

December 22, 2006

EA-06-275

Mr. Paul A. Harden
Site Vice President
Nuclear Management Company, LLC
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043-9530

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION AND CLOSURE OF
URI 05000255/2003008-03, "EMERGENCY ACTION LEVEL AND EMERGENCY
PLAN CHANGES" - PALISADES NUCLEAR PLANT (NRC INSPECTION
REPORT NO. 05000255/2006501)

Dear Mr. Harden:

This refers to the in-office inspection of the Palisades Nuclear Plant completed on November 2, 2006, to review your Emergency Action Level (EAL) and Emergency Plan changes, and to follow up on the Unresolved Item 05000255/2003008-03, Emergency Action Level and Emergency Plan Changes Potentially Resulting in a Reduction of Emergency Plan Effectiveness. An apparent violation of 10 CFR 50.54(q) and 10 CFR 50.47(b) was identified during the inspection which involved changes made to an EAL, without Commission approval, which resulted in a decrease in the effectiveness of your Emergency Plan. An exit meeting was conducted by telephone on November 2, 2006, between yourself and Mr. Kenneth Riemer of our staff.

Based on the information developed during the inspection, the NRC has determined that a violation of NRC requirements occurred. In Revision 6 of Palisades Site Emergency Plan, dated January 7, 2002, your staff changed the NUREG 0654 #S-10 based Site Area Emergency (SAE) EAL for "Major damage to spent fuel in containment or fuel handling building." This revision changed the NRC approved SAE EAL in Table 4-2, Fission Product Barriers/Fuel Damage from:

"Major damage to irradiated fuel in containment or fuel handling building (e.g., large object damages fuel or water loss below fuel level)"

to:

"Major damage to irradiated fuel in fuel handling building."

This EAL change was a decrease in effectiveness because your staff changed its approved standardized EAL scheme to a non-standardized scheme without prior NRC approval; and the previously classifiable condition, "major damage to irradiated fuel in containment or fuel handling building," could potentially no longer result in classification for an emergency having major damage to irradiated fuel in containment. The EAL as changed did not meet the standards of 10 CFR 50.47(b)(4) because it was inconsistent with the licensee's NRC approved (February 28, 1985) standardized EAL scheme based on NUREG 0654.

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 January 7, 2002, you made changes, without Commission approval, to the Fission Product Barriers/Fuel Damage Site Area Emergency EAL #S-10 in your Emergency Plan that decreased the effectiveness of the plan and resulted in use of a non-standard scheme of EALs. As a result, you may not have classified events or delayed classification for events involving major damage to irradiated fuel in containment which could have resulted in a reduced level of response by off-site authorities. Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III.

In January 2004, the Nuclear Management Company (NMC) initiated a fleet-wide comprehensive review to identify all Emergency Plan discrepancies. This resulted in your prompt identification of the S-10 EAL error. On February 13, 2004, you restored the Palisades EAL scheme to the original NRC approved version of February 28, 1985. On November 9, 2005, you implemented an upgraded, NRC approved EAL scheme based on Nuclear Energy Institute (NEI) 99-01 methodology.

Therefore, to encourage the prompt identification and comprehensive correction of violations, and in recognition of the age of the violation and the lack of clarity in NRC guidance, and the potentially generic aspects of the matter, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and not issue a Notice of Violation in this case. However, significant violations in the future could result in escalated enforcement action.

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 will be adequately addressed on the docket upon issuance of this letter, Inspection Report No. 05000255/2006501. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, clearly mark your response as a Reply to an Exercise of Enforcement Discretion, EA-06-275, 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 the Enforcement Officer, Region III, and a copy to the Resident Inspector at the Palisades facility, within 30 days of the date of this letter. 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.

Based on the inspection conclusions, licensee corrective actions, and enforcement discretion identified in this letter, Unresolved Item 05000255/2003008-03, Emergency Action Level and Emergency Plan Changes Potentially Resulting in a Reduction of Emergency Plan Effectiveness, is closed.

If you have any questions, please contact Kenneth Riemer. Mr. Riemer can be reached at telephone number (630) 829-9757.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response (should 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/NRC/ADAMS/index.html> <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. 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 by Cynthia D. Pederson Acting for/

James L. Caldwell
Regional Administrator

Docket No. 50-255
License No. DPR-20

cc: J. Cowan, Executive Vice President
and Chief Nuclear Officer
R. Fenech, Senior Vice President, Nuclear
Fossil and Hydro Operations
D. Cooper, Senior Vice President - Group Operations
L. Lahti, Manager, Regulatory Affairs
J. Rogoff, Vice President, Counsel and Secretary
A. Udrys, Esquire, Consumers Energy Company
S. Wawro, Director of Nuclear Assets, Consumers Energy Company
Supervisor, Covert Township
Office of the Governor
State Liaison Office, State of Michigan
L. Brandon, Michigan Department of Environmental Quality -
Waste and Hazardous Materials Division

Based on the inspection conclusions, licensee corrective actions, and enforcement discretion identified in this letter, Unresolved Item 05000255/2003008-03, Emergency Action Level and Emergency Plan Changes Potentially Resulting in a Reduction of Emergency Plan Effectiveness, is closed.

If you have any questions, please contact Kenneth Riemer. Mr. Riemer can be reached at telephone number (630) 829-9757.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response (should 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/NRC/ADAMS/index.html> <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. 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 by Cynthia D. Pederson Acting for/

James L. Caldwell
Regional Administrator

Docket No. 50-255
License No. DPR-20

- cc; J. Cowan, Executive Vice President
and Chief Nuclear Officer
R. Fenech, Senior Vice President, Nuclear
Fossil and Hydro Operations
D. Cooper, Senior Vice President - Group Operations
L. Lahti, Manager, Regulatory Affairs
J. Rogoff, Vice President, Counsel and Secretary
A. Udrys, Esquire, Consumers Energy Company
S. Wawro, Director of Nuclear Assets, Consumers Energy Company
Supervisor, Covert Township
Office of the Governor
State Liaison Office, State of Michigan
L. Brandon, Michigan Department of Environmental Quality -
Waste and Hazardous Materials Division

DOCUMENT NAME:C:\FileNet\ML063610474.wpd

Publicly Available Non-Publicly Available Sensitive Non-Sensitive

To receive a copy of this document, indicate in the concurrence box "C" = Copy without attach/encl
"E" = Copy with attach/encl "N" = No copy

OFFICE	RIII	RIII	RIII	OE1	RIII	RIII
NAME	Pelke	Boland for Pederson	West for Satorius	Solario for Carpenter	Shear	Pederson for Caldwell
DATE	12/20/06	12/21/06	12/21/06	12/20/06	12/22/06	12/22/06

OFFICIAL RECORD COPY

¹ David Solario, OE, provided HQ concurrence via e-mail from Doug Starkey on December 20, 2006.

Letter from J. Caldwell to P. Harden dated December 22, 2006

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION AND CLOSURE OF
URI 05000255/2003008-03, "EMERGENCY ACTION LEVEL AND EMERGENCY
PLAN CHANGES - PALISADES NUCLEAR PLANT (NRC INSPECTION
REPORT NO. 05000255/2006501)

DISTRIBUTION:

ADAMS (PARS)

SECY

OCA

L. Reyes, EDO

W. Kane, DEDR

C. Carpenter, OE

D. Solorio, OE

D. Starkey, OE

J. Caldwell, RIII

G. Grant, RIII

L. Chandler, OGC

B. Jones, OGC

J. Dyer, NRR

D. Holody, Enforcement Officer, RI

C. Evans, Enforcement Officer, RII

G. Shear, Acting Enforcement Officer, RIII

K. Fuller, Enforcement Officer, RIV

R. Pascarelli, Enforcement Coordinator, NRR

E. Brenner, OPA

H. Bell, OIG

G. Caputo, OI

R. Jickling, RIII

P. Pelke, RIII

J. Strasma, RIII:PA

V. Mitlyng, RIII:PA

R. Lickus, RIII

S. Minnick, RIII

J. Lynch, RIII

OEWEB

OEMAIL

DRPIII

DRSIII

PLB1

TXN

PST

TEB

RidsNrrDirslrib

ROPreports@nrc.gov

JAE

LMP

JBG

CAA1

LSL