

Michael J. Wallace
President, Constellation Generation Group

750 E. Pratt Street
18th Floor
Baltimore, Maryland 21202-3106
410 783-2877
410 783-2873 Fax
mjlw@constellation.com



July 24, 2003

U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Mr. Samuel J. Collins, Director, Office of Nuclear Reactor Regulation

SUBJECT: Calvert Cliffs Nuclear Power Plant
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318
Nine Mile Point Nuclear Station
Unit Nos. 1 & 2; Docket Nos. 50-220 & 50-410
Relief and Understandings Relating to the Order to Modify License and
Compensatory Measures Related to Security Force Fitness-For-Duty
(EA-03-038)

On April 29, 2003, the Nuclear Regulatory Commission (NRC) issued an Order (Reference a) requiring additional compensatory measures as prudent to address the current security threat environment, particularly related to Fitness-For-Duty for security force personnel (hereinafter, the Order). In accordance with the instructions contained in the Order, Constellation Generation Group, LLC, (CGG) on behalf of its licensees Calvert Cliffs Nuclear Power Plant, Inc. and Nine Mile Point Nuclear Station, LLC, submitted a timely response to the Order on June 2, 2003 (Reference b). A related relief request (Reference c) was also submitted on that date. The Director, Nuclear Reactor Regulation responded to that relief request on July 10, 2003 (Reference d). In response to Reference (d), an answer and supplemental response related to the Order are being provided under separate cover. Constellation Generation Group, LLC, consents to the Order and does not request a hearing. However, this letter requests two considerations for relief, as noted below.

JES3

Constellation Generation Group, LLC, appreciates the NRC providing its basis for the Order as requested in Reference (c), to enable us to more fully understand the NRC's intent in promulgating the Order. However, after reviewing the basis provided in the enclosure to the NRC Letter (Reference d), CGG does not believe that the rationale appropriately supports many of the requirements established by the Order. Working through the Nuclear Energy Institute, we intend to continue discussions with the NRC to bring greater clarity to those matters to ensure that the implications of the Order and related issues are fully addressed, including how they might apply in the broader context of revisions to the 10 CFR Part 26 rule.

Section 4 of the enclosure to the NRC Letter (Reference d) states that licensees must include shift turnover time in the calculation of group work-hour controls. We believe that this interpretation of the Order's requirements does not promote safety or prevent fatigue, deviates from the precedent established in Generic Letter 82-12, and, in the context of implementing the other requirements of the Order, will be unnecessarily burdensome. Therefore, pursuant to the provisions of Section III of the Order, and consistent with the Staff Requirements Memorandum to William D. Travers dated March 31, 2003, CGG hereby requests that the Director, Office of Nuclear Reactor Regulation, rescind the interpretation provided in the NRC letter (Reference d) that shift turnover time must be included in the calculation of group work-hour controls. Enclosure 1 to this submittal provides the good cause basis upon which the requested relief should be granted.

Further, pursuant to Section III of the Order CGG also requests that the Director, Office of Nuclear Reactor Regulation, relax the application of the group work-hour controls during the preparation for and conduct of pilot and annual force-on-force exercises. The pilot force-on-force exercises conducted to date demonstrate that an extraordinary amount of effort is involved in preparing for and conducting those exercises and will also be required for the mandated annual licensee force-on-force exercises. The goal of

the group work-hour controls is not advanced by requiring their application to the preparation for and conduct of force-on-force exercises. Enclosure 2 to this submittal provides the good cause basis for relaxing the group work-hour control requirements in those circumstances.

Unless and until the NRC grants the requested rescission and/or relaxation, CGG will continue to implement those portions of the Order on the schedule provided and will complete implementation of all provisions of the Order by October 29, 2003. Constellation Generation Group, LLC, will also promptly bring to the NRC's attention any matters that we determine justify any further request for rescission or relaxation of any provision of the Order or the NRC letter.

Finally, CGG hereby confirms its understanding that the Commission intends to exercise enforcement discretion to accommodate issues, which may arise as licensees, in good faith, take reasonable actions to implement the specific requirements of the Order. We further understand that the Commission will exercise enforcement discretion for the period necessary to resolve such issues and to integrate the requirements of the Order with the other Orders issued April 29, 2003, and the Order of February 25, 2002, as well as with other pertinent regulatory requirements, and our safeguards contingency plans, security plans, and security officer training and qualification plans.

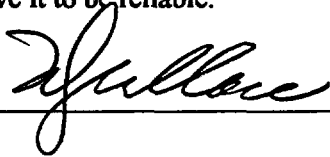
Mr. S. J. Collins
July 24, 2003
Page 4

If you have any questions or require additional information, please contact me.

Sincerely,

STATE OF NEW YORK :
: TO WIT:
COUNTY OF OSWEGO :

I, Michael J. Wallace, being duly sworn, state that I am President and Chief Nuclear Officer, Constellation Generation Group, LLC, and that I am duly authorized to execute and file this response on behalf of Calvert Cliffs Nuclear Power Plant, Inc. and Nine Mile Point Nuclear Station, LLC. To the best of my knowledge and belief, the statements contained in this document are true and correct. To the extent that these statements are not based on my personal knowledge, they are based upon information provided by other Calvert Cliffs and Nine Mile Point employees and/or consultants. Such information has been reviewed in accordance with company practice and I believe it to be reliable.



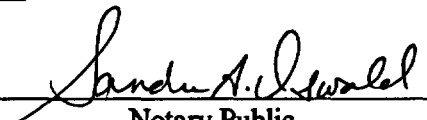
Subscribed and sworn before me, a Notary Public in and for the State of New York and County of
Oswego, this 24th day of July, 2003.

WITNESS my Hand and Notarial Seal:

SANDRA A. OSWALD
Notary Public, State of New York
No. 010S6032276

Qualified in Oswego County
Commission Expires 10/25/05

My Commission Expires:



Notary Public

7/24/03

Date

MJW/ALS/bjd

REFERENCES:

- (a) Letter from Mr. S. J. Collins (NRC) to Holders of Licenses for Operating Power Reactors, dated April 29, 2003, Issuance of Order for Compensatory Measures Related to Fitness-For-Duty Enhancements Applicable to Nuclear Facility Security Force Personnel, EA-03-038
- (b) Letter from Mr. M. J. Wallace (CGG) to Document Control Desk (NRC), dated June 2, 2003, Response to Issuance of Orders to Modify License for Revised Design Basis Threat and Compensatory Measures Related to Security Force Training and Fitness-for-Duty
- (c) Letter from Mr. M. J. Wallace (CGG) to Mr. S. J. Collins (NRC), dated June 2, 2003, Relief and Understandings Relating to Orders to Modify License for Revised Design Basis Threat and Compensatory Measures, Related to Security Force Training and Fitness-for-Duty
- (d) Letter from Mr. S. J. Collins (NRC) to Mr. M. J. Wallace (CGG), dated July 10, 2003, Relaxation of the Order, Exercising Enforcement Discretion, and Extension of the Time to Submit an Answer or Request a Hearing Regarding Order EA-03-038, Fitness-For-Duty Enhancements for Nuclear Security Force Personnel, for: Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2

Enclosures: As stated

cc: Document Control Desk, NRC
J. Petro, Esquire
M. J. Wetterhahn, Esquire
Director, Project Directorate I-1, NRC
D. M. Skay, NRC
G. S. Vissing, NRC
P. S. Tam, NRC
H. J. Miller, NRC

Resident Inspector, NRC, CCNPP
Resident Inspector, NRC, NMP
R. I. McLean, DNR
Rulemakings and Adjudications Staff, NRC
Assistant General Counsel for Materials
Litigation and Enforcement, NRC

ENCLOSURE (1)

**RATIONALE FOR NOT INCLUDING TURNOVER TIME IN
GROUP WORK-HOUR LIMITS**

ENCLOSURE (1)

RATIONALE FOR NOT INCLUDING TURNOVER TIME IN GROUP WORK-HOUR LIMITS

1. Including shift turnover time in group work-hour limits can have negative safety implications: As discussed in Section 3 of the enclosure to the Nuclear Regulatory Commission (NRC) letter of July 10, 2003, the Order appropriately excluded shift turnover time in the calculation of individual work-hour limits to avoid a potential unintended consequence with safety implications (i.e., an individual might rush the turnover process to ensure that he or she complied with the individual work-hour limits). Issues related to management of shift turnover were extensively discussed in public meetings held as part of the 10 CFR Part 26 revision process, and there was broad agreement that such a possibility could have potential safety implications that should be avoided. Including shift turnover time in the calculation of group work-hour controls also creates the potential that the turnovers will be rushed. To avoid the potential negative safety consequences that could result from rushing the turnover process, shift turnover time should be excluded from the calculation of the group work-hour controls.

2. Including shift turnover time in group work-hour limits undercuts the intent of the Order: The content of an appropriate mechanism for monitoring total hours worked to meet the group work-hour conditions was also discussed extensively in the public meetings conducted as part of the 10 CFR Part 26 revision process. The goal is to provide licensee management and the NRC with an indicator that would provide a timely indication if staffing limitations could lead to performance problems. To be effective, such a metric should be straightforward in its implementation, provide meaningful results, and not be unnecessarily burdensome. Including shift turnover time in group work-hour controls achieves none of these objectives.

First, including shift turnover times in the group work-hour calculations would add significant and unnecessary complications to the metric, even though turnover time would represent a numerically insignificant amount of the total group work-hours worked. There has been broad agreement, in the public meetings discussed above, that some simplifications are necessary to establish an efficient and effective metric. Appropriate simplifications include the exclusion of individuals who work less than

ENCLOSURE (1)

RATIONALE FOR NOT INCLUDING TURNOVER TIME IN GROUP WORK-HOUR LIMITS

75% of their scheduled time during a six-week monitoring period, the inclusion of meal time and breaks that occur during a shift, and the exclusion of transit time to and from the plant. Consistent with the goal of developing a simple, but effective, metric, excluding turnover time would simplify the necessary calculations.

Second, the inclusion of shift turnover time in the group work-hour limit will provide inconsistent and ambiguous data. To be meaningful, group work-hour limits should be able to be applied, and measured, consistently across the industry. However, differences in lengths of shifts, numbers of turnovers, and shift turnover practices among plants would inhibit meaningful plant-to-plant and industry-wide comparisons.

3. Record-keeping burden: The inclusion of shift turnover time will be unnecessarily burdensome and penalize some licensees. As discussed above, the Order specifically excludes turnover time from the calculation of the individual work-hour limits. Thus, including turnover time in the group work-hour limit calculation would require licensees to calculate the hours that each individual worked twice -- once for the calculation of individual limits, which would exclude shift turnover time, and a second time for the calculation of the group limits, which would be required to include shift turnover time. The resultant multiple counting to implement the staff's interpretation of the Order's intent will create a clearly unwarranted record-keeping burden with no commensurate benefit. Further, plants on an eight-hour shift rotation would be penalized because they would have more shift turnovers each day, and thus significantly more cumulative time would be spent on shift turnovers.

Conclusion: The group work-hour controls established by the Order are intended to preclude significant amounts of overtime being worked by security officers over long periods of time by requiring licensees to ensure that they have hired and trained a large enough work force to support routine operations. This intent is clearly consistent with Generic Letter 82-12, *Nuclear Power Plant Staff Work Hours*, which states, "Enough plant personnel should be employed to maintain adequate shift coverage without routine

ENCLOSURE (1)

RATIONALE FOR NOT INCLUDING TURNOVER TIME IN GROUP WORK-HOUR LIMITS

heavy use of overtime.” Including shift turnover time in the evaluation of security force staffing would represent an insignificant amount of time in the context of total hours worked, but it would impose an unnecessary burden on licensees without any commensurate benefit. Finally, there is no logic that supports treating shift turnover time differently for group work-hour purposes than for individual work-hour limits.

ENCLOSURE (2)

**RATIONALE FOR NOT INCLUDING THE PREPARATION FOR
AND CONDUCT OF PILOT FORCE-ON-FORCE EXERCISE
AND ANNUAL LICENSEE FORCE-ON-FORCE EXERCISES
IN GROUP WORK-HOUR LIMITS**

ENCLOSURE (2)

RATIONALE FOR NOT INCLUDING THE PREPARATION FOR AND CONDUCT OF PILOT FORCE-ON-FORCE EXERCISE AND ANNUAL LICENSEE FORCE-ON-FORCE EXERCISES IN GROUP WORK-HOUR LIMITS

1. Including the preparation for and conduct of pilot force-on-force exercises would not be appropriate: The purpose of the pilot exercises is to develop the process that will be used by the Nuclear Regulatory Commission (NRC) to evaluate aspects of the total security program of individual licensees, including observation and participation in the required exercises, through the mandated annual licensee force-on-force exercises. As has been demonstrated in the pilot force-on-force exercise program, significant changes in licensee protective strategies have resulted from the implementation of the Compensatory Measures required by the April 29, 2003, Orders and the Interim Compensatory Measures mandated by the February 25, 2002, Order. The pilot exercises are intended to provide valuable insight to licensees and the NRC to evaluate the effectiveness of the security protective strategy developed by licensees and security program performance.

The pilot force-on-force exercises are, by their very nature, developmental, and are occurring coincident with licensees' implementation of the other April 29, 2003, security-related orders. The benefit of conducting these exercises far outweighs the burden of the extra man-hours being expended. These exercises occur only once for each participating licensee and therefore, would not cause a long-term cumulative fatigue impact on the participating licensees' security forces or create any resultant safety concern.

2. Including the preparation for and conduct of annual licensee force-on-force exercises would not be appropriate: Pilot program exercises conducted to date have proven that it takes a significant amount of overtime hours for the security force personnel covered by the work-hour order to prepare for and conduct force-on-force exercises. A complete shadow force of exercise participants must be created, and additional personnel to serve as monitors and adversaries must also be provided. Security personnel on overtime beyond the regular shift are assigned many of these tasks. Because these exercise programs are not yet refined and because of the greater number of exercises initially conducted to test the revised

ENCLOSURE (2)

RATIONALE FOR NOT INCLUDING THE PREPARATION FOR AND CONDUCT OF PILOT FORCE-ON-FORCE EXERCISE AND ANNUAL LICENSEE FORCE-ON-FORCE EXERCISES IN GROUP WORK-HOUR LIMITS

strategies associated with the Orders, licensees will initially require staffing beyond the level that will ultimately be needed. Hiring extra security officers beyond the long-term requirements is inefficient. It is also injurious to work force stability, which is an important element in optimizing plant security. Granting relief from including extra work hours, particularly during the initial period of implementing the training and work-hours orders, is a sensible and appropriate approach. If, after implementation, it becomes apparent that the overall effect of such relief causes excessive work-hours that might be a precursor to performance problems, then withdrawal of this relief could be considered.

Conclusion: The group work-hour controls are intended to ensure licensees have hired and trained a large enough work force to support routine operations. Preparing for and conducting both pilot force-on-force exercises and annual licensee force-on-force exercises will likely represent a significant proportion of the total hours worked during those periods when the exercises are conducted. Imposing a staffing level requirement on licensees sufficient to support the force-on-force exercises will result in staff levels greater than are routinely needed. The resources required to prepare for and conduct these exercises should not be required to be included in the group work-hour controls metric.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

| | | |
|--|---|-------------|
| Calvert Cliffs Nuclear Power Plant, Inc. |) | |
| Nine Mile Point Nuclear Station, LLC |) | Docket Nos. |
| |) | |
| (Calvert Cliffs Nuclear Power Plant, |) | 50-317 |
| Units 1 and 2) |) | 50-318 |
| |) | |
| (Nine Mile Point Nuclear Station, |) | 50-220 |
| Units 1 and 2) |) | 50-410 |

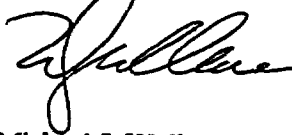
**LICENSEES' ANSWER TO APRIL 29, 2003
COMMISSION ORDER TO MODIFY LICENSE FOR COMPENSATORY
MEASURES RELATED TO SECURITY FORCE FITNESS-FOR-DUTY (EA-03-038)**

On April 29, 2003, the Nuclear Regulatory Commission ("NRC" or "Commission") issued an immediately effective Order¹ related to security force personnel Fitness-For-Duty to, *inter alia*, Calvert Cliffs Nuclear Power Plant, Inc. ("Calvert Cliffs") and Nine Mile Point Nuclear Station, LLC ("Nine Mile Point"). Constellation Generation Group, LLC, ("CGG") on behalf of its licensees ("Calvert Cliffs" and "Nine Mile Point") provided a timely response to the substantive requirements of the Fitness-For-Duty Order (EA-03-038) by letter dated June 2, 2003, in accordance with the provisions of 10 C.F.R. § 50.4, and as directed by the Order. At the same time, CGG requested additional time to provide an answer and to request a hearing associated with the Fitness-For-Duty Order, pending receipt of additional information requested from the NRC. The July 10, 2003, letter from the Director, Nuclear Reactor Regulation, provided certain information related to the Order and granted an extension of time until fifteen days from the date of that letter to file an answer and request for a hearing.

¹ EA-03-038, "Issuance of Order For Compensatory Measures Related To Fitness-For-Duty Enhancements Applicable To Nuclear Facility Security Force Personnel"

On this basis, CGG consents to the Fitness-For-Duty Order (EA-03-038) and specifically does not request a hearing pursuant to Section IV of that Order and 10 C.F.R. § 2.202.

Respectfully submitted,



Michael J. Wallace
President and Chief Nuclear Officer
Constellation Generation Group, LLC

STATE OF NEW YORK

The above-subscribed individual appeared before me on this 24th day of July, 2003 and made oath that he is duly authorized to execute this Answer on behalf of Calvert Cliffs Nuclear Power Plant, Inc. and Nine Mile Point Nuclear Station, LLC, and the statements contained within this Answer are true to the best of his knowledge, information, and belief.

Before me,



Notary Public

SANDRA A. OSWALD
Notary Public, State of New York
No. 010S6032276
Qualified in Oswego County
Commission Expires 10/25/05

My Commission Expires: 10/25/05

My Commission Expires: 10/25/05