

July 14, 2005

EA-05-039

Mr. Michael Balduzzi
Site Vice President
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, Massachusetts 02360

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL
PENALTY - \$60,000 (NRC Office of Investigations Report No. 1-2004-040)
Pilgrim Nuclear Power Station

Dear Mr. Balduzzi:

This letter refers to an investigation initiated by the NRC Office of Investigations (OI), Region I, on August 27, 2004, at Entergy Nuclear Operation's Pilgrim Nuclear Power Station (Pilgrim). This investigation was initiated to determine if a Control Room Supervisor (CRS) at Pilgrim was sleeping/inattentive to duty on June 29, 2004, and whether others were aware that the CRS was inattentive and failed to correct the condition. As described in our letter to you dated March 23, 2005, the NRC concluded, based on the results of the OI investigation, that (1) the CRS was sleeping and inattentive to duty; (2) a Reactor Operator (RO) observed the CRS sleeping but deliberately failed to take immediate action to awaken the CRS, notify the Shift Manager (SM), and/or write a condition report (CR); and (3) a SM subsequently observed that the CRS was inattentive and failed to fully follow procedures in careless disregard of requirements.

In our March 23, 2005, letter, we also informed you that the failure of the CRS, RO and SM to follow procedures caused you to violate Technical Specification 5.4.1 and 10 CFR 26.20. Specifically, (1) the CRS was asleep for approximately four minutes on June 29, 2004, and was, therefore, neither alert nor attentive to his duties in violation of the "Conduct of Operations" procedure, and the CRS did not ask the SM for relief before or after he was awakened by the SM; (2) the RO observed the CRS asleep, but deliberately failed to take immediate actions to awaken the CRS, failed to inform appropriate site personnel, and failed to initiate a CR in violation of the "Corrective Action Process" procedure; and (3) after observing the inattentive CRS and taking some immediate actions to correct the situation, the SM, in careless disregard of requirements, failed to immediately relieve the CRS of his duties, did not have the CRS for-cause fitness for duty (FFD) tested, did not inform appropriate site personnel, and did not initiate a CR in violation of the "Fitness For Duty Program" and the "Corrective Action Process" procedures.

The NRC considered the RO's actions to be deliberate because he knew that procedures required him to take action, yet he did not awaken the CRS, or notify management, or write a CR when he observed that the CRS was sleeping. In addition, the NRC considered the SM's actions to be in careless disregard of requirements because, even though he took immediate

actions to end the CRS's inattentive behavior by slamming a desk, the SM should have known of the requirement to relieve the CRS of duty and have him for-cause FFD tested. He also should have been aware of the requirement to inform appropriate site personnel and write a CR, given his position as the senior person on duty at the time, as well as his prior knowledge of a previous similar event. It is important to note that the SM was aware of a sleeping incident in a break room two months earlier that led to all SMs being required to discuss the event with their crews to emphasize peer checking, alertness, attentiveness, and FFD-related matters. In addition, the SM had an opportunity to inform appropriate site personnel of his observation because he met with operations management approximately two hours after he had observed the inattentive CRS, yet he did not inform them of his observation. These conclusions were noted in a factual summary of the OI report that was sent to you in our March 23, 2005, letter.

Our March 23, 2005, letter scheduled a predecisional enforcement conference and also offered you the opportunity to request alternative dispute resolution (ADR) instead. At your request, a predecisional enforcement conference was conducted on April 8, 2005, with members of your staff in the Region I Office in King of Prussia, PA. During the conference, you discussed the apparent violations, their significance, their root causes, and your corrective actions. You also disagreed with some of the NRC conclusions discussed in the March 23, 2005, letter.

With respect to the CRS, although you agreed that he was inattentive to duty, you stated that the CRS had not felt unfit before or after the event, and therefore, would not have been expected to ask for relief. This was consistent with the testimony provided by the CRS. After further consideration of this matter, the NRC has concluded that you were not in violation regarding this aspect of the event.

With respect to the SM, you agreed that he should have informed management of his observation that the CRS was inattentive to duty. You also agreed that the SM's failure to notify management was in violation of your procedures. However, you maintained that the SM's failure to inform management was a mistake in judgement rather than careless disregard of requirements. In addition, you disagreed that the SM needed to immediately relieve the CRS from duty, have him for-cause FFD tested and write a CR. You noted that since the SM observed the CRS "head-bobbing" rather than sleeping as the RO had observed, and since the SM did not believe (based on a counseling session with the CRS shortly after the incident) that drugs or alcohol were involved, immediate relief and for-cause FFD testing were not required. You also noted that since the SM had observed the CRS "head-bobbing" rather than sleeping, and took prompt action to correct the inattentive condition by counseling the CRS, preparation of a CR was not required.

After further consideration of this matter, the NRC has concluded that the SM observed the CRS (who was responsible for supervising the manipulation of the controls of a nuclear facility) to be inattentive to his duties, and that this observation constituted an adverse condition that should have been communicated to management and warranted initiation of a CR per your procedure. Furthermore, the NRC maintains that the SM, by not informing management of his observation and writing a CR, acted in careless disregard of requirements, after considering (1) his position as the senior member of the operating crew; (2) his prior discussions with the crew just two months earlier regarding the importance of being alert and attentive; and (3) his failure to inform management despite being admittedly very upset with what he had observed and despite meeting with operations management approximately two hours later. Although the SM may not have observed the CRS sleeping, credible information was available to

substantiate that the CRS was asleep; therefore, in accordance with your procedures, the NRC maintains that the CRS should have been relieved of duty and for-cause FFD tested.

Accordingly, after considering the information developed during the OI investigation and the information that you provided during the enforcement conference, the NRC has determined that four violations of NRC requirements occurred. The violations, which are cited in the enclosed Notice of Violation (Notice), involve: (1) the CRS being asleep, and therefore, neither alert nor attentive to his duties (Violation A); (2) the RO observing the CRS asleep, but deliberately failing to take immediate actions to awaken the CRS, inform appropriate site personnel, and initiate a CR (Violation B.1); (3) the SM, in careless disregard of requirements, failing to inform appropriate site personnel and initiate a CR (Violation B.2); and (4) the CRS not being relieved of duty and for-cause FFD tested (Violation C).

Although there was no actual safety consequence resulting from this event because there were no plant conditions that warranted immediate action, it is important for licensed operators to be alert and attentive to their control room duties at all times so that they can adequately monitor the reactor, manipulate reactor controls, and react to any plant transients. It is also important that when licensed operators are not alert or attentive to their duties, appropriate action must be taken to immediately correct the situation and inform management. After considering these facts, as well as the willful acts of the RO and SM, the NRC has concluded that these four violations should be categorized as a Severity Level III problem in accordance with the NRC Enforcement Policy.

In accordance with the Enforcement Policy that was in effect in June 2004, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III problem. Because the Severity Level III problem included violations that were willful, 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. Because you did not identify the violations, credit is not warranted for the *Identification* factor. Because your corrective actions taken or planned were considered comprehensive, credit for corrective action is warranted. Your actions included: (1) initial actions by the SM to assure the CRS became attentive; (2) senior managers meeting with all operations personnel, security personnel and other plant personnel to discuss the event, FFD obligations, and safety conscious work environment requirements; (3) enhancement of back-shift monitoring; (4) enhancement of FFD, Continuing Behavior Observation Program and safety conscious work environment training; and (5) initiation of plans to conduct lifestyle training and operating crew teamwork training.

After considering the available information, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$60,000 for the Severity Level III problem. This action is being taken to emphasize that all licensed operators must remain alert and attentive to duty at all times, and must act appropriately when conditions adverse to quality are identified. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

As an option, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Should you have any questions regarding this letter, please feel free to contact Mr. Clifford Anderson at 610-337-5227.

Sincerely,

/RA/
Samuel J. Collins
Regional Administrator

Docket No. 50-293
License No. DPR-35

Enclosures: 1. Notice of Violation and Proposed Imposition of Civil Penalty
2. Brochure NUREG/BR-0317

cc w encl:

G. J. Taylor, Chief Executive Officer, Entergy Operations
J. T. Herron, Senior Vice President and Chief Operating Officer
M. Kansler, President, Entergy Nuclear Operations, Inc.
S. J. Bethay, Director, Nuclear Assessment
D. L. Pace, Vice President, Engineering
C. Schwarz, Vice President, Operations Support
J. F. McCann, Director, Nuclear Safety Assurance
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M. J. Colomb, Director of Oversight, Entergy Nuclear Operations, Inc.
D. Tarantino, Nuclear Information Manager
B. S. Ford, Manager, Licensing, Entergy Nuclear Operations, Inc.
J. M. Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc.
S. Lousteau, Treasury Department, Entergy Services, Inc.
R. Walker, Department of Public Health, Commonwealth of Massachusetts
The Honorable Therese Murray
The Honorable Vincent deMacedo
Chairman, Plymouth Board of Selectmen
Chairman, Duxbury Board of Selectmen
Chairman, Nuclear Matters Committee
Plymouth Civil Defense Director
D. O'Connor, Massachusetts Secretary of Energy Resources
J. Miller, Senior Issues Manager
Office of the Commissioner, Massachusetts Department of Environmental Protection
Office of the Attorney General, Commonwealth of Massachusetts
Electric Power Division, Commonwealth of Massachusetts
R. Shadis, New England Coalition Staff
D. Katz, Citizens Awareness Network
Chairman, Citizens Urging Responsible Energy
J. Sniezek, PWR SRC Consultant
R. Toole, PWR SRC Consultant
C. McCombs, Acting Director, MEMA and Commonwealth of Massachusetts, SLO Designee
Commonwealth of Massachusetts, Secretary of Public Safety

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CJA

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Entergy Nuclear Operations, Inc
Pilgrim Nuclear Power Station

Docket No. 50-293
License No. DPR-35
EA-05-039

Based on an NRC investigation conducted by the Office of Investigations, Region I Field Office, the report of which was issued on February 4, 2005, four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

Technical Specification 5.4.1 of Facility Operating License No. DPR-35 for the Pilgrim Nuclear Power Station (PNPS) requires the establishment and implementation of procedures covering the applicable procedures recommended in Regulatory Guide 1.33, Revision 2, February 1978.

Regulatory Guide 1.33 recommends, in part, administrative procedures covering authorities and responsibilities for safe operation and shutdown, and shift and relief turnover.

10 CFR Part 50, Appendix B, requires a quality assurance program for nuclear power plants to assure that conditions adverse to quality are promptly identified and corrected, and includes, in part, written policies, procedures or instructions.

10 CFR Part 26, "Fitness For Duty Programs," prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness for duty programs and procedures by licensees, and each licensee subject to this part shall establish and implement written policies and procedures to meet these objectives.

- A. PNPS Procedure Number 1.3.34, "Conduct of Operations", Section 5.15, requires, in part, that Operations personnel on duty will remain alert and awake so that they may respond to plant conditions or emergencies. PNPS Procedure Number 1.3.34 is required by Technical Specification 5.4.1.

Contrary to the above, for approximately four minutes on June 29, 2004, the on duty Control Room Supervisor (CRS) was not alert to his duties in the control room in that he was asleep in a chair, and therefore, not in a condition to respond to plant conditions or emergencies.

- B. PNPS Procedure ENN-LI-102, "Corrective Action Process", Section 4.1, requires, in part, that all personnel working at Entergy Nuclear Northeast (ENN) facilities are responsible for identifying and reporting problems. Section 5.1.1.4, requires, in part, that any individual who discovers an adverse condition is expected to ensure that: immediate actions are taken as necessary to minimize the consequence of the condition; appropriate site personnel are notified of the identified condition; and the condition is promptly documented in a Condition Report (CR). ENN-LI-102 is required by 10 CFR Part 50, Appendix B.

Contrary to the above, on June 29, 2004:

1. a Reactor Operator (RO), at approximately 4:40 a.m., became aware of an adverse condition (the RO observed the CRS to be asleep in a chair), and the RO did not take immediate actions to awaken the CRS and minimize the consequence of the condition, did not inform appropriate site personnel that he had observed the CRS to be asleep, and did not document the condition in a CR.
 2. a Shift Manager (SM), at approximately 4:45 a.m., became aware of an adverse condition (the SM observed the CRS "head-bobbing" in a chair, and was therefore, inattentive to his duties and not fully alert), and the SM did not inform appropriate site personnel of the condition and did not document the condition in a CR.
- C. PNPS Procedure ENN-NS-102, "Fitness For Duty Program," Section 3.0, defines, in part, for-cause testing as testing that is conducted as soon as possible following an observed behavior that indicates questionable fitness for duty. Section 5.3 states, in part, that factors such as fatigue, mental stress and illness may affect an individual's fitness for duty. Section 5.7 further states, in part, that testing for-cause shall be based on observation or information received from a credible source that indicates possible impairment of an individual's ability to work safely. ENN-NS-102 is required by 10 CFR Part 26.

Contrary to the above, for approximately four minutes on June 29, 2004, the on duty CRS was asleep in a chair in the control room and not fit for duty, and appropriate measures were not taken to relieve the CRS from duty and have him for-cause FFD tested.

These violations constitute a Severity Level III problem.
Civil Penalty - \$60,000. (EA-05-039)

Pursuant to the provisions of 10 CFR 2.201, Entergy Nuclear Operations, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty(ies) (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-05-039" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, Entergy Nuclear Operations, Inc. may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear

Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Entergy Nuclear Operations, Inc. is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, and a copy to the NRC Resident Inspector at Pilgrim Nuclear Power Station.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 14th day of July 2005