

September 14, 2001

Mr. David A. Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street, N.W., Suite 600
Washington, D.C. 20006-3919

Dear Mr. Lochbaum:

Thank you for your letter of June 1, 2001, concerning the March 29, 2001, Notice of Enforcement Discretion (NOED) issued to Detroit Edison Company for Fermi 2 and the Nuclear Regulatory Commission (NRC) staff's response to three plant shutdowns at the Perry Nuclear Power Plant. We understand that you are concerned about the apparent inconsistency between the staff's issuance of the Fermi 2 NOED and the staff's response to the Perry plant shutdowns.

In the March 29, 2001, letter, the staff stated that exercising enforcement discretion to extend the allowed diesel generator outage time from 7 to 14 days was warranted because the action was consistent with the Enforcement Policy and staff guidance and would not have an adverse impact on public health and safety. The letter documented the staff's acceptance of the licensee's assessment of the small risk increase associated with extending the allowed diesel generator outage time. The staff concluded that the small risk increase was diminished by the licensee's planned compensatory measures and that the risk associated with extending the allowed diesel generator outage time was less than the risk arising from the shutdown of the plant with an unavailable diesel generator and subsequent startup. Therefore, the licensee's request met the guidance for enforcement discretion in NRC Inspection Manual, Part 9900, "Technical Guidance on Notices of Enforcement Discretion." This determination was made following an extensive review and consideration by risk analysts who are specialists in the application of probabilistic risk analysis methods. This expertise helped to assure that the proper risk insights were considered in the decision on the Fermi 2 NOED.

As you noted, the current staff guidance specifies that a "regular" NOED (as opposed to a "weather-related" NOED) shall not involve an increase in radiological risk. This guidance has been in effect and has been applied since the inception of the NOED policy. The NRC has intended and implemented this policy in a manner to ensure that the granting of an NOED must be, at worst, safety-neutral, as compared with the alternative of not granting the NOED. The staff is currently revising this aspect of the NOED guidance to assure that the intent of "no increase in radiological risk" is sufficiently clear and the staff's evaluation in support of granting NOEDs is well-documented. When completed, this revised guidance will be published for comment in the *Federal Register*. Consistent with the Commission's policy of risk-informing NRC regulations, the staff also plans to revisit the NOED process to determine whether it

should be aligned with the other risk-informed processes, such as the risk-informed Technical Specifications, the Maintenance Rule, and the Reactor Oversight Program.

With regard to the Perry Nuclear Power Plant, you stated that the NRC Region III staff did not visibly respond to three recent plant shutdowns and two associated plant startups. In accordance with the Reactor Oversight Process, the Region III staff reviewed each of these events using the guidance in applicable inspection procedures. The first plant shutdown, a reactor scram that occurred on Sunday, April 29, 2001, was reviewed by the Region III staff using baseline inspection program procedure 71153, "Event Followup," and the guidance in Management Directive 8.3, "NRC Incident Investigation Program." The two subsequent plant shutdowns and the associated plant startups were reviewed using baseline inspection program procedure 71111.14, "Personnel Performance During Nonroutine Plant Evolutions." In accordance with the guidance in the referenced documents and based on the low risk associated with these events, the staff determined that no additional inspection of the circumstances of these events was warranted beyond the baseline inspection program. The results of our reviews of the events were documented in NRC Inspection Reports 50-440/01-08(DRP) and 50-440/01-09(DRP), which are publicly available in the Agencywide Documents Access and Management System (ADAMS).

In your letter, you also calculated an unplanned scram rate of 33.65 scrams per 7,000 critical hours at Perry based on 624 critical hours between the three recent shutdowns at the plant. You correctly stated that increased levels of NRC action would be appropriate if a licensee reported that this scram rate occurred over 7,000 critical hours. However, it is important to note that two of the shutdowns you cited were controlled shutdowns conducted in accordance with the licensee's normal shutdown procedure. These shutdowns do not count in the unplanned scram performance indicator. Therefore, the licensee reported only one unplanned scram in its performance indicator data for the second quarter of this calendar year. This results in a calculated unplanned scram rate of 0.9 per 7000 critical hours for July 2000 through June 2001. Moreover, the guidance for unplanned scram rate calculations in Nuclear Energy Institute (NEI) 99-02, Revision 1, "Regulatory Assessment Performance Indicator Guidelines," which the NRC staff has accepted as the standard used for calculating performance indicator values in the Reactor Oversight Process, does not provide for calculating scram rates when there are less than 2,400 critical hours in the period of calculation. The guidance states that rate indicators can produce misleadingly high values when the denominator is small and, therefore, the value for this indicator will be computed as "N/A" when there are fewer than 2,400 critical hours in the period of the calculation. Consequently, your evaluation is not consistent with NRC processes for determining the appropriate agency response to the events at Perry.

In addition to immediately reviewing licensee events, the staff follows the guidance in Manual Chapter 0305, "Operating Reactor Assessment Program," to determine the appropriate level of agency response to overall licensee safety performance based on inspection results and the submitted performance indicator data. The Perry plant staff has reviewed the circumstances surrounding the plant events which occurred in the second quarter of this calendar year and submitted the performance indicator data in July 2001. The NRC has reviewed the plant events, Performance Indicator data, and inspection findings in accordance with the Reactor Oversight Process, and determined that no supplemental inspections are required.

In conclusion, the staff's actions were consistent with the applicable NRC policies with appropriate considerations given to risk insights. Each of the three Perry shutdowns was carefully evaluated by the staff following each occurrence. The staff concluded that the risk associated with each shutdown was low, and did not warrant additional inspection beyond the baseline inspection program. In the case of Fermi 2, the staff concluded that the incremental risk associated with extending the diesel generator allowed outage time with compensatory measures was no greater than the risk associated with the shutdown and startup of the plant.

The NRC staff recognizes that there is a need for clarification of the NOED guidance and is developing appropriate revisions to provide the necessary clarification. Inputs and observations, such as yours, from all of our stakeholders are especially valuable in this regard.

Thank you for your letter and sharing your insights. I trust that the information provided in this letter clarifies the NRC actions in this matter.

Sincerely,

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Richard A. Meserve