

June 27, 2001

EA-01-088

Mr. John Paul Cowan
Senior Vice President
Nuclear Management Company, LLC
27780 Blue Star Highway
Covert, MI 49043

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY-
\$55,000 (NRC Inspection Report No. 50-255/01-06 (DRP))

Dear Mr. Cowan:

This refers to the baseline inspection completed on March 31, 2001, at the Palisades Nuclear Generating Plant (Palisades). The results of this routine baseline inspection were transmitted to you on April 19, 2001, in NRC Inspection Report No. 50-255/01-06(DRP) and identified an apparent violation of NRC requirements for failing to provide the Commission complete and accurate information in letters dated February 16, 2000, and February 18, 2000.

In a letter to the NRC dated May 2, 2001, your staff provided clarification regarding your February 2000 letters. Additionally, on May 8, 2001, a predecisional enforcement conference was conducted in the Region III office with members of your staff to discuss the apparent violation, its significance, the root causes, and your corrective actions.

Based on the information developed during the inspection, the information that you provided in your May 2, 2001, letter and the information that you provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to provide complete and accurate information in letters dated February 16, 2000, and February 18, 2000, requesting a Notice of Enforcement Discretion (NOED) and an exigent Technical Specification (TS) change request, respectively. The requests involved the abandonment of the underground (backup) steam supply line to the Turbine Driven Auxiliary Feedwater (TDAFW) Pump P-8B. Your staff stated in the requests that the Post-Fire Safe Shutdown Analysis indicated that a fire in the Southwest Cable Penetration Room was the only case where use of the underground (backup) steam supply line was considered available to help the plant achieve safe (cold) shutdown. Based, in part, on this information, the NRC granted the NOED, which allowed plant startup from a maintenance outage, and subsequent operation without compliance with a surveillance requirement for the underground (backup) steam supply valve to Pump P-8B. The TS change removed the surveillance requirement for this valve.

Subsequently, in January 2001, the resident inspectors identified that Section IV of the Fire Protection Program Report, "Post-Fire Safe Shutdown Analysis" credited the underground (backup) steam supply line as available to help the plant achieve safe (cold) shutdown conditions for a fire in the Turbine Building. Therefore, your submittals in February 2000 for the

NOED and TS change request failed to identify that the underground steam supply line was credited in your fire protection program for a fire in the Turbine Building. The NRC staff is satisfied that the failure to provide complete and accurate information was the result of an oversight on the part of members of your staff and not a deliberate act to withhold information material to the NRC's decision making process.

The failure to provide complete and accurate information affected the NRC's ability to perform its regulatory function. The NRC granted the NOED and an exigent TS change with an incomplete understanding of the potential safety impact to the plant. With complete information the NRC would have reconsidered issuing the NOED and the exigent TS change or would have had substantial further inquiry and considered additional compensatory actions before making a regulatory decision. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, May 1, 2000, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 is considered for a Severity Level III violation. Because your facility has not been the subject of escalated enforcement actions within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. During our May 8, 2001, enforcement conference, your staff discussed corrective actions taken and planned, including improved management oversight of the corrective action process, implementation of a validation process for NRC submittals and commitments, and sharing of lessons learned. Your staff stated that the errors in the basis documents were corrected and your staff provided clarification to your February 2000 submittals in a letter to the NRC dated May 2, 2001. The NRC evaluated the corrective actions and determined that your staff failed to recognize the importance of remedying this condition in a timely manner after it was identified by the NRC. Additionally, your staff failed to promptly correct the incomplete and inaccurate information after the NRC staff identified that this information was relevant to the bases for a regulatory decision. Specifically, in January 2001, the resident inspectors informed your staff of the apparent inaccurate information and your staff subsequently initiated a condition report on January 23, 2001, documenting the issue. During the inspection exit meeting on April 9, 2001, the NRC again informed your staff of the apparent violation. However, it was not until May 2, 2001, when your staff provided to the NRC the information required to assess the significance of the incomplete and inaccurate information and initiate corrections to the licensing bases. Therefore, the NRC has concluded that credit for corrective action is not warranted in accordance with the guidance in Section VI.C.2 of the Enforcement Policy.

The NRC must be able to rely on licensees to provide complete and accurate information on matters involving licensing actions, especially when those matters are related to timely NRC actions such as granting NOEDs or emergency or exigent TS change requests. To emphasize the importance of accurate and complete information and of prompt correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$55,000 for the Severity Level III violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/ James Caldwell for

J. E. Dyer
Regional Administrator

Docket No. 050-255
License No. DRP-20

Enclosure: Notice of Violation

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Consumers Energy Company
Palisades Nuclear Generating Plant

Docket No. 050-255
License No. DRP-20
EA-01-088

During an NRC inspection completed on March 31, 2001, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, May 1, 2000, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 50.9 (a), requires, in part, that information provided to the Commission by the licensee shall be complete and accurate in all material respects.

Contrary to the above, the licensee failed to provide the NRC complete and accurate information in its letters, dated February 16, 2000 and February 18, 2000, requesting enforcement discretion and an exigent Technical Specification change. Specifically, the letters stated that only one case existed where use of the underground steam supply through Control Valve CV-0522A was considered as available in the Post-Fire Safe Shutdown Analysis to help the plant in achieving safe (cold) shutdown. This case was a fire in the Southwest Cable Penetration Room. However, the inspectors identified on January 23, 2001, that the Post-Fire Safe Shutdown Analysis also credited the underground steam supply through CV-0522A as available to help the plant in achieving safe (cold) shutdown for a fire in the Turbine Building. This inaccurate information was material, in that, the NRC relied on the information provided by the licensee to grant the requested Notice of Enforcement Discretion to startup and operate the plant without complying with the surveillance requirements for the underground (backup) steam supply line, and to remove the surveillance requirements from the Technical Specifications.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$55,000.

Pursuant to the provisions of 10 CFR 2.201, Consumers Energy Company (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation; (2) the reasons for the violation if admitted, and if denied, the reasons why; (3) the corrective steps that have been taken and the results achieved; (4) the corrective steps that will be taken to avoid further violations; and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Notice of Violation and Proposed
Imposition of Civil Penalty

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Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due that subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, IL 60532-4351 and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that

you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 27th day of June 2001.