

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Entergy Nuclear FitzPatrick, LLC)	
)	Docket Nos. 50-333 and 72-12
Entergy Nuclear Operations, Inc.)	License No. DPR-59
)	EA-14-137
James A. Fitzpatrick Nuclear Power Plant)	
)	

CONFIRMATORY ORDER MODIFYING LICENSE

I.

Entergy Nuclear FitzPatrick, LLC, is the owner and Entergy Nuclear Operations, Inc. (“Entergy” or “the licensee”) is the operator of the James A. Fitzpatrick Nuclear Power Plant, including the general-licensed Independent Spent Fuel Storage Installation (hereinafter “JAFNPP” or “the facility”), and holder of Provisional Renewed Facility Operating License No. DPR-59 and Docket No. 72-12 issued by the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) under Title 10, “Energy,” of the *Code of Federal Regulations* (10 CFR) Part 50, “Domestic Licensing of Production and Utilization Facilities”; Part 70, “Domestic Licensing of Special Nuclear Material”; and Part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.” The license authorizes the operation of JAFNPP with the conditions specified therein. The facility is located on the owner’s site in Oswego County, New York.

II.

By application dated August 30, 2013, as supplemented by letters dated November 12, 2013, and May 14 and July 11, 2014, Entergy requested, under Commission Order EA-13-092, that under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain firearms and large-capacity ammunition-feeding devices by security personnel who protect a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission. Section 161A confers on the Commission the authority to permit a licensee's security personnel to possess and use firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use.

On review of the Entergy application for Commission authorization to use Section 161A preemption authority at JAFNPP, the NRC staff has found the following:

- (1) Entergy's application complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials";
- (2) There is reasonable assurance that the facilities will operate in conformance to the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;

- (3) There is reasonable assurance that the activities permitted by the proposed Commission authorization to use Section 161A preemption authority are consistent with the protection of public health and safety, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this confirmatory order;
- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public; and
- (5) The issuance of this Commission authorization to use Section 161A preemption authority will be in accordance with the Commission's regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The findings, set forth above, are supported by an NRC staff safety evaluation under Agencywide Documents Access and Management System (ADAMS) Accession No. ML14259A164.

III.

To carry out the statutory authority discussed above, the Commission has determined that the license for JAFNPP must be modified to include provisions with respect to the Commission authorization to use Section 161A preemption authority as identified in Section II of this confirmatory order. The requirements needed to exercise the foregoing are set forth in Section IV below.

The NRC staff has found that the license modifications set forth in Section IV are acceptable and necessary. It further concluded that, with the effective implementation of these provisions, the licensee's physical protection program will meet the specific physical protection program requirements set forth in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage" (for nuclear power reactors); and in 10 CFR 72.212(b)(9), "Conditions of the General License Issued Under § 72.210," and portions of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage" (for general-license independent spent fuel storage installations co-located with a reactor at the reactor site).

On January 15, 2015, Entergy consented to the issuance of this order. The licensee further agreed that this order will be effective 20 days after the date of issuance and that it has waived its right to a hearing on this order.

IV

Accordingly, under Sections 53, 103 and/or 104b, 161b, 161i, 161o, 161A, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, "Orders"; 10 CFR Part 50; 10 CFR Part 70; and 10 CFR Part 72, IT IS HEREBY ORDERED that:

1. The Entergy application for Commission authorization to use Section 161A preemption authority at JAFNPP is approved and permission for security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use, is granted.

2. The licensee shall review and revise its NRC-approved security plans, as necessary, to describe how the requirements of this confirmatory order and other applicable requirements of 10 CFR Part 73, "Physical Protection of Plants and Materials," to include those of the appendices to 10 CFR Part 73, will be met.
3. The licensee shall establish and maintain a program consistent with Commission Order EA-13-092 such that all security personnel who require access to firearms in the discharge of their official duties are subject to a firearms background check.

The Commission is engaged in an ongoing rulemaking to implement the Commission's authority under Section 161A. Subsequent to the effective date of that final rulemaking, the Director, Office of Nuclear Reactor Regulation (NRR) may take action to relax or rescind any or all of the requirements set forth in this confirmatory order.

The Director, NRR, may, in writing, relax or rescind this confirmatory order on demonstration by the licensee of good cause.

This confirmatory order is effective 20 days after the date of its issuance.

For further details with respect to this confirmatory order, see the staff's safety evaluation contained in a letter dated January 5, 2016 (ADAMS Accession No. ML14259A164), which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor),

Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents stored in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

In accordance with 10 CFR 2.202, any other person adversely affected by this order may submit an answer to this order within 20 days of its publication in the *Federal Register*. In addition, any other person adversely affected by this order may request a hearing on this order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and must include a statement of good cause for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (published at 72 FR 49139, on August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in

some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, the participant should contact the Office of the Secretary (at least 10 days before the filing deadline) by e-mail to hearing.docket@nrc.gov or by telephone at (301) 415-1677 to (1) request a digital ID certificate, which allows the participants (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site to file documents, but should note that the NRC's E-Filing system does not support unlisted software and that the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's Web-based online submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be Portable Document Format (PDF) documents in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. eastern time on the due date. On receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the filed documents through the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to MSHD.Resource@nrc.gov, or by a toll-free call to (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. eastern time, Monday through Friday, excluding Government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First Class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by First Class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service on depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, available to the public at <http://ehd1.nrc.gov/ehd/>, unless they are excluded

under an order of the Commission or by the presiding officer. Participants are requested not to include personally private information such as social security numbers, home addresses, or home phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing or of written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 5th day of January 2016.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

William M. Dean, Director,
Office of Nuclear Reactor Regulation.