



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

September 23, 2002

EA-02-062

David L. Wilson, Vice President of
Nuclear Energy
Nebraska Public Power District
P.O. Box 98
Brownville, Nebraska 68321

SUBJECT: ENFORCEMENT DECISION (NRC INVESTIGATION REPORT 4-2001-040)

Dear Mr. Wilson:

This refers to the investigation (4-2001-040) conducted by the NRC's Office of Investigations (OI) at Cooper Nuclear Station. The purpose of the investigation was to determine whether a shift supervisor deliberately violated fitness-for-duty (FFD) requirements. On May 9, 2002, my staff informed you that the NRC had identified an apparent, willful violation of FFD requirements and that the NRC was considering escalated enforcement action in accordance with the NRC Enforcement Policy. The apparent violation involved a failure to act on a report from two station operators during the Spring 2000 refueling outage that the operations supervisor had a strong odor of alcohol on his breath. On May 16, 2002, the NRC described the apparent violation in a letter to you, and on July 9, 2002, Nebraska Public Power District (NPPD) representatives discussed the apparent violation with NRC in a closed, predecisional enforcement conference in the NRC's Region IV office in Arlington, Texas.

At the conference, NPPD representatives stated that procedures governing for-cause testing during the Spring 2000 refueling outage were subject to interpretation, and in fact were interpreted by many to allow judgment by a supervisor in determining whether a for-cause test was necessary. NPPD representatives also stated that although no proof exists, they believe, based on past performance of the shift supervisor who received this information, that some follow-up action likely was taken. NPPD representatives concluded by stating that there was inadequate evidence of a failure to follow procedures, and inadequate evidence of a willful violation.

Based on the results of the investigation, and our review of the information NPPD provided at the conference, the NRC has determined that a violation of NRC requirements occurred. NRC's FFD regulations (10 CFR 26.24) require, in part, that testing for-cause be conducted after receiving credible information that an individual is abusing drugs or alcohol. In this instance, we conclude that the shift supervisor received credible information. The information he received was that the operations supervisor had a strong odor of alcohol on his breath. The shift supervisor stated that he had no reason to doubt the veracity of the individuals who claim they brought this information to him. Moreover, the individuals who brought this information to the shift supervisor were each trained to the same level as the supervisor in fitness for duty during plant access training. Additionally, there is no record of a for-cause test of the

operations supervisor being conducted during the Spring 2000 refueling outage. Thus, based on the specific circumstances presented in this case, we have concluded that 10 CFR 26.24 was violated as a for-cause test should have been conducted.

With regard to willfulness, the NRC carefully evaluated the information obtained from its investigation and the information that NPPD representatives provided at the conference. While we are able to conclude with certainty that a for-cause test of the operations supervisor was not conducted, there is considerable uncertainty surrounding the actions of the shift supervisor who received the information. He has no recollection of receiving this information or of taking any action to evaluate the operations supervisor to determine if a for-cause test was necessary. NPPD representatives stated at the conference that it was likely, based on the past performance of the shift supervisor, that he took some action following receipt of this information. The shift supervisor stated that he would not have ignored such an issue without investigating, that he was confident that he took steps to evaluate the information, and that it would have made no sense for him to ignore it in hopes that neither of the two individuals who reported this information to him would bring it up again. Based on the uncertainty surrounding the shift supervisor's actions, and the lack of clarity of NPPD's procedural requirements at that time, the NRC is not characterizing the violation in this case as willful.

Based on the possibility of this being a willful violation, it was originally processed under the Enforcement Policy. Absent willfulness, the significance of this violation is determined by the Interim Physical Protection Security Significance Determination Process (SDP). A failure to test an individual for-cause after receiving credible information that the individual has a strong odor of alcohol on his breath is a performance deficiency. This finding is more than minor because a failure to test for-cause, if left uncorrected, may increase the probability of errors and may lead to more significant safety consequences. Applying the SDP to this finding results in a determination that this issue, in isolation, is a green finding. The violation associated with this finding, described above, is being treated as a Non-Cited Violation (NCV), consistent with Section VI.A of the Enforcement Policy.

If you contest the violation itself, or its significance, you should provide a response within 30 days of the date of this letter with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington DC 20555-0001, with copies to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-4005, and the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001, and the NRC Resident Inspector at Cooper Nuclear Station.

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/

Ellis W. Merschoff
Regional Administrator

Docket No. 50-298
License No. DPR 46

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