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Executive Vice President
Nuclear Generation

January 31, 1991
JPN-91-006
IPN-91-003

Mr. James Kennedy
Office of Nuclear Materials and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
Indian Point 3 Nuclear Power Plant
Docket No. 50-286
Comments on SECY 90-318, "Low Level Radioactive Waste
Policy Amendments Act Title and Possession Provisions"

Dear Sir:

This letter provides the New York Power Authority's comments on SECY 90-318 "Low Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions." The Authority's comments address the questions contained in the Federal Register on December 4, 1990 (55 FR 50064).

The Authority believes that Commission decisions on licensee activities should continue to be based on a determination that such activities can be conducted in accordance with applicable regulations. Therefore, in response to several of the questions contained in the Federal Register, the Authority offers the following comments:

- Q1. The Authority agrees with the finding on page 4 of SECY 90-318 that Title 10 Code of Federal Regulations Parts 20, 30 and 50 and NRC guidance documents together provide an adequate regulatory framework for licensing onsite storage. The Authority recommends that the Commission use this existing regulatory framework for decisions related to onsite storage of low level waste.

Specifically, the Commission should consider authorization for storage based solely on reasonable assurance that a licensee can conduct storage activities in compliance with regulations and without endangering the health or safety of the public.

By using the existing regulatory framework, the Commission preserves the ability of each generator licensee to act on and pursue onsite storage according to the licensee's individual capabilities and situation. The Commission should not consider factors other than regulatory compliance when it is considering decisions on licensee actions related to storage.

WM-3
214
3/16
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- Q2. Permanent disposal of low level waste in a licensed disposal facility is the most effective means available for isolating the radiological hazard from the environment. However, licensees can conduct storage activities in a manner that will protect public health and present no danger to life and property.
- Q3. Storage should not be a substitute for permanent disposal and, further, permanent disposal is technologically achievable within existing licensing standards. However, the regulatory requirements under which storage is licensed and conducted are separate from the provisions of the act under which state and compact authorities are developing disposal capacity. The act imposes no mandate on the Commission to establish permanent disposal facilities. Conversely, if Congress had wanted to preclude onsite storage, whether by directing NRC not to license it or by outright prohibition, that requirement would have been expressly stated in the act. The NRC's mandate is to ensure through licensing and facility oversight that the handling, storage and disposal of radioactive material, in this case low level waste, is performed in a safe and environmentally sound manner. As long as onsite storage meets these criteria, not to license new or continued storage would appear discretionary.

Therefore, although the Commission is responsible under the law for certain activities concerning states and compacts, the Authority believes that the progress of such entities under the law should not become a factor in the Commission's decisions on individual generator licensee actions.

- Q8. The Power Authority has applied for interim status for mixed hazardous and radioactive waste under New York State's program authorized by the Environmental Protection Agency. Mixed waste is currently subject to full dual regulation by both the NRC and the EPA, and generators of mixed wastes have no alternative but to store them onsite because commercial disposal capacity does not exist. For these reasons the Authority encourages the Commission to work with the EPA and the Congress to establish a single set of standards for storage, treatment and disposal of mixed waste that will ensure an adequate degree of protection for workers, the public, and the environment.

Mr. James Kennech
Comments on SECY 90-318
page 3

If you have any questions on our comments, please contact Pete Kokolakis.

Very truly yours,



for John C. Brons
Executive Vice President
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cc: Regional Administrator
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