adjacent building. The NRC has established an agency task force to conduct a near term evaluation of the need for agency actions, which includes containment venting, following the events in Japan.”²

The joint petitioners cite the referenced “*caution for operators to consider the presence of hydrogen*” for primary containment venting as a significant increase in the uncertainty for the reliability and capability of the FitzPatrick pre-existing containment vent system due in part but not exclusively to the FitzPatrick operator’s non-conservative assumption regarding “*no likely ignition points*” in the pre-existing venting path. The joint petitioners argue that the cited “*caution*” presents a significant uncertainty by introducing an indeterminate element of delay of operator actions under severe accident conditions

² Ibid, NRC TI, p. 8-9 http://www.beyondnuclear.org/storage/mark-1-campaign/fof/fitzpatrick/FITZ%20_nrc_05132011_TI-183%20IR%202011008.pdf

that fundamentally undermine the reliability and capability of the FitzPatrick pre-existing venting system.

The Temporary Instruction makes reference to the NRC task force *"near term evaluation of the need for agency actions"* to include further containment venting modifications. The Commission issued just such an Order dated March 12, 2012 for further modifications and installation of a hardened vent on all Mark I and Mark II reactors which need not be completed before December 31, 2016.³

However, the joint petitioners argue that the FitzPatrick unit presents a unique situation by its original choice not to install the Direct Torus Vent System.

The Commission Order states that *"Current regulatory requirement and existing plant capabilities allow the NRC to conclude that a sequence of events such as the Fukushima Dai-ichi accident is unlikely to occur in the US. Therefore, continued operation and continued licensed activities do not pose an imminent threat to public health and safety."*⁴ The Order further states, *"While not required, hardened vents have been in place in U.S. plants with BWR Mark I containments for many years but a wide variance exist with regard to the reliability of the vents."*⁵

In fact, the joint petitioners argue that the NRC inspection report identifies that FitzPatrick's *"existing plant capabilities"* and *"current procedures do not address hydrogen considerations during primary containment venting"* which is further identified as a *"current licensing basis vulnerability."* The joint petitioners further reiterate that the NRC inspection finding that FitzPatrick's *"existing plant capabilities"* as assumed by the Order are in fact negated by the finding that *"FitzPatrick's current licensing basis did not require the plant to have a primary containment torus air space hardened vent system"*

³ "Issuance of Order to Modify Licenses with Regard to Reliable Hardened Vents," US NRC, March 12, 2012, http://www.beyondnuclear.org/storage/mark-1-campaign/fof/nrc-orders-and-communications/fof_nrc_order_vent_03122012_ML12054A694.pdf

⁴ Ibid, Order, Enclosure, p. 4

⁵ Ibid, Order, Enclosure, p. 4

as part of their Mark I containment improvement program.” In other words, FitzPatrick is uniquely vulnerable by its difference to the basic assumptions of the Commission Order.

In regards to the timeliness of remediation by the Order, the Commission Chair himself has identified that NRC Order timelines can be subject to delay as identified in recent testimony before the Senate Environment and Public Works with regard to the Order on seismic qualification.⁶ Even without such delay, the joint petitioners contend that the Commission Order timeline setting December 31, 2016 for installing the hardened vent Order does not address in a timely way the unique condition of the FitzPatrick nuclear power plant. To simply assume that a severe accident will not happen is neither reasonable nor acceptable and as such, the identified “*vulnerability*” presents an undue risk upon public health and safety.

FitzPatrick nuclear power plant uniquely does not have a fully hardened vent system on the vulnerable Mark I containment. As a result, FitzPatrick's current capability is identified with “*a beyond design and licensing bases vulnerability, in that FitzPatrick's current licensing basis did not require the plant to have a primary containment torus air space hardened vent system as part of their Mark I containment improvement program.*”⁷ Given that the FitzPatrick unit willfully refused to install the DTVS, the documented discovery of the “*licensing basis vulnerability*” of its chosen pre-existing vent now uniquely warrants the suspension of operations pending closer scrutiny, public hearings, and full disclosure for its adequacy and capability in the event of a severe accident.

The joint petitioners argue that the additional identified “*vulnerability*” and the relatively remote and uncertain mitigation strategy places the public health and safety unduly and unacceptably at risk by the continued day-to-day operations where “*current procedures*

⁶ “Key nuclear plant safety order likely to be delayed, NRC tells Senate,” Washington Post, 03/15/2012, http://www.washingtonpost.com/blogs/federal-eye/post/key-nuclear-plant-safety-order-likely-to-be-delayed-nrc-tells-senate/2012/03/15/gIQAX5maES_blog.html

⁷ Ibid, NRC TI, p. 8-9

do not address hydrogen considerations during primary containment venting” and will not for nearly five (5) more years.⁸

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⁸ Ibid, NRC TI, p. 8