



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-8931

February 6, 2009

EA-08-258

Mr. R. P. Cochrane
General Manager
Babcock & Wilcox Nuclear Operations Group, Inc.
P.O. Box 785
Lynchburg, VA 24505-0785

**SUBJECT: RESPONSE TO DISPUTED NOTICE OF VIOLATION NOS. 70-27/2008-002-02
 AND 70-27/2008-002-03**

Dear Mr. Cochrane:

Thank you for your response dated August 29, 2008, to the subject Notice of Violation issued on July 31, 2008, concerning activities conducted at your facility.

In your response, you disputed violation 2008-002-02 on the basis that (1) the scrubber auxiliary fan passed a functional test in August 2004; (2) a functional test as documented in the Integrated Safety Analysis (ISA) was being performed every six months; and (3) although licensees are expected to establish management measures for an item relied on for safety (IROFS), the frequency for functional testing as a management measure is not established by Babcock & Wilcox Nuclear Operations Group, Inc.'s license application or 10 CFR 70.61. You disputed violation 2008-002-03 on the basis that you were meeting the performance requirements of 10 CFR 70.61; therefore there was no event to report to the NRC Operations Center. After consideration of your response, the NRC has concluded that, for the reasons presented in the enclosure to this letter, the violations occurred as stated in the Notice of Violation (Notice) dated July 31, 2008. The violations will remain open until the NRC has verified implementation of your corrective actions during a subsequent inspection.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, 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>. 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.

R. Cochrane

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Should you have any questions concerning this letter, please contact Mr. D. Charles Payne at (404) 562-4711.

Sincerely,

/RA/

Luis A. Reyes
Regional Administrator

Docket No. 70-27
License No. SNM-42

Enclosure: Evaluation and Conclusion

cc w/encl:
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EVALUATION AND CONCLUSION

The violations were identified during routine NRC inspections conducted between March 23 and June 21, 2008, at the Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG) facility in Lynchburg, VA. B&W NOG disagreed with the violations by letter dated August 29, 2008, stating that (1) B&W NOG had not failed to meet the performance requirements of 10 CFR 70.61; and (2) therefore did not fail to report the event in accordance with 10 CFR 70, Appendix A.

A. Specific Basis for Disputing Violation 70-27/2008-002-02

B&W NOG's position is that the violation resulted from a misunderstanding of its Integrated Safety Analysis (ISA) documentation and SNM-42 License Application. B&W NOG cited the following reasons as the basis for disputing the violation:

1. The scrubber auxiliary fan passed a functional test in August 2004 when the fan was powered by the emergency diesel generator.
2. A functional test as documented in the ISA prior to July 18, 2007, was being performed as required every six months.
3. Although licensees are expected to establish the management measures for an item relied on for safety (IROFS), the frequency for functional testing as a management measure is not established by B&W NOG's License Application or 10 CFR 70.61. B&W NOG implemented the annual requirement with the revised management measure effective July 18, 2007.

Based on the above, B&W NOG requested that the NRC withdraw this violation cited against the failure to meet the performance requirements of 10 CFR 70.61.

NRC Evaluation of Licensee's Response

The NRC staff has carefully reviewed B&W NOG's response and has concluded that violation 70-27/2008-002-02 occurred as stated in our letter dated July 31, 2008, "Inspection Report 70-27/2008-002 and Notice of Violation." The basis for the determination is as follows:

1. B&W NOG provided documentation to the NRC showing that an acceptance test was performed in August of 2004. However, the licensee failed to perform a functional test of the IROFS between August 2004 and June 2008 to verify that the diesel generator will provide power to the auxiliary fan as stated in accident scenario SB1-1a1.
2. A functional test as documented in the ISA was being performed as required every six months. However, the test that was being performed was not a functional test with regards to accident scenario SB1-1a1. Accident scenario SB1-1a1 says that during a loss of offsite power, the auxiliary fan is powered by an emergency diesel generator. The functional tests being performed tested (1) the starting of the emergency diesel generator without the auxiliary fan and (2) the auxiliary fan on normal offsite power. Between 2004 and 2008, there was no functional test being conducted which included the permissives, interlocks,

Enclosure

relays, contacts, and transfer switch between the emergency diesel generator and auxiliary fan, to ensure the IROFS was available and reliable to perform its intended safety function when needed.

3. B&W NOG stated that the frequency for performing functional testing as a management measure is not established by B&W NOG's License Application or 10 CFR 70.61. While the NRC does not specify a frequency for performing functional testing, the NRC expects a reasonable testing frequency to assure the availability and reliability of IROFS to perform their intended safety function when needed. Section 11.2.1, "Surveillance Monitoring and Functional Testing," of B&W NOG's License Application states, in part, that for all IROFS that have engineered features identified in the ISA Summary, a monitoring or functional testing frequency has been established to assure that IROFS remain functionally available and reliable. In this case, B&W NOG had not established a functional testing frequency to assure that this IROFS would remain functionally available and reliable.

NRC Conclusion

Accident scenario SB1-1a1, a high consequence event, requires the functionality of this IROFS to reduce the likelihood of this accident scenario to highly unlikely. Without this IROFS, the likelihood of accident scenario SB1-1a1 is unlikely, which, therefore does not meet the performance requirements as stated in 10 CFR 70.61(b).

The NRC disagrees with B&W NOG's position and maintains that the licensee failed to meet the performance requirement of 10 CFR 70.61 by not properly implementing management measures to ensure that this IROFS was available and reliable to perform its intended safety function when needed.

For the above reasons, the NRC concludes that the violation occurred as stated in the Notice.

B. Specific Basis for Disputing Violation 70-27/2008-002-03

B&W NOG contests this violation because it believes there was no failure to meet the performance requirements of 10 CFR 70.61, therefore there was no event to report to the NRC Operations Center. The scrubber auxiliary fan was found to be working when it was called upon to perform its function during an unintended loss of offsite power on February 2, 2008. Thus, B&W NOG had no reason to believe that it was not meeting the performance requirements.

NRC Evaluation of Licensee's Response

The NRC staff has carefully reviewed B&W NOG's response and concluded that violation 70-27/2008-002-03 occurred as stated in our letter dated July 31, 2008, "Inspection Report 70-27/2008-002 and Notice of Violation." The basis for the determination is as follows:

The licensee must report to the NRC Operations Center, any condition that results in the facility being in a state that was not analyzed, or is different from that analyzed in the Integrated Safety Analysis, and which results in failure to meet the performance requirements of 10 CFR 70.61, within 24 hours of discovery.

The licensee recognized on July 18, 2007, that functional tests were not being performed on the auxiliary fan powered by the emergency diesel generator. However, the licensee failed to recognize that not having this IROFS available and reliable to perform its intended safety function, put the facility in a condition such that a high consequence event was not highly unlikely, based on accident scenario SB1-1a1 of the licensee's Integrated Safety Analysis.

The licensee was not meeting the performance requirements as stated in Part A of this Evaluation and Conclusion. Because the facility was in a condition that was different from that analyzed in the Integrated Safety Analysis (i.e. not highly unlikely for accident scenario SB1-1a1 which is a high consequence event) the licensee is required to report this condition to the NRC Operations Center within 24 hours of discovery, which it failed to do.

NRC Conclusion

The NRC disagrees with B&W NOG's position and maintains that the licensee was required to report this condition to the NRC Operations Center within 24 hours of discovery. Therefore, the violation occurred as stated in the Notice.