

EDO Principal Correspondence Control

FROM: DUE: 08/10/11

EDO CONTROL: G20110506

DOC DT: 07/03/11

FINAL REPLY:

Thomas Saporito  
Saprodani Associates

TO:

Vietti-Cook, SECY

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 11-0402

Leeds, NRR

DESC:

ROUTING:

2.206 - Nebraska Public Power District and Cooper  
Nuclear Station, et al. (EDATS: SECY-2011-0402)

Borchardt  
Weber  
Virgilio  
Ash  
Mamish  
OGC/GC  
Collins, RIV  
Burns, OGC  
Mensah, NRR  
Scott, OGC  
Bowman, OEDO

DATE: 07/11/11

ASSIGNED TO:

CONTACT:

NRR

Leeds

SPECIAL INSTRUCTIONS OR REMARKS:

*Template: SECY-017*

*E-Recs: SECY-01*

**EDATS Number:** SECY-2011-0402

**Source:** SECY

**General Information**

**Assigned To:** NRR

**OEDO Due Date:** 8/10/2011 11:00 PM

**Other Assignees:**

**SECY Due Date:** NONE

**Subject:** 2.206 - Nebraska Public Power District and Cooper Nuclear Station, et al.

**Description:**

**CC Routing:** OGC; RegionIV

**ADAMS Accession Numbers - Incoming:** NONE

**Response/Package:** NONE

**Other Information**

**Cross Reference Number:** G20110506, LTR-11-0402

**Staff Initiated:** NO

**Related Task:**

**Recurring Item:** NO

**File Routing:** EDATS

**Agency Lesson Learned:** NO

**OEDO Monthly Report Item:** NO

**Process Information**

**Action Type:** 2.206 Review

**Priority:** Medium

**Sensitivity:** None

**Signature Level:** NRR

**Urgency:** NO

**Approval Level:** No Approval Required

**OEDO Concurrence:** NO

**DCM Concurrence:** NO

**OCA Concurrence:** NO

**Special Instructions:**

**Document Information**

**Originator Name:** Thomas Saporito

**Date of Incoming:** 7/3/2011

**Originating Organization:** Saprodani Associates

**Document Received by SECY Date:** 7/11/2011

**Addressee:** Annette Vietti-Cook, SECY

**Date Response Requested by Originator:** 8/10/2011

**Incoming Task Received:** 2.206

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Jul 11, 2011 10:24*

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**PAPER NUMBER:** LTR-11-0402

**LOGGING DATE:** 07/11/2011

**ACTION OFFICE:** EDO

**AUTHOR:** Thomas Saporito

**AFFILIATION:** FL

**ADDRESSEE:** Annette Vietti-Cook

**SUBJECT:** Enforcement petition -Cooper nuclear plant

**ACTION:** Appropriate

**DISTRIBUTION:** Chairman, Comrs, OGC

**LETTER DATE:** 07/03/2011

**ACKNOWLEDGED** No

**SPECIAL HANDLING:** 2.206 petition

**NOTES:**

**FILE LOCATION:** ADAMS

**DATE DUE:**

**DATE SIGNED:**

EDO --G20110506

**UNITED STATES NUCLEAR REGULATORY COMMISSION  
BEFORE THE EXECUTIVE DIRECTOR FOR OPERATIONS**

*In the Matter of:*

**SAPRODANI ASSOCIATES, and  
THOMAS SAPORITO**

**DATE: 03 JULY 2011**

**Petitioner,**

**v.**

**NEBRASKA PUBLIC POWER DISTRICT,  
COOPER NUCLEAR STATION,  
PAT POPE-PRESIDENT CEO, LARRY  
LINSTROM-CHAIRMAN BOARD OF  
DIRECTORS, RONALD LARSEN-FIRST  
VICE CHAIRMAN BOARD OF DIRECTORS,  
GARY THOMPSON-SECOND VICE  
CHAIRMAN BOARD OF DIRECTORS,  
WAYNE BOYD-DIRECTOR BOARD OF  
DIRECTORS, JERRY CHLOPEK-DIRECTOR  
BOARD OF DIRECTORS, VIRGIL  
FROEHLICH-DIRECTOR BOARD OF  
DIRECTORS, THOMAS HOFF-DIRECTOR  
BOARD OF DIRECTORS, KEN KUNZE-  
DIRECTOR BOARD OF DIRECTORS,  
DENNIS RASMUSSEN-DIRECTOR BOARD  
OF DIRECTORS, and EDWARD SCHROCK-  
DIRECTOR BOARD OF DIRECTORS**

**Licensee.**

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**PETITION UNDER 10 C.F.R. §2.206 SEEKING ENFORCEMENT  
ACTION AGAINST NEBRASKA PUBLIC POWER DISTRICT  
AND COOPER NUCLEAR STATION ET AL.**

NOW COMES, Saprodani Associates, by and through and with, Thomas Saporito, Senior Consulting Associate (hereinafter "Petitioner") and submits a "*Petition Under 10 C.F.R. §2.206 Seeking Enforcement Action Against Nebraska Public Power District and Cooper Nuclear Station et al.*" (Petition). For the reasons stated below, the U.S. Nuclear Regulatory Commission

(NRC) should grant the Petition as a matter of law:

### **NRC HAS JURISDICTION AND AUTHORITY TO GRANT PETITION**

The NRC is the government agency charged by the United States Congress to protect public health and safety and the environment related to operation of commercial nuclear reactors in the United States of America (USA). Congress charged the NRC with this grave responsibility in creation of the agency through passing the Energy Reorganization Act of 1974 (ERA). In the instant action, the above-captioned entities are collectively and singularly a “licensee” of the NRC and subject to NRC regulations and authority under 10 C.F.R. §50 and under other NRC regulations and authority in the operation of one or more nuclear reactors. Thus, through Congressional action in creation of the agency; and the fact that the named-actionable parties identified above by Petitioner are collectively and singularly a licensee of the NRC, the agency has jurisdiction and authority to grant the Petition.

### **STANDARD OF REVIEW**

#### **A. Criteria for Reviewing Petitions Under 10 C.F.R. §2.206**

The staff will review a petition under the requirements of 10 C.F.R. §2.206 if the request meets all of the following criteria:

- The petition contains a request for enforcement-related action such as issuing an order modifying, suspending, or revoking a license, issuing a notice of violation, with or without a proposed civil penalty, etc.
- The facts that constitute the basis for taking the particular action are specified. The petitioner must provide some element of support beyond the bare assertion. The supporting facts must be credible and sufficient to warrant further inquiry.
- There is no NRC proceeding available in which the petitioner is or could be a party and through which petitioner's concerns could be addressed. If there is a proceeding available, for example, if a petitioner raises an issue that he or she has raised or could raise in an ongoing licensing proceeding, the staff will inform the petitioner of the ongoing proceeding and will not treat the request under 10 C.F.R. §2.206.

#### **B. Criteria for Rejecting Petitions Under 10 C.F.R. §2.206**

- The incoming correspondence does not ask for an enforcement-related action or fails to provide sufficient facts to support the petition but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns. The request cannot be simply a general statement of opposition to nuclear power or a general assertion without supporting facts (e.g., the quality assurance at the facility is inadequate). These assertions will be treated as routine correspondence or as allegations that will be referred for

appropriate action in accordance with MD 8.8, "Management of Allegations".

- The petitioner raises issues that have already been the subject of NRC staff review and evaluation either on that facility, other similar facilities, or on a generic basis, for which a resolution has been achieved, the issues have been resolved, and the resolution is applicable to the facility in question. This would include requests to reconsider or reopen a previous enforcement action (including a decision not to initiate an enforcement action) or a director's decision. These requests will not be treated as a 2.206 petition unless they present significant new information.
- The request is to deny a license application or amendment. This type of request should initially be addressed in the context of the relevant licensing action, not under 10 C.F.R. 2.206.
- The request addresses deficiencies within existing NRC rules. This type of request should be addressed as a petition for rulemaking.

*See, Volume 8, Licensee Oversight Programs, Review Process for 10 C.F.R. Petitions, Handbook 8.11 Part III.*

**REQUEST FOR ENFORCEMENT-RELATED ACTION TO MODIFY,  
SUSPEND, OR REVOKE A LICENSE AND ISSUE A NOTICE OF  
VIOLATION WITH A PROPOSED CIVIL PENALTY**

**A. Request for Enforcement-Related Action**

Petitioner respectfully requests that the NRC take escalated enforcement action against the above-captioned licensee(s) and suspend, or revoke the NRC license(s) granted to the licensee for operation of the Cooper Nuclear Station in the United States; and that the NRC issue a notice of violation with a proposed civil penalty against the collectively named and each singularly named licensee in this matter - in the total amount of \$1,000,000.00. In addition, Petitioner requests that the NRC issue a confirmatory order to the licensee requiring the licensee to bring the Cooper Nuclear Station to a "cold-shutdown" mode of operation until such time as (1) the flood-waters subside to an appreciable lower level or sea-level; (2) the licensee upgrades its flood-protection plan; (3) the licensee repairs and enhances its current flood-protection berms; and (4) the licensee upgrades its station blackout procedures to meet a challenging extended loss of off-site power due to flood-waters and other natural disasters or terrorist attacks.

**B. Facts That Constitute the Basis for Taking the Requested Enforcement-Related Action Requested by Petitioner**

On June 19, 2011, the licensee notified the U.S. Nuclear Regulatory Commission (NRC) of an Unusual Event Declared at the Cooper Nuclear Station – in connection with the Missouri River flooding its banks. The NRC documented the licensee's notification as Event Number:

46969 indicating an Event Time of 04:02 CDT; and a Notification Time of 05:27 ET. During the context of the Unusual Event, the licensee maintain the nuclear reactor power at 100%. The licensee further communicated to the NRC that, *"The Missouri River is expected to crest at 899.5 feet within the next couple of days. It is expected that the elevation of the Missouri River will remain above 899 feet for most of the summer..."*

Petitioner contends here that (1) the licensee's installed flood-protection measures and systems and barriers at the Cooper Nuclear Station are not sufficient to adequately protect the nuclear reactor from a full-meltdown scenario like that currently unfolding in Japan; (2) the licensee's station blackout procedures are not sufficient to meet a challenging extended loss of off-site power due to flood-waters and other natural disasters or terrorist attacks; (3) the licensee failed to timely notify the NRC of the Declaration of an Unusual Event within a one-hour period; and (4) the license continues to jeopardize public health and safety by failing to bring the Cooper Nuclear Station to a *"cold-shutdown"* mode of operation.

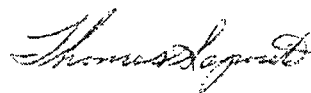
**C. There Is No NRC Proceeding Available in Which the Petitioner is or Could be a Party and Through Which Petitioner's Concerns Could be Addressed**

Petitioner avers here that there is no NRC proceeding available in which the Petitioner is or could be a party and through which Petitioner's concerns could be addressed.

**CONCLUSION**

FOR ALL THE ABOVE STATED REASONS, and because Petitioner has amply satisfied all the requirements under 10 C.F.R. §2.206 for consideration of the Petition by the NRC Petition Review Board (PRB), the NRC should grant Petitioner's requests made in the instant Petition as a matter of law.

Respectfully submitted,



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Thomas Saporito  
Senior Consulting Associate  
Saprodani Associates  
Post Office Box 8413  
Jupiter, Florida 33468-8413  
Voice: (561) 972-8363

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 3rd day of July, 2011, a copy of foregoing document was provided to those identified below by means shown:

Hon. William Borchardt  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
{Sent via U.S. Mail and electronic mail}

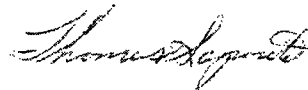
Melanie Checkle, Allegations Coordinator  
U.S. Nuclear Regulatory Commission  
Region II Headquarters  
Atlanta, Georgia 30303  
{Sent via electronic mail}

Hon. Gregory B. Jaczko, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
{Sent via electronic mail}

Oscar DeMiranda  
Senior Allegations Coordinator  
U.S. Nuclear Regulatory Commission  
Region II Headquarters  
Atlanta, Georgia 30303  
{Sent via electronic mail}

Carolyn Evans, Dir. of Enforcement  
U.S. Nuclear Regulatory Commission  
Region II Headquarters  
Atlanta, Georgia 30303  
{Sent via electronic mail}

Local and National Media Sources



By: \_\_\_\_\_  
Thomas Saporito  
Senior Consulting Associate