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James Knobel
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November 25, 1998
IPN-98-126

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

SUBJECT: Indian Point 3 Nuclear Power Plant
Docket No. 50-286
License No. DPR-64
NRC Inspection Report No. 50-286/98-81 Notice of Violation -Reply

Dear Sir:

This letter responds to your October 6, 1998 letter (Reference 1) sustaining violation 98-81-03, regarding a situation that the NRC believes was a failure to make a required report. Your letter was in response to our denial of the violation by letter dated July 15, 1998 (Reference 2). Normally NYPA would not choose to continue to debate the merits of a Level IV violation once we have received a response regarding the NRC position. In this instance, however, the NRC position on reportability represents a broad expansion of existing 10 CFR requirements as we understand them. Complying with these new reporting requirements would require a substantial expenditure of resources, with significant ramifications for the industry.

The NRC staff position, as stated in the reply (Reference 1) to our denial (Reference 2), is that "it is not acceptable to use different design inputs than those used in the licensing basis calculations in determining whether a condition is within the design basis of the plant" although it would be acceptable to use different inputs for operability determinations. The NRC position would require a demonstration that any degraded structure, system or component (SSC) credited in a licensing basis accident could perform that function while meeting all SSC design inputs. Design bases are defined in 10 CFR 50.2 (i.e., "that information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be (1) restraints derived from generally accepted "state of the art" practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated

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accident for which a structure, system, or component must meet its functional goals.") NYPA does not believe that reporting "outside design basis" is required at the system level as noted in our denial of violation 98-81-03. Even if NYPA did believe that reporting was required at the system level, NYPA does not believe the definition of design bases in 10 CFR 50.2 necessarily covers "all design inputs" which is supported by the NRC discussion of design basis in Reference 3.

NYPA continues to believe that the position in the NRC reply (Reference 1) and our prior understanding of the NRC position is not consistent with the literal wording of the rule, the historical regulatory guidance for the rule, or the stated purpose of the rule. NYPA's position is based, in part, on the following:

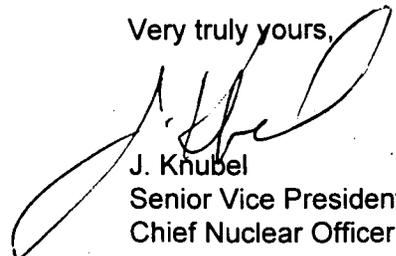
1. The reporting requirements of 10 CFR 50.72(b)(1)(ii) state that "Any event or condition during operation that....results in the nuclear power plant being:....(B) In a condition that is outside the design basis of the plant. (emphasis added)" and the requirements of 10 CFR 50.73(a)(2)(ii) state "Any event or condition....that resulted in the nuclear power plant being:....(B) In a condition that was outside the design basis of the plant. (emphasis added)" In neither case does the rule require reporting when a SSC is outside its design basis. It clearly requires reporting where the performance of the SSC was sufficiently degraded that the plant design basis would not be met.
2. Historical guidance found in the 1991 draft NUREG 1022 (Reference 4) said that a plant was to be considered outside design basis whenever a SSC "is exceeding the specific value or range of values that were chosen for controlling parameters as its reference bounds for design." The guidance in Reference 3 was issued only for comment (Reference 5). The guidance issued for use (Reference 6) did not contain this statement and indicated that reportability was determined on a plant design basis. The latest version of NUREG 1022 (Reference 7) continues to provide guidance that it is the plant design basis which is the criteria for reportability. Section 3.2.4 cites the definition of design basis (as defined in 10 CFR 50.2) as the information defining the specific functions to be performed and the specific values for controlling reference bounds for design for SSC and then goes on to cite general examples that are clearly plant design basis issues (e.g., the inability to meet the single failure criterion in ECCS, compliance with specific Appendix R requirements, the inability of an ECCS train to perform its design function for an extended period of time, and the inability of ECCS to meet the assumed flow requirements in the accident analysis). The historical guidance clearly indicates that when the design bases of SSC are not met, the ability to meet plant design bases must be evaluated based on the capability of the SSC to perform its intended function in the as found condition.

3. The essential purpose of 10 CFR 50.72, per Reference 8, is "to provide the Commission with immediate reporting of twelve types of significant events where immediate Commission action to protect the public health and safety may be required or where the Commission needs timely and accurate information to respond to heightened public concern." The current NRC position would consider any degradation of a SSC relied upon for an accident a matter of potential heightened public concern. Our understanding of the rule is that any degradation of a SSC affecting the design basis of the plant (e.g., inability to meet General Design Criteria 19 dose limits) would be a matter of potential heightened public concern. A determination of reportability based on whether a degraded SSC relied upon for an accident could continue to perform its function so that plant design bases are met would appear to be a more reasonable basis for heightened public concern and is consistent with past regulatory guidance and the literal wording of 10 CFR 50.

NYPA recognizes that the reporting requirements for "outside design basis" issues represent an area of confusion and controversy. The NRC also recognized that confusion and controversy in an advanced notice of proposed rulemaking (Reference 9) that would eliminate the reporting requirement for outside design basis. NYPA will continue to work with the NRC staff to assure that information necessary to the NRC is transmitted in as timely a manner as possible.

There are no new commitments in this letter. If you have any questions or concerns, please contact Ms. C. D. Faison at (914) 681-6306. Additionally, I would also be happy to discuss this matter personally with you.

Very truly yours,



J. Khubel
Senior Vice President and
Chief Nuclear Officer

References and cc: See next two pages

References:

1. NRC Letter "NRC Inspection Report No. 50-286/98-81 - Reply", dated October 6, 1998.
2. NYPA Letter IPN-98-081, "Reply to Notice of Violation 50-286/98-81," dated July 15, 1998.
3. SECY-91-364, "Design Document Reconstitution," dated November 12, 1991.
4. NUREG 1022, Revision 1, Draft, "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73 - Clarification of NRC Systems and Guidelines For Reporting" (September 1991).
5. Federal Register dated September 10, 1992 (Volume 57, pages 41378-41381).
6. NUREG 1022, Revision 1, Second Draft, "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73 - Second Draft For Comment" (February 1994).
7. NUREG 1022, Revision 1, "Event Reporting Systems 10 CFR 50.72 and 10 CFR 50.73" (January 1998).
8. Federal Register dated August 29, 1983 (Volume 48, page 39039) .
9. Federal Register dated July 23, 1998 (Volume 63, pages 39522 - 39526).

cc: Director, Office of Enforcement
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U.S. Nuclear Regulatory Commission
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