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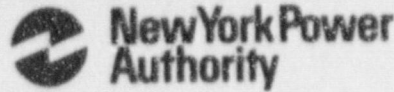
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James Krubel
Senior Vice President and
Chief Nuclear Officer

RULES & DIR. BRANCH
US NRC

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NUMBER
PROPOSED RULE **PR 50**
(62FR53975)
(62FR53932)

December 1, 1997
JPN-97-037
IPN-97-164

Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: Indian Point 3 Nuclear Power Plant
Docket No. 50-286
James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
**COMMENTS ON FINAL DIRECT RULE
CHANGES TO PARAGRAPH (h) OF
10 CFR 50.55a "CODES AND STANDARDS"**

- REFERENCES:
1. October 17, 1997 FEDERAL REGISTER, Vol. 62, No. 20, pages 53932-53935, "Nuclear Regulatory Commission Final Direct Rule, Codes and Standards; IEEE National Consensus Standard"
 2. IEEE Std. 603-1991, "Criteria for Safety Systems for Nuclear Generating Stations"
 3. IEEE Std. 279, "Criteria for Protection Systems for Nuclear Power Generating Stations"

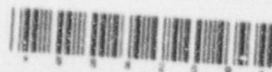
Dear Sir:

The Authority has reviewed the direct final rule (Reference 1) published October 17, 1997 amending 10 CFR 50.55a(h). This new rule incorporates a reference to IEEE Std. 603-1991 (Reference 2) to replace IEEE Std. 279 (Reference 3) which has been withdrawn by the IEEE. The Authority has several concerns regarding this new rule, which are detailed below.

Imposes New Requirements on Existing Operating Plants

The current version of 10 CFR 50.55a(h) includes a provision that excludes plants with construction permits issued prior to January 1, 1971. The final direct rule includes no such provision. The absence of this provision would have a significant effect on the Authority's

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ability to change protection systems at the Authority's nuclear plants.

Both Indian Point 3 and James A. FitzPatrick received their construction permit before January 1, 1971, and consequently, are exempt from the requirements of 10 CFR 50.55a(h). While both plants have committed to portions of IEEE Std. 279 (1968 or 1971), this change to 10 CFR 50.55a(h) would impose IEEE Std. 603-1991 as a new requirement on both plants. The imposition of IEEE Std. 603-1991 as a regulatory requirement may meet the definition of a backfit in 10 CFR 50.109(a)(1) and requires the preparation of a backfit analysis.

Broadened Scope of IEEE Std. 603-1991

The scope of IEEE Std. 603-1991 (including the correction sheet dated January 30, 1995) goes beyond that of IEEE Std. 279. While a section-by-section comparison of the two standards shows them to be similar, IEEE Std. 603-1991 includes features not addressed in IEEE Std. 279.

IEEE Std. 279 is limited to the sense and command features of safety systems. IEEE Std. 603-1991 includes not only those features, but expands the scope of the standard to address execute features, power sources and supporting systems, such as heating, ventilating and air conditioning (HVAC).

IEEE Std. 603-1991 is also broader in scope than IEEE Std. 279 since it invokes several other industry standards as requirements. Many of these sub-tier standards are not part of the current licensing basis of either of the Authority's plants and were issued after they received their operating licenses. As currently proposed, the new rule could be interpreted as elevating these sub-tier standards to the status of regulatory requirements.

Administrative Procedures Act

The Administrative Procedures Act (APA) typically requires a rule to be issued as a proposed rule and allow for public comment. A final direct rule may only be used when the issue is entirely non-controversial. The October 17, 1997 Federal Register Notice concludes that because the Commission did not receive any adverse comments on a draft regulatory guide (Reference 3) which also endorsed IEEE Std. 603-1991, that the issuance of this rule is non-controversial.

The lack of public comments, adverse or otherwise, on a draft regulatory guide is not a reliable indicator of whether or not an NRC staff position is controversial. As stated at the bottom of most regulatory guides, "...Regulatory guides are not substitutes for regulations and *compliance with them is not required*. Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings...(emphasis added)." In contrast, the rules and regulations contained in Title 10 are legally binding and *compliance is required*.

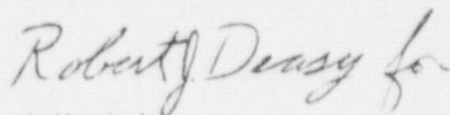
While the Authority closely monitors developing regulatory issues and NRC concerns, it does not routinely develop and submit comments on new or revised NRC staff positions expressed in guidance documents such as Regulatory Guides.

Conclusion

The effective date of the new rule should be delayed until these concerns about it can be resolved and appropriate changes incorporated. The Authority does not consider the adoption of IEEE Std. 603-1991, as a regulatory requirement, non-controversial.

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,



J. Knubel
Senior Vice President and
Chief Nuclear Officer

cc: Regional Administrator
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