



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, IL 60532-4352

January 29, 2009

Mr. David A. Christian
President and Chief Nuclear Officer
Dominion Energy Kewaunee, Inc.
Innsbrook Technical Center
5000 Dominion Boulevard
Glen Allen, VA 23060-6711

**SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR DOMINION ENERGY
KEWAUNEE, INC., FOR KEWAUNEE POWER STATION (NOED 09-3-01)**

Dear Mr. Christian:

By letter dated January 27, 2009, Dominion Energy Kewaunee, Inc., requested that the U.S. Nuclear Regulatory Commission (NRC) exercise discretion not to enforce compliance with Technical Specification (TS) 3.7.a.7, "Auxiliary Electrical Systems," for Kewaunee Power Station. The letter documented information previously discussed between the NRC and Mr. Steve Scace and other members of your staff in a telephone conference on January 23, 2009, at 1:30 p.m. (CST). During that conference, the NRC conveyed to members of your staff the results of our review of the licensing basis of the siphon line that connects the two underground storage tanks which supply fuel for the two emergency diesel generators (EDGs). Our review indicated that the siphon line is part of the licensing basis of Kewaunee and that use of a portable transfer pump or reliance on replenishing the onsite supply of fuel oil from offsite sources prior to seven days of EDG operation during an accident are not part of the licensing basis of Kewaunee. The line is designed to connect the two tanks and to allow, without manual operator action, for an equal draw-down of fuel oil from both tanks during operation of either EDG. In addition, a calculation completed by your staff has indicated that the useable volume of fuel oil that can be provided from each of the two nominal 35,000-gallon storage tanks is 33,259 gallons.

Technical Specification 3.7.a.7 requires that the two underground storage tanks combine to supply at least 35,000 gallons of fuel oil for either EDG and the two day tanks for each EDG contain at least 1,000 gallons of fuel oil. With the siphon line inoperable and neither storage tank capable of providing 35,000 gallons of fuel, Kewaunee cannot meet the requirement to supply at least 35,000 gallons to an EDG. With the condition of Kewaunee not being able to provide 35,000 gallons of fuel to either EDG, both EDGs would be inoperable. Technical Specification 3.7.b.7 requires that if the two EDGs are inoperable for more than two hours, then Kewaunee must initiate action within one hour to achieve Hot Standby within the next six hours.

You requested that a Notice of Enforcement Discretion (NOED) be granted pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.C of the NRC Enforcement Policy, not to enforce the 35,000-gallon limit specified in the TS and to

change the current limit of 35,000 gallons to 31,858 gallons for each EDG. You did not request a change of the 1,000-gallon limit specified for the day tanks. According to your latest calculation, the requested change of 31,858 gallons, with the previously established 1,000-gallon minimum in the day tanks, provides the necessary fuel for routine surveillance testing of an EDG and seven days of operations of an EDG for an accident. Previous calculations had established the 35,000 and 1,000 gallon values for surveillance testing and seven days of operation for an accident. You requested that the NRC exercise this discretion for a 14-day period until a license amendment request to change TS 3.7.a.7 could be submitted and approved. This letter documents our telephone conversation on Friday, January 23, 2009, when we orally issued this NOED at 3:42 p.m. We understand that a license amendment request was submitted on the morning of January 23, and that a supplement to this request was submitted on Monday, January 26, to support the processing of the request under 10 CFR 50.91(a)(6), applicable to amendments where exigent circumstances exist. This NOED is considered effective until 3:42 p.m. on Friday, February 6, 2009, at which time, if the exigent license amendment is not approved or the siphon line connecting the two EDGs is not repaired, Kewaunee would be required to take the actions specified in TS 3.7.b.7 for two inoperable EDGs.

The principal NRC staff members who participated in that telephone conference included Cynthia Pederson, Director, Division of Reactor Projects (DRP), Region III; Robert Nelson, Deputy Director, Division of Operator Reactor Licensing (DORL), Office of Nuclear Reactor Regulation (NRR); Allen Howe, Deputy Director, DORL, NRR; Kenneth O'Brien, Enforcement Officer, Region III; Lois James, Chief, Plant Licensing Branch III-1, NRR; Donald Harrison, Chief, Balance-of-Plant Branch, NRR; George Wilson, Chief, Electrical Engineering Branch, NRR; Merrilee Banic, Generic Communications Branch, NRR; Richard Branch, Acting Chief, PRA Operational Support & Maintenance Branch, NRR; Peter Tam, Senior Project Manager, Plant Licensing Branch III-1, NRR; AnnMarie Stone, Chief, Mechanical Engineering Branch, Region III; Robert Daley, Chief, Electrical Engineering Branch, Region III; David Passehl, Senior Reactor Analyst, Region III; Antonios Zoulis, Reliability and Risk Analyst, PRA Operational Support & Maintenance Branch, NRR; Rene Vogt-Lowell, Senior Reactor Analyst, PRA Operational Support & Maintenance Branch, NRR; Stephen Burton, Senior Resident Inspector, Kewaunee; and Mike Kunowski, Chief, Reactor Projects Branch 5, Region III.

Your staff requested this NOED after consideration of the safety significance and potential consequences of such an action. Your staff performed a risk assessment of operating Kewaunee during the 14-day period of the NOED and found risk to be within Kewaunee's normal work control limits, and consequently, no net increase in radiological risk to the public. This review included an assessment of scheduled maintenance and surveillances activities for the 14-day period of the NOED. The mission time of the two EDGs at Kewaunee is 24 hours. The seven-day supply maintained onsite is significantly larger than the supply necessary for 24 hours of operation. The licensee's analysis indicated that the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP) are negligible, $3.5E-7$ and $4.7E-8$, respectively. These values support the licensee's contention that there is no net increase in radiological risk to the public because of the change of quantity of fuel oil required for each underground storage tank.

The NRC reviewed your written request for enforcement discretion dated January 27, 2009, and verified consistency between the oral request of your staff and the written request. The NRC's

basis for this discretion considered the information above including: (1) the calculation that 32,858 gallons of fuel (31,858 gallons in an underground storage tank and at least 1,000 gallons total in the two day tanks associated with an EDG) were sufficient for a one-hour surveillance run and to operate the EDG for seven days during an accident; (2) the submittal of an exigent license amendment request to change the total gallons of fuel oil required in the Technical Specifications for each underground fuel oil storage tank; and (3) the qualitative and quantitative risk evaluation of the change in quantity of fuel required to be available in the EDG underground fuel oil storage tanks.

Based on the above considerations, the NRC staff concluded that Criterion B.2.1.1.a and the applicable criteria in Section D.4 to NRC Manual Chapter 9900, "Technical Guidance, Operations – Notice of Enforcement Discretion," were met. Criterion B.2.1.1.a states that for an operating plant, the NOED is intended to avoid unnecessary transients as a result of compliance with the license condition and, thus, minimize potential safety consequences and operational risks.

On the basis of the staff's evaluation of your request, we have concluded that granting this NOED was consistent with the Enforcement Policy and staff guidance, and had no adverse impact, on public health and safety or the environment. Therefore, we exercise discretion to not enforce compliance with TS 3.7.a.7--that requires the underground storage tanks combine to supply at least 35,000 gallons of fuel oil for either diesel generator--for 14 days from 3:42 p.m. on Friday, January 23, 2009, to 3:42 p.m. on Friday, February 6, 2009. As discussed earlier in this letter, an exigent license amendment request is required of Kewaunee and has been submitted to the NRC for review and approval.

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the non-compliance for which this NOED was necessary.

Sincerely,

/RA by A. Boland Acting for/

Cynthia D. Pederson, Director
Division of Reactor Projects

Docket No. 50-305
License No. DPR-43

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Letter to D. Christian from C. Pederson dated January 29, 2009

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR DOMINION ENERGY
KEWAUNEE, INC. FOR KEWAUNEE POWER STATION (NOED 09-3-001)

cc: S. Scace, Site Vice President
M. Wilson, Director, Nuclear Safety and Licensing
C. Funderburk, Director, Nuclear Licensing and Operations Support
T. Breene, Manager, Nuclear Licensing
L. Cuoco, Senior Counsel
D. Zellner, Chairman, Town of Carlton
J. Kitsembel, Public Service Commission of Wisconsin
P. Schmidt, State Liaison Officer

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