March 1, 2001

EA-01-011

Mr. John H. Mueller
Chief Nuclear Officer
Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station
Operations Building, 2nd Floor
P.O. Box 63
Lycoming, NY 13093

SUBJECT: NRC OFFICE OF INVESTIGATION CASE NO. 1-1999-015
Nine Mile Point Nuclear Station, Unit 1

Dear Mr. Mueller:

This letter refers to the results of an investigation initiated by the NRC Office of Investigations (OI) on May 12, 1999, at Nine Mile Point Nuclear Station, Unit 1. The purpose of the investigation was to determine whether an NRC-licensed chief shift operator (CSO) had deliberately provided false, inaccurate, or incomplete information on health history forms required by Niagara Mohawk Power Corporation (NMPC), as part of the Fitness-For-Duty (FFD) program and medical certification process required for licensed operators.

Based on the results of this investigation, an apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The current Enforcement Policy is included on the NRC's website at www.nrc.gov/OE. Specifically, the evidence developed by OI indicates that the CSO deliberately failed to provide truthful, accurate and complete information on NMPC health history forms for the purpose of misleading the Medical Review Officer (MRO). This information was false, inaccurate, and incomplete in that the CSO denied taking any medications and being under the care of a health care provider, when in fact the CSO was taking prescription medications and was under the care of two health care professionals. As a result, the MRO was precluded from making a fully informed decision about the CSO's medical qualifications to perform licensed activities. A Factual Summary of OI Investigation 1-1999-015 is enclosed.

10 CFR 50.9(a) states that information required by the Commission's regulations to be maintained by a licensee shall be complete and accurate in all material respects. 10 CFR 55.27 requires licensees to document and maintain the results of medical qualification data, test results, and each operator's medical history for the current license period and to provide the documentation to the NRC upon request. Therefore, when the CSO provided false, inaccurate and incomplete information on health history forms, it resulted in NMPC violating 10 CFR 50.9(a).

As a result of the facts that we have gathered from the OI investigation, it may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision. However, before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond in writing to the apparent violation within

30 days of the date of this letter or (2) request a predecisional enforcement conference. If a conference is held, it will be closed for public observation, but the NRC will issue a press release to announce the conference. Please contact Mr. Richard J. Conte at 610-337-5183 within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a response rather than attend a conference, your response should be clearly marked as a "Response to An Apparent Violation in NRC Investigation Report No. 1-1999-015" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved.

In addition, NMPC had an opportunity sometime in 1996 to address this situation prior to NRC involvement. The OI investigation revealed that the CSO had confided to a station shift supervisor (SSS) that the CSO was taking prescription medications at the time. Although the SSS advised the CSO to report this information to the medical department, the SSS never followed up to inform the medical department or to check if the CSO informed the medical department. NMPC procedure N1P-FFD-01, step 2.3.4, requires supervisors to confer with FFD or medical staff if a worker should report any mental stress, fatigue, or illness that could affect safety or fitness-for-duty. Therefore, you should also address this issue either in your response or at a conference.

If a response is provided, it should be submitted under oath or affirmation and may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision. In addition, please be advised that the number and characterization of the apparent violation(s) may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (if you choose to provide one) 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). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Wayne D. Lanning, Director
Division of Reactor Safety

Docket No. 05000220
License No. DPR-63

Enclosure: Factual Summary of OI Investigation 1-1999-015

cc w/encl:
G. Wilson, Esquire
M. Wetterhahn, Winston and Strawn
J. Rettberg, New York State Electric and Gas Corporation
P. Eddy, Electric Division, Department of Public Service, State of New York
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law
J. Vinquist, MATS, Inc.
F. Valentino, President, New York State Energy Research and Development Authority
J. Spath, Program Director, New York State Energy Research and Development Authority
T. Judson, Central NY Citizens Awareness Network

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DATE	2/22/01		1/19/01		2/26/01		1/22/01		2/22/01	

OFFICE	RI/DRS		HQ/OE		RI/DRP					
NAME	WLanning (WDL)		RBorchardt (RJU)*		ABlough (RVC)					
DATE	2/27/01		1/30/01		1/22/01					

*** Per D. Nelson phone call - Follow-up call on 2/26**

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FACTUAL SUMMARY OF OI INVESTIGATION 1-1999-015

The Office of Investigations (OI), Region I, initiated an investigation on May 12, 1999, to determine whether an NRC-licensed chief shift operator (CSO) at the Nine Mile Point Nuclear Station, Unit 1, had deliberately provided false, inaccurate, or incomplete information on health history forms required by Niagara Mohawk Power Corporation (NMPC) as part of their Fitness-For-Duty (FFD) program and medical certification process required for licensed operators. In accordance with NRC regulations, NMPC must provide physical examinations of licensed reactor operators every two years to determine their continued fitness for licensed duties. The health history forms are utilized by the Medical Review Officer (MRO) as input for the periodic NRC-required physical examinations. Based upon the evidence developed by OI, the CSO deliberately failed to provide truthful, accurate, and complete information on NMPC's health history forms for the purpose of misleading the MRO, thereby precluding the MRO from making a fully informed decision about the CSO's medical qualifications to perform licensed duties.

During a transcribed interview with OI, the CSO provided sworn testimony that since May of 1996, the CSO had been taking various prescription medications and had been under the care of two health care professionals on a regular basis. On a health history form signed and dated by the CSO on December 11, 1996, the CSO checked "No" to the following two questions: "Taken or are you currently taking any medications (prescription and/or non-prescription)," and "Been treated for any illnesses or injuries." On a subsequent health history form signed and dated by the CSO on October 8, 1997, the CSO checked "No" to the following question: "Presently under a health care provider's care for any condition," and did not answer the following question: "List any medications you are currently taking (prescription and/or over the counter)." These answers were inaccurate and also considered deliberate because at the time the CSO filled out the health history forms, the CSO was taking prescription medications and was being treated by two health care professionals.

10 CFR 50.9(a) states that information required by the Commission's regulations to be maintained by a licensee shall be complete and accurate in all material respects. 10CFR55.27 requires licensee's to document and maintain the results of medical qualification data, test results, and each operator's medical history for the current license period and to provide the documentation to the NRC upon request. Therefore, when the CSO deliberately provided incomplete and inaccurate information on health history forms, it caused NMPC to violate 10 CFR 50.9(a).