

January 17, 2002

EA-01-072

Mr. A. C. Bakken III  
Senior Vice President  
Nuclear Generation Group  
American Electric Power Company  
500 Circle Drive  
Buchanan, MI 49107-1395

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION  
[NRC OFFICE OF INVESTIGATIONS REPORTS NO. 3-1999-016 *et seq*]

Dear Mr. Bakken:

This refers to information provided to the U.S. Nuclear Regulatory Commission (NRC) on February 10, 1999, by two former employees of Crane Nuclear, Inc., at the American Electric Power Company's (AEP) D.C. Cook Nuclear Power Plant. According to the individuals, the Crane Nuclear project manager terminated their employment after they questioned the adequacy of a maintenance work package for a pump in the Unit 2 containment annulus. The NRC Office of Investigations (OI) investigated this matter and a summary of the OI investigation was provided to AEP on June 1, 2001. On July 24, 2001, a predecisional enforcement conference was held in the NRC Region III office.<sup>1</sup>

Based on the OI investigation and all other information, the NRC determined that a violation of 10 CFR 50.7, "Employee Protection" occurred.<sup>2</sup> Specifically, on February 10, 1999, two pump mechanics, employed by Crane Nuclear, were assigned to perform maintenance on a pump in the annulus of Unit 2 at the D.C. Cook Plant. The mechanics requested that the work package be revised to include detailed instructions for performing the job. The concern was brought to the attention of the Crane Nuclear project manager, who stated the work could be performed using "skill of the craft." The mechanics refused to perform the work because they reasonably believed that performing the work without a detailed procedure would violate NRC regulations. The project manager terminated the employment of the two pump mechanics for refusing to

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<sup>1</sup> Additional information was submitted to the NRC following the July 24, 2001, predecisional enforcement conference, including: an undated letter from one of the pump mechanics, letters dated July 27 and September 28, 2001, from AEP, and letters dated August 23, and October 29, 2001, from Crane Nuclear, Inc.

<sup>2</sup> One employee also filed a complaint with the U.S. Department of Labor (DOL). The DOL Administrative Law Judge (ALJ) issued a Recommended Decision and Order (RD&O) on October 4, 2001, in favor of the employee (DOL No. 2001-ERA-0003). The NRC reached its conclusions independent of the RD&O.

work the package as written. In terminating the employment of the mechanics, the project manager changed the compensation, terms, conditions, or privileges of their employment on February 10, 1999, in violation of 10 CFR 50.7. The NRC concluded that the project manager's actions were not in deliberate violation of requirements since he believed that the work was within the "skill of the craft" and that the pump mechanics were essentially being insubordinate. The project manager was considered to be a low-level manager within the Crane Nuclear organization. Therefore, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, (Enforcement Policy) at Severity Level III.

The NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for the *Identification* factor because the Crane Nuclear project manager notified Cook Plant management shortly after the violation occurred. At about the same time, the pump mechanics met with the NRC Resident Inspector at the Cook Plant and the NRC also notified plant management of the terminations. These notifications allowed Cook Plant management to begin an investigation and to contact the management of Crane Nuclear. As a result, the Cook Plant Employee Concerns Program began an investigation on February 10, 1999, and a representative of Crane Nuclear arrived on site the following day to begin an investigation for their company. Credit was also warranted for the *Corrective Action* factor. Corrective actions included, but were not limited to: taking disciplinary action against the Crane Nuclear project manager; offering job reinstatement to the pump mechanics; improving training for supervisors on employee protection; improving general nuclear employee training on employee protection; and adding contract provisions for 10 CFR 50.7 compliance. These actions were taken with little intervention from the NRC. Also, the actions of the Crane Nuclear site superintendent were not in deliberate violation of NRC requirements.

Therefore, to encourage prompt and comprehensive identification and correction of violations, I have been authorized, after consulting with the Director, Office of Enforcement, and the Deputy Executive Director for Reactor Programs, to exercise enforcement discretion in accordance with Section VII.B.5 of the Enforcement Policy and not issue a Notice of Violation or civil penalty in this matter. Any future violation of 10 CFR 50.7 will be considered for full application of the Enforcement Policy.

You are not required to respond to this letter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter 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/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

*/RA/*

J. E. Dyer  
Regional Administrator

Docket Nos. 50-315; 50-316  
License Nos. DPR-58; DPR-74

- cc: J. Pollock, Plant Manager
- M. Rencheck, Vice President, Strategic Business Improvements
- J. P. Hickey, Shaw Pitman
- R. Whale, Michigan Public Service Commission
- Michigan Department of Environmental Quality
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- MI Department of State Police
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