

July 1, 2014

The Honorable Jeanne Kirkton
Missouri House of Representatives
659 Tuxedo Blvd
St. Louis, MO 63119

Dear Ms. Kirkton:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of May 28, 2013, in which you followed up on a request to me from Representative Oxford dated November 1, 2012, for the NRC staff to take additional action on the petition filed by Mr. Lawrence Criscione on August 15, 2012. The staff informed Mr. Criscione by letter dated September 20, 2012, that his petition was not accepted because it failed to provide new information that the staff had not already considered in his previous petitions. In Representative Oxford's letter, she requested the staff's assessment of certain questions about the inadvertent shutdown event of the Callaway Plant on October 21, 2003.

On October 21, 2003, during a plant shutdown, control room operators at Callaway did not effectively control core reactivity during low-power operations. As a result, the reactor became subcritical. The NRC concluded that operators were not aware of the shutdown. While the reactor was in a safe condition throughout the duration of the event, the operator performance weaknesses were not initially documented in the licensee's corrective action program.

The responsibility of the NRC under the Atomic Energy Act of 1954, as amended, is "to provide for the common defense and security and to protect the health and safety of the public." The NRC takes its safety responsibility seriously, and we welcome opportunities to discuss nuclear safety issues in an open and collaborative manner. As both a member of the NRC staff and a member of the public, Mr. Criscione has discussed the Callaway Plant inadvertent shutdown event of October 21, 2003, with the NRC staff on numerous occasions. He has submitted four petitions to the staff regarding the event, by letters dated April 27, April 30, and September 17, 2010, and August 15, 2012¹, under Title 10 of the *Code of Federal Regulations* (10 CFR), 2.206, "Requests for actions under this subpart."

In each instance, the NRC staff has thoroughly evaluated Mr. Criscione's concerns. The staff's responses to Mr. Criscione are documented in letters dated May 27, 2010, January 19, and January 20, 2011, and September 20, 2012.²

Mr. Criscione's petition dated August 15, 2012, was reviewed and handled in accordance with NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206

¹ Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML101200401, ML101230100, ML103280306, and ML12237A172, respectively.

² ADAMS Accession Nos. ML101380320, ML110140104, ML103410070, and ML12257A165, respectively.

Petitions.” The NRC staff follows an established process for reviewing petitions to ensure that (1) each petition is fully and objectively evaluated, (2) the provisions of 10 CFR 2.206 are not abused, and (3) the staff meets its obligations under 10 CFR 2.206. Mr. Criscione’s petition was not accepted because he provided no significant new information beyond what he had previously provided in his September 17, 2010, petition. Since the NRC has already reviewed, evaluated, and resolved issues that Mr. Criscione has raised for the Callaway Plant, the staff did not accept his August 15, 2012, petition.

The specific efforts of the NRC staff to address Mr. Criscione’s concerns are documented in the staff’s response dated September 20, 2012. The staff has expended considerable resources to substantiate that the inadvertent shutdown event had no safety significance or consequences. These resources include investigations into claims of false testimony and falsification of records not available to the public because of the potential for enforcement, criminal prosecution, or release of personal information. Mr. Criscione chose to file his petitions as a member of the public. Therefore, only information available to the public was used to respond to his requests.

Representative Oxford discussed the Callaway Plant inadvertent shutdown event with members of the NRC Region IV staff on November 8, 2011, as documented in Mr. Elmo Collins’ letter to her dated April 20, 2012³. As to her letter of November 1, 2012, the NRC staff did not identify any new information that it had not previously considered. In her letter, she asked five specific questions of the NRC staff, which you subsequently repeated in your letter:

1. Their assessment as to whether or not the information contained in “CAR 200702606, Action 5” is accurate.
2. Their assessment as to when the operators at Callaway Plant first recognized the reactor was no longer critical on October 21, 2003.
3. Their assessment as to why the operators allowed the reactor to operate in the source range for over 45 minutes with its control rods still at their critical rod heights and with no Source Range Nuclear Instruments energized.
4. Their assessment as to why the Reactor Operator was able to spend 30 minutes raising letdown flow from 75 to 120 gpm yet could not spend 10 minutes to insert the control banks.
5. Their assessment as to why NRC licensed reactor operators were available to remove an intake pump from service and to place cooling tower blowdown in service yet were not available to insert the control banks.

The NRC staff addressed Question 1 in its letter to Mr. Criscione dated September 20, 2012. In our response to this question, the NRC stated that the staff did not identify any evidence that would indicate misleading information was provided during our investigation. The staff addressed Question 2 in Mr. Collins’ letter to Representative Oxford dated November 17, 2011.⁴ For this response, the NRC staff concluded that reactor operators

³ADAMS Accession No. ML12167A508

⁴ADAMS Accession No. ML113220478, specifically response 6

were likely to have been alerted to the fact that reactor power had dropped into the source range at 11:34 am. With regard to Questions 3, 4, and 5, the staff has concluded (e.g., Mr. Collins' letter to Representative Oxford dated November 17, 2011, specifically his responses to Questions 4 and 5), that the operators were not fully cognizant of the operational condition of the reactor and that operator performance in not effectively controlling reactivity on October 21, 2003, was attributable, in part, to weakness with management oversight, training, and procedural guidance.

As stated in Mr. Collins' letter dated April 20, 2012, the scope of the initial investigation that the NRC conducted from September 28, 2007, to May 9, 2008, was to determine if Callaway Plant control room personnel failed to document a temperature transient during the inadvertent shutdown event of October 21, 2003. The NRC did not investigate if the operations manager was in the control room during the plant shutdown since it was not relevant to the scope of the investigation. The NRC has no regulatory concern regarding the presence or absence of the operations manager in the control room during the shutdown because there is no regulatory requirement that he or she be present during specific evolutions, including low power operations or shutdowns. The NRC requires a sufficient number of operators and skill sets in the control room to ensure safe operation of the facility. As a result, the operations manager's presence is not needed in the control room. With respect to Mr. Criscione's question about the sworn testimony of the shift manager at the Callaway Plant, the NRC staff has no evidence to suggest that he provided false testimony when investigators interviewed him in 2008 about the October 21, 2003, plant shutdown. The shift manager's testimony was corroborated not only by the testimony of other reactor personnel in the control room, but by other documentary evidence.

The fact that the circumstances involving operator performance weaknesses were not documented in a corrective action document in 2003 is not in dispute. However, the staff has concluded that the corrective actions the licensee has taken in the intervening years have been responsive to addressing this and other performance deficiencies related to the October 2003 plant shutdown. These actions included improving plant low power operations procedures.

You also requested that the NRC staff review Mr. Criscione's article in the *International Nuclear Safety Journal*, Volume 2, Number 1 (2013). The staff reviewed the article after its publication last year and concluded that it provided no new information beyond that already provided by Mr. Criscione or the licensee, and evaluated by the staff, as documented in the correspondence noted above.

As further stated in Mr. Collins' letter dated April 20, 2012, Mr. Criscione's questions are important and we have carefully considered the issues he has raised. The NRC has provided him with answers to his questions multiple times through correspondence and meetings. Mr. Criscione disagrees with some of our answers, but the NRC has concluded, based on its independent inspection and investigation, that the October 21, 2003, Callaway Plant shutdown did not endanger public health and safety. Furthermore, there has been no evidence obtained during the inspection or investigation that would indicate that there was wrongdoing, such as a cover-up, concerning that shutdown. Therefore, this matter is closed and in the absence of new information, there is no regulatory or safety basis for the NRC to expend further resources related to the October 21, 2003, Callaway Plant shutdown.

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All of the correspondence referenced above is publicly available. If you have additional questions, please feel free to contact me or Amy Powell, Acting Director of the Office of Congressional Affairs, at 301-415-1776. I appreciate hearing your views and thank you for your interest in this matter.

Sincerely,

/RA/

Allison M. Macfarlane

cc: The Honorable Mike Bernskoetter