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Nuclear Power Plant
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January 18, 1991
IP3-91-010

Docket No. 50-286
License No. DPR-64
EA 90-178

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

Subject: Indian Point 3 Nuclear Power Plant Reply
and Answer to Notice of Violation and
Proposed Imposition of Civil Penalty
Regarding NRC Inspection Report
No. 50-286/90-16

Reference: (1) NRC Inspection Report No. 50-286/90-16,
dated October 5, 1990.
(2) Notice of Violation and Proposed
Imposition of Civil Penalty (\$50,000),
dated December 7, 1990.

Dear Sir:

On December 7, 1990, the NRC issued notice of a severity level III violation and proposed a \$50,000 civil penalty against the New York Power Authority (hereinafter "the Power Authority"). The NRC charged a violation of plant Technical Specifications regarding shift staffing based upon alleged inattentiveness to licensed responsibilities by a senior reactor operator (SRO) and a reactor operator (RO) on the morning of September 14, 1990, at Indian Point Nuclear Power Station, Unit 3.

The Power Authority has reviewed the NRC's enforcement action and the facts involving the incident at issue. In sum, the Power Authority continues to believe that the SRO and RO were attentive to duties during the period in question, and thus denies that it violated its Technical Specifications, as alleged. The Power Authority submits that the NRC did not take adequate account of several events that occurred shortly before the alleged inattentive period which, along with the statements of the operators (which they would reiterate if called upon to testify under oath), provide strong evidence that the operators were attentive to their duties at the time they were observed by the NRC Resident Inspector.

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As to the SRO, the material facts generally do not appear to be in dispute. The resulting question is whether a licensed operator can remain attentive to his duties while shutting his eyes for up to sixty seconds. We believe the only reasonable answer must be in the affirmative.

As to the RO, the material facts are in dispute. The Resident Inspector's observation is not in accord with the RO's testimony. But viewed together with the evidence of an unusually active shift, including a log entry of activity a few minutes before the Resident Inspector entered, we believe that the RO's testimony is credible. That testimony is further supported by the recollection of the SRO that the RO did not have his feet on the desk, as alleged, a minute or two before the Resident Inspector entered the control room.

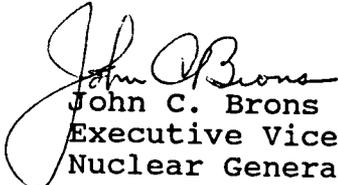
We also believe that there are reasonable explanations for the factual differences between the Resident Inspector's observations and the RO's testimony. First, despite the stated observation of the Resident Inspector that the RO was seated with his feet on the desk, it may be that the movement by the RO which the Resident Inspector interpreted as dropping of feet from the desk to the floor was actually the shifting of the RO's leg from under his body (his customary sitting position) and the dropping of his foot to the floor. Second, while the RO allegedly "appeared to have just awakened" when the Resident Inspector addressed the RO and SRO in the control room (NRC Inspection Report 50-286/90-16, at 2), this appearance may have been nothing more than the RO's ordinary facial expression which (in contrast to his actual performance) may appear to be somewhat lethargic.

In any event, in light of the foregoing, we think that the record does not contain the substantial evidence which must exist to support the proposed sanction. We therefore ask that the NOV be withdrawn. However, if the NRC adheres to the view that a violation occurred, we submit that the proposed civil penalty should be mitigated in full.

Page Three
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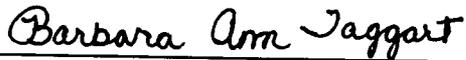
Appendix A provides in more detail the Power Authority's reply to the Notice of Violation pursuant to 10 C.F.R. 2.201. Appendix B provides the Power Authority's answer to, and basis for our request for full mitigation of the proposed civil penalty pursuant to 10 C.F.R. 2.205.

Very truly yours,


John C. Brons
Executive Vice President
Nuclear Generation

STATE OF NEW YORK
COUNTY OF WESTCHESTER

Subscribed and sworn to before me
this 18th day of January 1991



Notary Public

BARBARA ANN TAGGART
NOTARY PUBLIC, State of New York
No. 4881437
Qualified in Putnam County
Commission Expires Jan. 27, 19 92

Attachment

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Appendix A

Reply to the Notice of Violation (EA 90-178)
Docket No. 50-286

Restatement of the Violation

10 C.F.R. 50.54(k) requires that an operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility.

Technical Specification (T.S.) 6.2.2 requires a minimum crew composition which includes, in part, two licensed Senior Reactor

Operators and two licensed Operators (T.S. 6.2.2.a). Further, it requires that a licensed Reactor Operator be on duty in the control room at all times (T.S. 6.2.2.h) and that a licensed Operator be in the control room when fuel is in the reactor (T.S. 6.2.2.b).

Contrary to the above, at approximately 5:07 a.m. on September 14, 1990, at a time when the reactor was in an operational condition with fuel in the reactor vessel, the NRC Senior Resident Inspector observed that the licensed Operator and licensed Senior Reactor Operator in the control room assigned to monitor the operation of Unit 3, were not fully attentive to their duties; thus, neither a reactor operator nor senior reactor operator were present at the controls as required. The licensed Reactor Operator (RO) was not fully attentive to his duties in that the inspector observed the licensed Reactor Operator with his eyes closed, head tilted back, and feet up on the desk. The licensed Senior Reactor Operator was not fully attentive to his duties in that the inspector observed him with his eyes closed, and head tilted back.

This is a severity level III violation. (Supplement I) Civil Penalty - \$50,000

I. Admission or Denial of the Violation

The Power Authority has concluded that the SRO and the RO involved in the subject event were attentive to licensed duties during the time at issue. This conclusion is based on the results of its prompt and comprehensive investigation of the alleged violation. The Power Authority therefore denies that a violation of the IP3 Technical Specifications occurred on September 14, 1990. The bases for the Power Authority's position are discussed further herein and in Appendix B, the Power Authority's answer to the proposed imposition of civil penalty.

II. Bases For Denying The Notice of Violation

Section 556(d) of the Administrative Procedure Act states that "[a] sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence" (emphasis added).

The judicial review standard of APA Section 706(2)(E) applies to cases that are subject to Section 556. In this regard, the Supreme Court noted in Steadman v. Securities and Exchange Commission that the term "substantial evidence," as used in Section 556, denotes a quantity of proof, that quantity being the traditional "preponderance-of-the-evidence" standard. 450 U.S. 91, 96 (1981). The Court also noted that "substantial evidence" (in 706(2)(E)) means evidence, which on the whole record is clearly substantial, plainly sufficient to support a finding or conclusion under the requirements of Section (556(d)), and material to the issues. Id. at 99, quoting H.R. Rep. No. 1980, 79th Cong., 2d Sess., 45 (1946).

In other words, a reviewing court may not uphold an agency's decision by referring only to those parts of the record which support the agency. A review of the entire record means that the court (and the agency) must take account of evidence in the record which detracts from the evidence relied on by the agency. Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

It follows that the NRC should not base its enforcement decision on findings that benefit the NRC's position, while ignoring the Power Authority's evidence. Based upon its own prompt, intensive investigation of this incident, the Power Authority has determined that credible, reliable evidence exists which, when taken as a whole and considering all information available, reasonably leads to the conclusion that the SRO and RO were attentive to duties during the period in question. This evidence is summarized below.

On the other hand, we do not believe that the NRC has adequately considered the whole record or that the sanction imposed is supported by substantial evidence. In sum, we submit that the NRC has not struck a fair balance between the sole observation of the Resident Inspector, which we believe was mistaken as to the RO, and the weight of the evidence which supports a finding that both operators were attentive to their duties during the period in question. Accordingly, the Power Authority submits that the Notice of Violation should be withdrawn.

A. The Senior Reactor Operator (SRO)

The SRO has been employed by the Power Authority /Consolidated Edison for 16 years, 8 of those years as a licensed operator and 4 years as an SRO. During these periods, the SRO has an excellent performance record and has never been found inattentive to his licensed duties.

The NRC alleged that the SRO was observed with his head tilted back and his eyes closed. See NRC Inspection Report 50-286/90-16 dated October 5, 1990, at 1. The SRO candidly acknowledged that he had momentarily closed his eyes and that they may have been closed for as long as 60 seconds. However, the SRO also emphatically denies that his head was tilted back or that he was asleep. He stated that he was attentive at this time.

The SRO stated that he had sat down in his chair moments before the Resident Inspector entered the IP-3 control room and was stretching his back muscles to obtain relief from a recurring back problem. We have confirmed that the SRO is being treated for a back ailment that does not affect his ability to perform licensed duties. The SRO finds relief from minor discomfort associated with this ailment by stretching his back.

When he seeks such relief, the SRO arches his lower back and cranes his neck forward. He thus denies that his head was "tilted back." In fact, he recalled facing and reading the instrument panel to his front before closing his eyes, and said he did not change the position of his head until after the Resident Inspector entered the control room.

Perhaps of more importance, the SRO stated that his mind was on his work while his eyes were momentarily closed, as he was thinking about the next jobs he had to perform on the shift. There is nothing in the record which refutes this testimony. In fact, the NRC Resident Inspector lent credence to this statement when he acknowledged that the SRO was instantly alert when he opened his eyes.

The NRC proposes to set a standard in this case that is unreasonable and largely undefined. The Power Authority believes that a rule of reason must be applied in light of the facts presented here. Certainly, not every closure of an operator's eyes for more than a blink, nor every moment that an operator's attention is diverted from the control board, can be considered inattentiveness to duties. We believe that the only reasonable conclusion that can be reached based upon the whole record is that the SRO was attentive to his duties during the short period his eyes were closed. See Section II.D. This does not mean, however, that we approve of any appearance of inattentiveness, and we have taken steps to assure that all operators at IP-3 avoid such undesirable appearances.

B. The Reactor Operator (RO)

The RO has been employed by the Power Authority/Consolidated Edison for over 25 years, 16 of those years as a licensed operator. During these periods, the RO has an excellent performance record and has never been found inattentive to his licensed duties.

The NRC stated in the alleged violation that the RO was observed with his head tilted back, eyes closed, and feet on the desk, and appeared startled when the Resident Inspector addressed him. See NRC Inspection Report at 1. The RO emphatically denied that he was in the posture that the Resident Inspector believes he observed, that his eyes were closed, that he was asleep, or that he otherwise was inattentive on shift. The SRO recalled looking at the RO from a few feet away a minute or so before the Resident Inspector entered the control room, and recalled that the RO was not in an unusual position (such as with his feet on the desk) at that time.

The Power Authority's investigation found no Power Authority employee who had ever observed the RO sitting in the alleged position (leaning back in his chair with his feet on the desk) during his 16 years at IP3. Plant personnel who are very familiar with the ingrained habits of the RO have indicated that this particular individual has developed an idiosyncrasy in that he sits in a chair with one leg folded under him. None can recall ever seeing him with his feet up even in casual situations.

Also, the RO stated that he was aware that someone had entered the control room and, in fact, turned his head and saw that the Resident Inspector was approaching. The RO agreed with the NRC inspection report finding that he did not acknowledge the Resident Inspector's presence in the control room until the inspector knocked on a table located next to the SRO desk.

The RO stated that not acknowledging the Resident Inspector's presence earlier was in keeping with the custom in the IP3 control room that the SRO on shift usually serves as the person who interfaces with the Resident. In short, it would have been out of the ordinary for the RO to have acknowledged the Resident when he entered the control room.

We believe that the testimony of the RO is credible and reliable, particularly when viewed together with the evidence of record depicting an unusually active shift (see Section II.C) and the SRO's observation of the RO moments before the Resident Inspector entered the control room. In this light, we believe that the RO was attentive to his duties during the period in question.

C. Activities During the Shift Provide Persuasive Evidence That the Operators Were Attentive to Duties

The September 14, 1990, backshift was unusually busy in that control room personnel were performing several additional activities in preparation for a refueling outage that was scheduled to begin later that day. Many of the operators' activities required documentation of certain plant parameters. Control room logs, strip charts, and other calculations indicate that the SRO and RO's activities were performed on time.

In addition, several events that occurred shortly before the Resident Inspector entered the IP3 control room, because they (1) involved SRO and RO action and (2) made loud sounds in the control room, assured that the operators were attentive. These events include a telephone call from Indian Point Unit 2 to the SRO regarding the shutdown of a circulating water pump, and an alarm for the plant stack monitor (R-14). The sound from either the telephone call (which involves several telephones in the control room ringing at one time) or the plant vent monitor alarm (which is located in front of the RO's desk and because it is an alarm is intentionally loud) would have been sufficient to assure that anyone at the control room consoles was alert. The R-14 alarm required the involvement of both the SRO and the RO. The RO silenced the alarm on the supervisory panel while the SRO investigated the indication. For this particular event, the R-14 setpoint required adjustment which required additional activity by the SRO (who adjusted the setpoint) and the RO (who silenced the alarm again when the setpoint was adjusted). This event was recorded and is evident on the stripchart for R-14. Since the Resident Inspector entered the control room only minutes after these events occurred, it is not reasonable to conclude that the operators could have become inattentive within such a short period.

Also it is significant that on September 14, 1990, shift management was present in the control room on nine separate occasions. Shift Supervisor and Assistant Shift Supervisor coverage resulted in a total period of three (3) hours during just the first five (5) hours of the shift, where at least one manager was present in the control room. This level of management involvement in control room activities provided further assurance that operators were attentive. Other personnel entered the control room at least eleven (11) times from the 2300 to the 0500 period. Our investigation of the September 14, 1990, control room activities indicates that the SRO and the RO were continuously involved in and attentive to licensed operator duties.

The NRC has as its sole basis for the violation an observation by the Resident Inspector. For the record, the Power Authority considers the integrity of the Resident to be above reproach. However, we believe that the Resident must have misconstrued what he observed. As to the SRO, there appears to be no dispute as to the facts (other than whether his head was tilted back), but only as to the regulatory significance of the facts. As to the RO, there is a dispute as to the facts, but on balance, the Power Authority does not believe that the Resident Inspector's observations provide adequate support for a violation when viewed in light of the evidence provided by the Power Authority that points to a contrary conclusion.

D. The NRC's Definition of "Attentive to Duties" Is Unreasonable

It has been the Power Authority's understanding from the beginning that the NRC was not alleging or concerned with actual sleeping by the operators, but rather with whether they were attentive. This understanding is confirmed by the wording of the allegation in the NOV ("not fully attentive to their duties"). Based upon the evidence in this case, including the Resident Inspector's observation that the SRO was instantly alert when he opened his eyes, and the SRO's testimony that he was thinking about his next action on shift, the fair conclusion is that the SRO was not sleeping or even daydreaming, but merely had his eyes closed. In regard to the RO, his somewhat lethargic appearance could erroneously lead an observer, who is not familiar with his demeanor, to conclude that he was not attentive to duties. We submit that we are dealing here with a case of the appearance of inattentiveness, and not with actual inattentiveness.

So postured, the Power Authority believes that it is unreasonable for the NRC to conclude that a violation has occurred simply because the SRO's eyes were not focused on the plant's control panel for 60 seconds.

Operators are routinely involved in control room activities that distract operators' attention from the control panels for 60 seconds or longer. Examples of such activities include:

- o An operator's eyes directed away from the control board because he/she is discussing issues with plant personnel or an NRC inspector.
- o An operator's eyes directed away from the control board because he/she is responding to plant operations-related telephone calls.
- o Operators reading/logging control room information that must be observed in one area of the control room (and as a result, the individual not being able to observe the rest of the control panels for a period of time).
- o An operator turning his/her back to the control board to perform any procedurally mandated function.
- o Operator review of a procedure, log, or other operations-related document while in the control room and on shift (especially if a process that the procedure addresses is about to be performed).

If consistently applied, the NRC's position that the closure of an individual's eyes for up to 60 seconds represents inattentiveness (and a violation), merely because the operator is not, during that time, watching the control board, would result in all of the above examples also being violations of NRC requirements. In the same vein, operator actions which are expressly aimed at refocusing attention or even forestalling drowsiness or distraction (such as standing in front of the control panel and massaging one's temples with eyes temporarily closed) also would be subject to sanctions for "inattentiveness." Obviously such a result would be unreasonable, unduly harsh, and unworkable. To apply such a standard to a case where the only additional factor is the operator's relaxed posture is equally inappropriate. In addition, it is unreasonable for the NRC to conclude that an enforcement sanction is appropriate simply because the normal demeanor of a licensed operator is unusual, and thus could be mistaken as being inattentive.

The standard for "attentiveness" should not be so rigid as to focus only on appearances at the expense of actual fact. This can be illustrated by the hypothetical case of an operator who is seated in the proper position and location, with his eyes open and fixed in the direction of the control panels, but who is daydreaming and totally "tuned out."

This operator would appear to be attentive to his duties when in fact he probably is not. He is certainly far less attentive to his duties than the operator who decides to rest his eyes momentarily while considering activities relating to the shift.

Again, while the Power Authority thinks that appearances are important, and has taken steps to reinforce to all operators that they must not only be attentive, but also avoid any appearance of inattentiveness, we submit that in the facts of this case, a citation for violating Technical Specifications is inappropriate.

Appendix B

10 C.F.R. 2.205 Answer to the
Proposed Imposition of A Civil Penalty

As noted in the Power Authority's 10 C.F.R. 2.201 reply to the Notice of Violation (see Appendix A), the Power Authority believes that the Notice of Violation should be withdrawn. If after reviewing the Power Authority's position and the record as a whole, the NRC continues to maintain that these facts support the finding of a violation, the Power Authority requests that the NRC fully mitigate the proposed civil penalty. Discussed below are the Power Authority's bases for requesting civil penalty mitigation.

I. Mitigation of the Proposed Civil Penalty

Following this incident, the Power Authority initiated a prompt investigation and instituted several measures to address even the possibility of inattentiveness by operators. The NRC acknowledged that the Power Authority took prompt actions subsequent to the event, including the temporary removal of the SRO and RO from licensed activities pending the completion of the Power Authority's investigation into the event. Also, the NRC acknowledged that: (1) Power Authority management met with all watchstanders immediately after the event to stress the importance of attentiveness to duty; (2) the Resident Manager and Operations Superintendent met with all licensed operators to reenforce Power Authority policy regarding attentiveness to duties; (3) procedures were revised, as appropriate; and (4) modifications to training programs were planned, as appropriate.

However, the NRC concluded that the above activities were not comprehensive because: (1) the Power Authority's investigation allegedly focused on the narrow issue of whether operators were sleeping rather than a broader issue of attentiveness, and (2) corrective actions did not include a means for verifying attentiveness independent of the scheduled shift, such as by periodic unannounced senior management backshift tours.

The NRC also concluded that corrective actions were not prompt because station administrative procedures were not revised to provide staff and supervisors with guidance on attentiveness until six (6) weeks after the event. Based upon these conclusions, the NRC refused to mitigate the proposed civil penalty.

The Power Authority submits that these conclusions are incorrect, and that in fact, each point actually should argue in favor of mitigation. We address below the issues of comprehensiveness and promptness of corrective actions.

A. Comprehensiveness of Corrective Actions

According to the NRC, the Power Authority's initial investigation focused on the narrow issue of whether the operators were sleeping, rather than the broader issue of operator attentiveness. In fact, the Power Authority's investigation did focus on more than sleeping as the primary concern.

1. Scope of Power Authority's Investigation

When Power Authority management became aware of the Resident Inspector's visit to the control room at 5:07 a.m. on September 14, 1990, it initiated immediate action to address the matter. The assistant shift supervisor was stationed in the control room immediately, until the next shift reported for duty. The RO and SRO were withheld from performing licensed duties until the investigation was completed, and were returned to normal shift duties only after the Power Authority management discussions of the situation with the NRC.

The investigation included interviews with the majority of plant personnel who regularly stand fixed-post watches. Included in the topics covered during the interviews were IP3's policy regarding attentiveness, the appearance of inattentiveness, personal and corporate expectations, and observations of shift personnel. In addition, log and data records from the subject shift were reviewed to confirm that readings taken by the SRO and RO during the shift at issue were accurate and on time. No discrepancies were found regarding the SRO and RO's shift records.

Because the Resident Inspector's allegation, as the Power Authority always understood it, dealt with attentiveness and the appearance of inattentiveness rather than actual sleeping, the Power Authority's investigation was not confined to the narrow issue of sleeping. We are frankly surprised that the NRC found otherwise and stated that NRC intervention was necessary to broaden the Power Authority's focus, because we recall our conversations with the NRC from the first to have focused on the broader issue.

In any event, Power Authority management naturally first focused on whether the operators in fact were sleeping. In denying that they had been sleeping, the operators explained the attitudes in which they were seated when the Resident entered the control room. The SRO explained that his body was in extension, back arched, with his eyes closed. The very description of the SRO in this position would have caused management to consider the appearance question even if our focus had not already been on this broader issue, and steps were taken to reemphasize management's expectations on both attentiveness and the appearance of inattentiveness. We thus think the NRC should reconsider its refusal to mitigate the proposed civil penalty based on its finding that the investigation was too narrowly focused. That finding is erroneous.

2. Power Authority Memoranda That Addressed Sleeping and Attentiveness

The NRC's refusal to mitigate the civil penalty also seems to ignore the fact that the Power Authority has emphasized attentiveness to duty, not merely staying awake, for a number of years. The IP3 policy on sleeping while on duty and avoiding the appearance of inattentiveness to duty has periodically been provided to, or reviewed with, all licensed personnel. The Power Authority's investigation confirmed that all licensed operators are aware of this policy. The following memoranda have been issued to plant personnel on this issue. This list was presented to the NRC at the enforcement conference, and bears repeating here in view of the proactivity on the part of Power Authority management that it reflects.

August 1, 1982

"Station Policy/Personnel Department Procedure # 1 On Site Employee Conduct Guidelines," Revision 1. This procedure expressly prohibited among other things, sleeping while on duty.

September 9, 1985

Memorandum from L. W. Sinclair (then President of the Power Authority) to all licensed operators. The memorandum provided (a) Power Authority policy on attentiveness to duty and other prohibited licensed operator conduct; (b) a copy of IE Information Notice 85-53, "Performance of NRC-Licensed Individuals While On Duty," (July 12, 1985); (c) a copy of IE Circular 81-02, "Performance of NRC-Licensed Individuals While On Duty," (February 9, 1981); and (d) an excerpt from an internal NRC memorandum that rated Region I plants' control room behavior.

September,
October 1985

The training staff presented Lesson Plan REQ-IEV 85.3, "Industry Events" to the licensed operators as part of continuing training. This lesson plan addresses IE Information Notice 85-53, "Performance of NRC-Licensed Individuals While On Duty," (July 12, 1985) and IE Circular 81-02, "Performance of NRC-Licensed Individuals While On Duty," (February 9, 1981).

April 7, 1987

Memorandum to all employees from W. Josiger (then Resident Manager at IP3) regarding the shutdown of Peach Bottom due in part to sleeping operators.

May 18, 1987

Transmittal from W. Josiger (then Resident Manager IP3) to all operators NRC Information Notice 87-21, "Shutdown Order Issued Because Licensed Operators Asleep While On Duty" (May 11, 1987).

October 22, 1987

The IP3 Operational Experience Review Group completed its review of Information Notice 87-21 and concluded (in part based on pre-existing Power Authority policy which prohibits inattentiveness) that additional Power Authority actions were not necessary.

June 1989

J. Brons (Executive Vice President) held discussions with all licensed operators and addressed, among other things, the need to maintain alertness. This discussion was documented in NRC Inspection Report No. 89-12, dated August 10, 1989.

September 1990

During the shift turnovers conducted immediately after the September 14, 1990 event, attentiveness and the appearance of inattentiveness to duty were stressed to all watch personnel by the Shift Supervisor.

September 14,
September 20,
September 27, 1990

The Resident Manager and the Operations Superintendent met with all licensed operators to discuss the NRC's concerns and to reaffirm Power Authority management's expectations regarding the conduct of operators, including attentiveness and the appearance of inattentiveness.

Therefore, given the above, the Power Authority believes that it had properly focused on the issue of attentiveness even prior to this event, and that it responded to the event by comprehensively addressing the full scope of the NRC's concern, rather than merely focusing on sleeping, as the notice of violation suggests.

3. Programmatic Enhancements In Response to NRC Concerns

In addition to the issuance of policy documents to plant personnel, programmatic enhancements were implemented by the Power Authority following this event to provide additional assurance that licensed operators will always be, and will always appear to be, attentive while on duty.

After the event, modifications were made to the licensed operator initial and requalification training programs to emphasize and more clearly state the Power Authority's policy requiring attentiveness and avoiding the appearance of inattentiveness by licensed operators at all times while on duty. Modifications were made to certain IP3 procedures to assure that the procedures clearly state that disciplinary actions could be taken against any watchstander if the watchstander is inattentive or appears to be inattentive to duty.

It is significant that even though plant procedures initially did not explicitly address avoiding the appearance of inattentiveness, the Power Authority has confirmed that plant personnel were aware of this policy as a result of several previously issued policy-related memoranda and several meetings that had been held with the operators.

4. Existing Level of Management Surveillance is Adequate

The NRC also alleged that the Power Authority's corrective actions were insufficient because the Power Authority did not include a means for verifying attentiveness, independent of the scheduled shift. In a notably prescriptive fashion, the NRC posited that the Power Authority should have instituted periodic unscheduled visits by senior management during backshift tours.

However, the NRC apparently has not accounted for the fact that, as a matter of policy, IP3 shift management already makes unannounced visits to the control room during backshifts to observe operators with respect to a broad range of issues. These visits obviously included observation of the alertness of operators that were on duty. The Power Authority will continue this effort to assure that its licensed operators continue to be attentive to licensed duties.

The Power Authority believes that its corrective actions, and its prior existing practices, should not be discounted by the NRC simply because the Power Authority concluded that it was not necessary to require additional unannounced visits by senior management during the backshift. We believe that we are in the best position to assess whether such additional measures would enhance the performance of our licensed operators. It is our view, in light of the unannounced visits already made by shift management, that the facts in this case do not compel or warrant additional management visits. The following points support this position:

- o During the watch in question, there were at least nine unannounced and unscheduled visits to the control room by Power Authority managers. The number of management entries confirm that the Power Authority's policy regarding unscheduled visits is being implemented. There is no basis for concluding that even more unannounced management backshift tours would further enhance attentiveness.
- o There have been no prior allegations of operator inattentiveness to duties at IP3. The Power Authority is aware of corrective actions taken by other licensees which included a requirement for senior management visits to the control room, measures instituted after the licensee found evidence of a prolonged problem with sleeping on shift or other inattentiveness to duties (these situations often involved inattentiveness by shift managers necessitating additional senior management oversight). NRC licensees should be expected to structure the corrective action to fit and be responsive to the alleged discrepancy. Our operating history confirms that such a problem does not exist at IP3. Therefore, even if the Resident Inspector's observation at IP3 is accepted as accurate, a programmatic change that requires increased senior management visits to the control room is not presently warranted.

B. Promptness of Corrective Actions

The Power Authority disagrees with the NRC's conclusion that the Power Authority's actions in response to the NRC's findings were not prompt. According to the NRC, station administrative procedures were not revised to provide staff and supervisors with guidance on attentiveness until six (6) weeks after the event.

However, the question of the timing of corrective actions should be put in perspective. Several meetings with licensed personnel were held within hours of the event to reinforce the Power Authority's policy on the matter. Also, the Power Authority discussed its schedule for responsive actions with the NRC within 48 hours of the incident.

The NRC gave every indication during those discussions that the planned schedule was fully acceptable. The Power Authority took all essential actions in the first week after the incident, even though the NRC had verbally agreed that a five (5) to six (6) week schedule was reasonable (the normal operator training cycle).

The most important corrective actions were, in our view, the prompt discussions (within a week or so after the event) that management had with all watchstanders to stress the importance of attentiveness and the appearance of attentiveness. These meetings were held as watchstanders came on their first shifts following the September 14 event. Follow-up meetings were held with all licensed operators on September 14, 20, and 27. The fact that procedures were not revised to reflect this message for several weeks following the event is not of significance since the message had already been delivered, loudly and clearly. Further, the Power Authority elected to await completion of the interviews it conducted with a significant number of licensed operators, before conforming the procedures to the message already delivered. It did so because it wanted the benefit of the information provided by those interviews before modifying the procedures so that any relevant knowledge acquired could be reflected in the new procedures. We believed then, and believe today, that this was the prudent course of action. This was, we might add, in keeping with the schedule for action which we discussed with the NRC at the time and with which the NRC expressed no dissatisfaction.

It bears mention, more broadly, that the Power Authority was careful to communicate openly and frequently with the NRC regarding our proposed actions. All such actions, including administrative efforts, were taken within the time frame discussed with the NRC, notwithstanding significant emerging issues that were occurring at the plant during the outage that could have diverted our attention.

II. Conclusion

Accordingly, all of the programmatic enhancements taken by the Power Authority were, and should be considered, proactive and prompt when viewed in context. The NRC's refusal to mitigate the civil penalty, based on the position that the Power Authority should have taken more action, more promptly, does not fairly account for the facts discussed above.

As previously noted, the Power Authority promptly investigated the alleged violation. The SRO and the RO were immediately removed from licensed duties pending the completion of the investigation. The Power Authority's investigation included the prompt initiation of interviews by plant management of the SRO and the RO involved in the incident, several discussions between the Power Authority and NRC management, and discussions between Power Authority management and other licensed operators.

For all of these reasons, the Power Authority believes that its actions in response to this event were indeed timely and comprehensive when viewed in the context of what needed to be done. Accordingly, the proposed civil penalty should have been fully mitigated based on the corrective actions factor.