



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 13, 1978

NRC PUBLIC DOCUMENT ROOM

Docket No. 50-286

Mr. Paul J. Early
Assistant Chief Engineer - Projects
Power Authority of the State of New York
10 Columbus Circle
New York, N.Y. 10019



Dear Mr. Early:

This letter constitutes the NRC Staff's response to your August 2, 1978 letter enclosing PASNY's "Application for an Extension of the Period of Interim Operation Using the Installed Once-Through Cooling System and Motion for Expedited Commission Consideration" (dated August 7, 1978) and the supporting "Affidavit of Paul J. Early" (dated August 1, 1978).

Pursuant to the provisions of paragraph 2.E(1) of Operating License No. DPR-64 the date for termination of operation of Indian Point Unit No. 3 ("IP3") with once-through cooling is presently designated as September 15, 1980. 1/ By virtue of operation of paragraph 2.E(1)(e), that date has, however, been extended to September 15, 1982 2/ and License No. DPR-64 will be appropriately amended.

1/ Paragraph 2.E(1) of the license contains the provisions of a stipulation, dated January 13, 1975 among the parties to the IP3 operating license proceeding.

2/ Paragraph 2.E(1)(e) provides:

The September 15 date is subject to extension if the empirical data referred to in subparagraph (c) are insufficient solely because the Plant has not operated at at least 40% of rated power for 45 or more full days (8:00 a.m. to 7:59 a.m.) during the period from May 15 to July 31 in each calendar year, commencing January 1, 1975. The September 15 date will be extended one year for each calendar year in which such operation is not achieved. However, no such extension shall be granted after the Plant has achieved such operation in two calendar years, and no more than two such extensions shall be granted. This subparagraph shall not bar an application for an extension under subparagraph (c) because of lack of operation. As long as an extension of the September 15 date is possible pursuant to this subparagraph, whenever the Plant operates at less than 20% of rated power for more than 12 consecutive hours during the May 15 to July 31 period, no more than three circulating water pumps shall be used.

IP3 did not operate at this level during the May 15 - July 31 period in 1975 and 1976.

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Your present application asks that DPR-64 be amended so as to extend the date by which PASNY has to commence any procurement or construction activities on a closed-cycle cooling system until such time as the Environmental Protection Agency renders a decision on the cooling system for this plant and any judicial review thereof is completed. 3/

By letter dated July 24, 1978, a copy of which you have received, we denied a somewhat similar request made by Con Edison with respect to Indian Point Unit No. 2 ("IP2"). Briefly, the bases for that denial were:

1. NRC will be required to conform its license condition to whatever compliance schedule is adopted by EPA.
2. The §316 proceeding involving the closed-cycle cooling requirement for IP2 (and other facilities on the lower Hudson River, including IP3) is in process.
3. If the compliance date ultimately established by EPA is beyond the May 1, 1982 date for termination of operation with once-through cooling, or if EPA allows life-of-plant operation with once-through cooling, NRC will have to determine, on a cost-benefit basis, whether IP2 may continue to operate for the designated period.
4. NRC Staff anticipates a final EPA administrative decision 4/ well in advance of May 1, 1982, so that the Staff will have sufficient time to take whatever action might be required prior to that date. No prejudice to Con Edison arises, therefore, from a continuation of the present license condition. 5/

3/ Application, p. 7 n. 4.

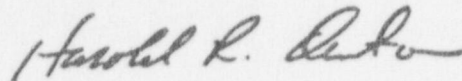
4/ For purposes of the taking of necessary actions by it, the Staff considers that reliance on final decisions of EPA need not await the completion of any judicial review thereof. Public Service Company of New Hampshire (Seabrook), Commission Memorandum and Order, August 9, 1978, slip op. at 3; CLI-78-1, 7 NRC 1 at 28; CLI-77-8, 5 NRC at 521 n. 20.

5/ The operating licenses for IP2 and IP3 do not contain any compliance schedules, i.e., they do not establish intermediate dates by which the licensees must have passed certain milestones in the construction of their towers. It follows that Con Edison and PASNY could not be in noncompliance until the actual date for termination of operation with once-through cooling. Furthermore, in the event that the final EPA administrative decision has not been handed down as the termination dates in the licenses draw near, the Staff will undertake the necessary reviews to either amend the licenses or take other appropriate action.

Your application raises the same set of considerations as were previously weighed with regard to Con Edison's application. We perceive no reason why the result should be different for IP3 and are, therefore, denying your application. This denial is, of course, without prejudice to your right to apply for appropriate relief once the EPA Administrator has rendered his decision in the §316 proceeding.

We are enclosing with this letter a copy of a Notice of Denial of Amendment Application which we have transmitted to the Federal Register for publication. Pursuant to §189 of the Atomic Energy Act, as amended, 6/ you may, of course, request a hearing on the Staff's denial. 7/

Sincerely,



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:

Notice of Denial of Amendment
Application

cc w/enclosure: Sarah Chasis, Esq.
Nicholas A. Robinson, Esq.
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6/ 42 U.S.C. §2239

7/ Any other person whose interest may be affected by your application may also request a hearing.