

April 8, 2004

NRC 2004-0035  
10 CFR 2.201

Frank J. Congel, Director  
Office of Enforcement  
U. S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

Point Beach Nuclear Plant, Units 1 and 2  
Dockets 50-266 and 50-301  
License Nos. DPR-24 and DPR-27

Reply to a Notice of Violation; EA-03-181  
NRC Supplemental Inspection Report 05000266/2003007; 05000301/2003007

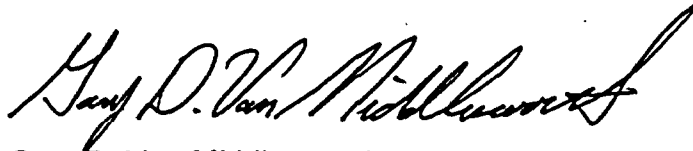
*Reference: 1) Letter from J. L. Caldwell (NRC) to Gary Van Middlesworth (NMC), "Point Beach Nuclear Plant, Units 1 and 2, Notice of Violation and Proposed Imposition of Civil Penalty - \$60,000 (NRC Supplemental Inspection Report 05000266/2003007; 05000301/2003007)," dated March 17, 2004.*

In accordance with NRC Inspection Procedure 95003, an Emergency Preparedness (EP) inspection was conducted between July 28 and August 12, 2003. As a result of this inspection, an apparent violation of NRC requirements was identified involving changes made to Emergency Action Levels (EALs) without requesting and receiving prior NRC approval. Details of this non-conformance, along with a Notice of Violation, were provided in Reference 1.

Pursuant to the provisions of 10 CFR 2.201, Nuclear Management Company, LLC (NMC) has prepared a written response to the Notice of Violation as an enclosure to this letter. NMC concurs that the failure to submit changes to the EALs from October 1998 through December 1999 for prior approval by the NRC staff, as detailed in Reference 1, was in violation of 10 CFR 50.54(q) and 10 CFR 50.47(b).

NMC will not be contesting the Imposition of Civil Penalty. Our statement concerning the method of payment will be provided under separate cover.

This letter contains no new commitments and no revisions to existing commitments.



Gary D. Van Middlesworth  
Site Vice-President, Point Beach Nuclear Plant  
Nuclear Management Company, LLC

Enclosure

cc: Document Control Desk  
Administrator, Region III, USNRC  
Project Manager, Point Beach Nuclear Plant, USNRC  
Resident Inspector, Point Beach Nuclear Plant, USNRC  
PSCW

**ENCLOSURE**  
**REPLY TO A NOTICE OF VIOLATION**  
**EA-03-181**  
**NRC SUPPLEMENTAL INSPECTION REPORT**  
**05000266/2003007; 05000301/2003007**

Pursuant to the provisions of 10 CFR 2.201, the following is the NMC response to Notice of Violation (EA-03-181) as cited in Reference 1:

**NRC VIOLATION**

*10 CFR 50.54(q) requires, in part, that a licensee authorized to possess and operate a nuclear power reactor follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in appendix E of this part. The licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to this part. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission.*

*10 CFR 50.47(b) requires that onsite emergency response plans for nuclear power reactors must meet each of 16 planning standards. Planning standard 4 requires, in part, that a standard emergency classification and action level scheme is in use by the licensee.*

*Contrary to the above, from October 1998 through December 1999, the licensee made changes, without Commission approval, to eight emergency action levels (EALs) in its Emergency Plan that decreased the effectiveness of the Emergency Plan and resulted in use of a nonstandard scheme of EALs. The EALs that were changed were originally approved by the NRC in 1984 and were consistent with the standard scheme in Revision 1 to NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," (November 1980). Specifically:*

**A. Examples Assessed a Civil Penalty**

*1. EAL GE-5(b), as approved by the NRC in 1984, required, in part, the declaration of a GE for a transient causing loss of all feed/condensate and all AFW for greater than one hour. With the revision of this EAL on December 29, 1999, in Revision 33 to Emergency Plan Implementing Procedure (EPIP) 1.2, the current EAL required a loss of vital alternating current for greater than 15 minutes, and replaced the greater than one hour loss of all feed/condensate requirement with steam generator level and AFW flow criteria that would indicate a significant loss of feed. The addition of the loss of a vital electrical power criterion is a more restrictive condition, thereby decreasing the effectiveness of the EP.*

2. EALs A-18a and A-18b involved "other hazards being experienced or projected." The first EAL involved an aircraft crash in the protected area, and the second involved a missile impact from any source by visual observation. With the revision of these EALs on December 29, 1999, in Revision 33 to EPIP 1.2, both EALs had a more restrictive condition added stating that the hazard was "affecting operability of one (1) train of a safety system," thereby decreasing the effectiveness of the EP.

3. EALs UE-14c and UE-14d, involved "other hazards," including explosion and toxic/flammable gas release. While the original EALs included the owner controlled area, these EALs were revised on December 29, 1999, in Revision 33 to EPIP 1.2, to exclude areas of the site outside the protected area. This change resulted in a more restrictive condition, thereby decreasing the effectiveness of the EP.

4. EAL UE-13 involved a tornado sighting and was applicable if a tornado was visible from the site. With the revision of this EAL on December 29, 1999, in Revision 33 to EPIP 1.2, the EAL was changed to make it applicable only if a tornado was within the protected area or switchyard. This change resulted in a more restrictive condition, thereby decreasing the effectiveness of the EP.

5. The EAL scheme approved by the NRC in 1984 included an NOUE (Category 18a) for uncontrolled control rod withdrawal. This EAL was removed from the EAL scheme on December 29, 1999, in Revision 33 to EPIP 1.2, with an explanation that an uncontrolled rod withdrawal event was encompassed in the Alert EAL for a Reactor Protection System (RPS) failure. However, the EALs for RPS failure did not address an uncontrolled rod withdrawal and there were no EALs in the current EAL scheme that addressed an uncontrolled control rod withdrawal. This change decreased the effectiveness of the EP.

#### B. Example Not Assessed a Civil Penalty

1. EAL GE-1, as approved by the NRC in 1984, required, in part, the declaration of a general emergency if a field dose rate corresponding to a 5 rem committed dose equivalent to the thyroid (for 1 hour of inhalation) was measured. With the revision of this EAL on October 28, 1998, in Revision 32 to EPIP 1.2, the current EAL does not require a GE declaration directly from a field dose rate measurement corresponding to a 5 rem committed dose equivalent to the thyroid (for 1 hour of inhalation). This revision resulted in a less conservative criterion for a GE declaration, thereby decreasing the effectiveness of the Emergency Plan (EP).

#### NMC RESPONSE

NMC concurs that the examples of changes to the EALs cited in the Notice of Violation (NOV) are representative of failure to comply with the provisions of 10 CFR 50.54(q), which requires the licensee to obtain the review and approval of the NRC before implementation of changes which decreased the effectiveness of the Emergency Plan (EP). NMC concludes that, as a result of these unapproved changes, the Point Beach Nuclear Plant (PBNP) was operated with a nonstandard scheme of EALs which is contrary to Planning Standard 4 of 10 CFR 50.47(b).

Reason for Violation:

On January 12, 2004, root cause evaluation (RCE) 241, "Change of EAL Scheme Results in Apparent Violation," was approved. The purpose of this RCE was to determine why PBNP made changes to the EAL scheme without obtaining pre-approval by the NRC. This evaluation concluded that:

"The station did not understand the definition of a decrease in effectiveness as described in 10 CFR 50.54(q). In all changes made to the EP, including EAL changes, the station believed the changes did not lessen the ability to meet 10 CFR 50.47(b) or 10 CFR 50, Appendix E, therefore, the changes were not considered a "decrease in effectiveness." The station did not understand that a change of commitment or a change of EAL scheme constitutes a "decrease in effectiveness" regardless of the continued ability to meet 10 CFR 50.47(b) and 10 CFR 50, Appendix E."

As a result of those EAL changes identified in the examples listed in the NOV, PBNP was operated with a nonstandard, and unapproved, scheme of EALs. This constituted a violation of NRC regulations.

Corrective Steps Taken and Results Achieved:

Corrective actions identified in the RCE 241 include upgrading the EAL scheme to the NEI 99-01, Revision 4, and obtaining NRC approval for that scheme. However, at the pre-decisional enforcement conference on January 13, 2004, NMC recognized that appropriate immediate corrective actions had not been taken to restore the PBNP EALs to compliance. Accordingly, between that date and January 16, 2004, the EALs were revised to return them to compliance with the version approved by the NRC in 1984. Training was provided to the plant staff. As documented in Reference 1, on January 16, 2004, the NRC confirmed that actions had been completed to correct the subject eight EALs to restored them to regulatory compliance.

Corrective Steps To Be Taken

NMC will be revising and upgrading the EALs to the NEI 99-01, Revision 4, scheme. These EAL changes will be submitted for NRC approval later this year.

Date Full Compliance Will Be Achieved

Full compliance to the EALs approved by the NRC in 1984 was achieved on January 16, 2004.