

August 18, 2005

EA-05-025

Mr. James A. Spina
Vice President Nine Mile Point
Nine Mile Point Nuclear Station, LLC
P.O. Box 63
Lycoming, NY 13093

SUBJECT: NOTICE OF VIOLATION
NRC Office of Investigations Report No. 1-2004-005
(Nine Mile Point Nuclear Station)

Dear Mr. Spina:

Following the receipt of information in January 2004, the NRC's Office of Investigations (OI), Region I, initiated an investigation on February 3, 2004, to determine whether employees of Nine Mile Point Nuclear Station (Nine Mile Point) deliberately violated conditions of the Nine Mile Point Unit 2 license by compromising an unannounced fire drill in June 2000. Based on the evidence developed during its investigation, OI substantiated that a Fire Protection Supervisor deliberately violated conditions of the Unit 2 license by compromising an unannounced fire drill in June 2000. The basis for OI's conclusion was previously provided to you in a factual summary of the OI investigation enclosed with our letter dated March 18, 2005. In a letter dated July 13, 2005, you provided an unsolicited response to our March 18, 2005, letter in order to describe actions that Nine Mile Point has taken, and plans to take, in response to the OI finding.

The actions of the former fire protection supervisor were contrary to 10 CFR Part 50, Appendix R, which requires persons planning and authorizing an unannounced fire drill to ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun. This failure to meet a regulatory requirement had more than minor significance because virtually the full details of the fire drill were compromised. In accordance with the NRC Enforcement Policy, Supplement I - Reactor Operations, Example D.3, the NRC has categorized the violation at Severity Level IV because it was a failure to meet a regulatory requirement that had more than minor safety significance.

Given the deliberate nature of this violation by a first line supervisor, the NRC considered exercising discretion to increase the severity level of the violation in accordance with the NRC Enforcement Policy, Section IV.A.4. However, the NRC decided that Severity Level IV was the appropriate classification in this case based on the following factors: (1) the safety consequence of the misconduct was limited since the fire drill was never conducted and, therefore, never counted as an unannounced fire drill; (2) there were no other supervisors involved in this incident; (3) the compromise appeared to be an isolated incident; and (4) the former fire protection supervisor accepted responsibility for his actions. The NRC also considered whether a non-cited violation was appropriate in this case. However, issuance of a

non-cited violation was not appropriate because the violation was willful, identified by the NRC, and involved the actions of a first line supervisor.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket as summarized in your letter dated July 13, 2005. Therefore, you are not required to respond unless these documents do not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice of Violation.

As another option, you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue if you disagree with this enforcement sanction. 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 administer the NRC's program. 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.

You should note that final NRC documents, including the final OI report, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be 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). Should you have any questions regarding this letter, please feel free to contact Mr. James Trapp at (610) 337-5186.

Sincerely,

/RA/

Brian E. Holian, Director
Division of Reactor Projects

Docket No. 50-410
License No. NPF-69

Enclosure: Notice of Violation

cc w/encl:

M. J. Wallace, President, Constellation Generation

M. Heffley, Senior Vice President and Chief Nuclear Officer

J. M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc.

M. J. Wetterhahn, Esquire, Winston and Strawn

P. R. Smith, President, New York State Energy, Research, and Development Authority

J. Spath, Program Director, New York State Energy Research and Development Authority

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C. Adrienne Rhodes, Chairman and Executive Director, State Consumer Protection Board

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* Refer to previous concurrences

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OFFICE	RI/ORA	OE	OGC	HQ/NRR	RI/RA
NAME	KFarrar	JLuehman (RJu for)	TSmith (RJu for)	BBoger (RJu for)	SCollins
DATE	07/28/05	08/05/05	08/03/05 (NLO)	08/03/05	08/02/05

OFFICIAL RECORD COPY

Enclosure

Notice of Violation

Nine Mile Point Nuclear Station, LLC
Nine Mile Point Unit 2

Docket No. 50-410
License No. NPF-69
EA 05-025

During an NRC investigation completed on January 3, 2005, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Until February 2001, Nine Mile Point Unit 2 Technical Specification 6.4, "Training," required that the training program for the fire brigade shall meet or exceed the requirements of Appendix R to 10 CFR Part 50.

10 CFR Part 50, Appendix R, Section III.I.3.b, requires, in part, that persons planning and authorizing an unannounced fire drill shall ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun.

Contrary to the above, on June 14, 2000, an unannounced fire drill was planned, and prior to its start, the fire protection supervisor made a responding shift fire brigade member (the fire brigade leader) aware of not only the fact that an unannounced fire drill was planned but also the time and location of the planned, unannounced, fire drill.

This is a Severity Level IV violation (Supplement I).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated July 13, 2005. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-05-025," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response, if provided, 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), 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> (the Public Electronic Reading Room). 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 18th day of August 2005