

October 6, 2006

EA-06-177

Mr. M. Nazar
Senior Vice President and
Chief Nuclear Officer
Indiana Michigan Power Company
Nuclear Generation Group
One Cook Place
Bridgman, MI 49106

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC INSPECTION REPORT NO. 05000315/2006502(DRS);
05000316/2006502(DRS)) DONALD C. COOK NUCLEAR PLANT,
UNITS 1 AND 2

Dear Mr. Nazar:

This letter refers to an inspection conducted from May 1 to August 1, 2006, by the U.S. Nuclear Regulatory Commission (NRC) at the Donald C. Cook Nuclear Plant, Units 1 and 2. The purpose of the inspection was to review your emergency action level (EAL) and Emergency Plan changes. An apparent violation of 10 CFR 50.54(q) and 10 CFR 50.47(b)(4) was identified which involved changes made to an EAL, without Commission approval, which resulted in a decrease in the effectiveness of your Emergency Plan. Details regarding the apparent violation were provided in NRC Inspection Report No. 05000315/2006501(DRS); 05000316/2006501(DRS), dated August 7, 2006.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference (PEC) or by providing a written response before we made our final enforcement decision. You declined the opportunity to discuss this matter at a PEC, and on September 6, 2006, provided a written response to the apparent violation.

Based on the information developed during the inspection and the information provided in your written response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it are described in detail in the inspection report dated August 7, 2006. In accordance with 10 CFR 50.54(q), a licensee may make changes to the emergency 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). On April 16, 2003, you made changes, without Commission

approval, to the Fission Product Barrier Matrix EAL in your Emergency Plan, for a loss of containment barrier due to a steam generator secondary side release, that decreased the effectiveness of the plan and resulted in use of a non-standard scheme of EALs. Specifically, you removed the condition, "release of secondary coolant from the associated steam generator to the environment is occurring," from the EAL. The revised EAL, "secondary line break outside containment results in release (greater than 30 minutes) to the environment," added a non-conservative 30 minutes before meeting this EAL. As a result, you may not have classified events (General Emergency, Site Area Emergency, or Unusual Event) or delayed classification for events with release durations to the environment of 30 minutes or less. A decrease in the General Emergency level of classification could have resulted in decreased protective action recommendations for the off-site authorities, and potentially a reduction in the level of protective action decisions forwarded to the public by off-site authorities. A decrease in the Site Area Emergency and Unusual Event levels of classification could have resulted in a reduced level of response by off-site authorities if their level of response was based to some extent on which of the three emergency classes was associated with the licensee's emergency declaration. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

Your letter dated September 6, 2006, stated that the reason for the violation was inadequate program requirements in the Emergency Preparedness organization's procedures and processes, and the Emergency Preparedness organization failed to incorporate the expectations and standards set forth by the NRC with regard to changes that potentially decreased the effectiveness of the Emergency Plan. You requested that the NRC exercise enforcement discretion due to special circumstances in that when you made changes to the EAL you were striving to comply with Nuclear Utilities Management and Resources Council (NUMARC) guidance, which was believed to be consistent with NRC expectations at the time, and the actions occurred some time ago when some of your verification and validation processes were not as robust as today. We have reviewed your request and concluded that the basis for your request does not warrant discretion in accordance with Section VII.B.6 of the Enforcement Policy. A letter to Indiana Michigan Power Company from the NRC Office of Nuclear Reactor Regulation dated October 6, 1995, stated that a similar proposed change to the Fission Product Barrier Matrix EAL was unacceptable. During our April 2004 inspection we identified an unresolved item for this issue. The EAL was subsequently restored on May 18, 2006.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for this Severity Level III violation. Because you have been the subject of escalated enforcement actions within the last two years,¹ the NRC considered whether credit is warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit is not warranted for the *Identification* factor because the NRC identified the violation and you had prior opportunity to identify the violation as a result of a letter to Indiana Michigan Power Company from the NRC Office of Nuclear Reactor Regulation dated October 6, 1995, that stated that a similar proposed change to the Fission Product Barrier Matrix EAL was unacceptable.

Credit is warranted for the *Corrective Action* factor. Your corrective actions included:

(1) restoring your Emergency Plan and implementing procedure for emergency classification to the previous NRC-approved language on May 18, 2006, (2) training operations and emergency response personnel on the revision, (3) revising the administrative procedure for changing the Emergency Plan, (4) Emergency Preparedness department personnel completing the Nuclear Energy Institute Emergency Preparedness Training Course, and (5) changing and/or developing qualification guides for Emergency Preparedness coordinators. Therefore, to emphasize the importance of maintaining the effectiveness of your Emergency Plan and procedures, and in recognition of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the base amount of \$60,000 for the Severity Level III violation.²

¹ A Severity Level III violation without civil penalty was issued on September 29, 2004, (EA-04-109) associated with the failure to notify the NRC of a senior reactor operator's permanent medical condition and the failure to provide complete and accurate information to the NRC about that operator's permanent medical condition. A Severity Level III problem with a \$60,000 civil penalty was issued on November 23, 2005, (EA-05-171) associated with the failure to (1) provide complete and accurate information; (2) provide timely information with the regard to the medical status of NRC-licensed reactor operators; and (3) provide complete and accurate information with regard to three applications for new, renewed, or amended NRC-licensed reactor operator licenses.

² The base civil penalty amount for a Severity Level III violation occurring from November 3, 2000, to November 25, 2004, was \$60,000 (65 FR 243, December 18, 2000, page 79139) and was increased to \$65,000 on November 26, 2004 (69 FR 206, October 26, 2004, page 62485). Since the violation occurred after November 3, 2000, and before November 26, 2004, the NRC considered the base civil penalty of \$60,000 to be applicable to this enforcement action.

The NRC has concluded that information regarding the reasons 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 NRC Inspection Report No. 05000315/2006501(DRS); 05000316/2006501(DRS) and in your letter dated September 6, 2006. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description therein does not accurately reflect your corrective actions or position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. However, you are required to either pay the proposed civil penalty or respond in accordance with the instructions in the enclosed Notice.

Please contact Kenneth Riemer, Chief, Plant Support Branch, with questions. Mr. Riemer can be reached at (630) 829-9757.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, Enclosure 1 and your response, if you choose to respond, 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**.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket Nos. 50-315; 50-316
License Nos. DPR-58; DPR-74

Enclosures: 1. Notice of Violation and Proposed
Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/encl 1: M. Peifer, Site Vice President
L. Weber, Plant Manager
S. Simpson, Regulatory Affairs Manager
G. White, Michigan Public Service Commission
L. Brandon, Michigan Department of Environmental Quality -
Waste and Hazardous Materials Division
Emergency Management Division
MI Department of State Police
State Liaison Officer, State of Michigan
D. Lochbaum, Union of Concerned Scientists

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Sincerely,
 /RA/
 James L. Caldwell
 Regional Administrator

Docket Nos. 50-315; 50-316
 License Nos. DPR-58; DPR-74

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cc w/encl 1: M. Peifer, Site Vice President
 L. Weber, Plant Manager
 S. Simpson, Regulatory Affairs Manager
 G. White, Michigan Public Service Commission
 L. Brandon, Michigan Department of Environmental Quality - Waste and Hazardous Materials Division
 Emergency Management Division
 MI Department of State Police
 State Liaison Officer, State of Michigan
 D. Lochbaum, Union of Concerned Scientists

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OFFICE	RIII		RIII		RIII		OE		RIII		RIII	
NAME	Pelke		Pederson		Satorius		Fretz for Carpenter ¹		O'Brien		Caldwell	
DATE	10/04/06		10/04/06		10/05/06		10/04/06		10/05/06		10/05/06	

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¹HQ concurrence received via E-mail from R. Fretz,OE on 10/04/06

Letter from J. Caldwell to M. Nazar dated October 6, 2006

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$60,000 (NRC INSPECTION REPORT NO. 05000315/2006502(DRS);
05000316/2006502(DRS)) DONALD C. COOK NUCLEAR PLANT,
UNITS 1 AND 2

DISTRIBUTION:

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SECY

OCA

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W. Kane, DEDR

C. Carpenter, OE

D. Solorio, OE

D. Starkey, OE

J. Caldwell, RIII

G. Grant, RIII

C. Pederson, RIII

M. Satorius, RIII

A. Boland, RIII

S. West, RIII

L. Chandler, OGC

B. Jones, OGC

J. Dyer, NRR

D. Holody, Enforcement Officer, RI

C. Evans, Enforcement Officer, RII

K. O'Brien, Enforcement Officer, RIII

K. Fuller, Enforcement Officer, RIV

R. Pascarelli, Enforcement Coordinator, NRR

Resident Inspector

E. Brenner, OPA

H. Bell, OIG

G. Caputo, OI

J. Schlueter, OSTP

D. Dandois, OCFO/DAF/LFARB

K. Riemer, RIII

C. Lipa, RIII

R. Jickling, RIII

P. Pelke, RIII

J. Strasma, RIII:PA

R. Lickus, RIII

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Indiana Michigan Power Company
D. C. Cook Nuclear Plant
Units 1 and 2

Docket Nos. 50-315; 50-316
License Nos. DPR-58; DPR-74
EA-06-177

During an NRC inspection conducted from May 1 to August 1, 2006, a violation of NRC requirements was 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 violation and associated civil penalty are set forth below:

10 CFR 50.54(q) states, in part, that a licensee shall follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements of Appendix E of Part 50. 10 CFR 50.54(q) also provides that the licensee may make changes to the emergency 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 of Part 50. 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)(4) states, in part, that a standard emergency classification and action level scheme is in use by the licensee.

Contrary to the above, on April 16, 2003, the licensee made changes without Commission approval to Fission Product Barrier Matrix Emergency Action Level (EAL) 3.3L in its Emergency Plan for a loss of containment barrier due to a steam generator secondary side release that decreased the effectiveness of the plan and resulted in use of a non-standard emergency classification and action level scheme. Specifically, the licensee removed the condition, "release of secondary coolant from the associated steam generator to the environment is occurring," from EAL 3.3L. The revised EAL, "secondary line break outside containment results in release (greater than 30 minutes) to the environment," added a non-conservative 30 minutes before meeting this EAL.

This is a Severity Level III violation (Supplement VIII).
Civil Penalty - \$60,000 (EA-06-177)

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 Inspection Report No. 05000315/2006501(DRS); 05000316/2006501(DRS) and a letter from the licensee dated September 6, 2006. 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-06-177," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer, Region III, and a copy to the NRC Resident Inspector at the D.C. Cook Nuclear Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

The licensee may pay the civil penalty proposed above 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, EA-06-177" and may: (1) deny the violation 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, if provided, by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee 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 (statement as to payment of civil penalty and Answer to a Notice of Violation) should be addressed to: Cynthia A. Carpenter, 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 and Enforcement Officer, U.S. Nuclear Regulatory Commission, Region III and a copy to the NRC Resident Inspector at the D. C. Cook Nuclear Plant.

Notice of Violation and Proposed
Imposition of Civil Penalty

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If you choose to respond, 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>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

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

Dated this 6th day of October 2006