



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
101 MARIETTA STREET, N.W., SUITE 2900  
ATLANTA, GEORGIA 30323-0199

MAR 16 1994

Docket Nos. 50-269, 50-270, 50-287  
50-369, 50-370, 50-413  
and 50-414

License Nos. DPR-38, DPR-47, DPR-55  
NPF-9, NPF-17, NPF-35  
and NPF-52

EA 93-311

Duke Power Company  
ATTN: Mr. Mike Tuckman, Senior Vice President  
Nuclear Generation Department  
Post Office Box 1007  
Charlotte, North Carolina 28291

Gentlemen:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -  
\$75,000 (NRC INSPECTION REPORT NOS. 50-269, 270 AND 287/93-32, 50-369  
AND 370/93-31, AND 50-413 AND 414/93-35)

This refers to the Nuclear Regulatory Commission (NRC) inspection conducted by Ms. Orysia M. Masnyk on December 13 through December 17, 1993. This inspection included a review of your Safeguards Information Program and your reported failures to protect Safeguards Information (SGI) related to your Catawba, McGuire and Oconee facilities. As a result of this inspection, violations of NRC regulatory requirements were identified. The report documenting the NRC inspection was sent to you by letter dated January 6, 1994. An enforcement conference was conducted in the NRC Region II office on January 13, 1994 to discuss the violations, their cause, and your corrective actions to preclude recurrence.

Violation A in Part I of the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) involved your failure to provide the level of protection required in 10 CFR 73.21 in the Computer Aided Design System (CADS) work process. This resulted in archiving SGI on unprotected magnetic tapes and loading SGI on a computer network without a self-contained SGI protection program for a number of years. It is noted that a Duke Power Company employee identified this problem; however, the NRC is concerned about the length of time SGI was available on an uncontrolled management information system.

You had earlier opportunities to identify the vulnerability and received earlier guidance from the NRC on the need to provide adequate protection. Guidance on the control of SGI stored on data processing systems was provided in NUREG-0794, "Protection of Unclassified SGI." Information Notice 88-49, titled "Marking, Handling, Control, Storage and Destruction of Safeguards Information," issued on July 18, 1988, described an event similar to the one cited in Violation A. In the case described in the Information Notice, SGI was

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not adequately protected due to incorporation of SGI into an unprotected and uncontrolled computerized network information management system.

The NRC is also concerned that, although physical storage of magnetic tapes was audited throughout the time frame when SGI was stored on the CADS, the processing methods used for these documents were neither reviewed nor audited by management. The failure to control the processing of this SGI allowed significant information about the security systems at all three Duke Power Company sites to be available to individuals who may not have been authorized access to SGI. Although this event was mitigated by the fact that the information management system technology involved made the magnetic storage tapes difficult to access, the NRC expects licensee management to take appropriate action to ensure the protection of SGI, including methods to confirm that electronic transfer of SGI is controlled in accordance with established procedures. During the enforcement conference you indicated that the CADS was a unique information management system; however, the NRC notes this does not negate the need to be sensitive to the control of SGI.

Violation B in Part I of the Notice involves the failure to protect significant SGI on three occasions. On August 16, 1993, at the Catawba Nuclear Station, significant SGI was found in a desk that had been transferred to the site from the General Office. On November 22, 1993, a list of combinations for all SGI containers for the McGuire Nuclear Station was found outside of the protected area. This list had apparently been unsecured since November 19, 1993. On December 6, 1993, a safeguards container which contained significant SGI was found unsecured outside of the protected area at the Oconee Nuclear Station. This container had apparently remained opened for approximately one month.

The root cause of all three examples in Violation I.B was failure to adhere to procedures for the control of SGI. The NRC is particularly concerned about these examples because of the significance of the SGI that could have been compromised and the fact that unprotected SGI was located outside of the protected area. Individuals handling SGI should be particularly sensitive to the significance and vulnerability of SGI and additional controls should be implemented by management when significant SGI is handled in areas that can be accessed by individuals who do not have security clearances. The NRC is also concerned that these examples were addressed by Duke Power Company as isolated incidents, an approach that prevented the licensee from taking a sufficiently broad perspective of the problem and applying the corrective actions to all Duke Power Company sites. Therefore, in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy) 10 CFR Part 2, Appendix C, Violations I.A and I.B have each been categorized at Severity Level III.

The staff recognizes that immediate corrective action for the violations was prompt. The corrective action for Violation I.A included purging the unprotected data base of SGI, reviewing work processes of groups handling computerized SGI, and conducting an audit of the use of SGI at your sites. The corrective action for Violation I.B included securing the affected SGI, revising methods of control of SGI at specific locations, and steps to improve employee awareness of management's expectations regarding the protection of SGI. However, the corrective actions for Violation I.B only addressed the

immediate problem, e.g., relocking the safe and instituting a checkoff sheet for that safe, but did not include the institution of procedures or controls that would prevent a similar occurrence at another location at the same site or other sites. The staff also recognizes that during your audit of the SGI program, you identified additional potential violations of NRC regulatory requirements. As discussed during the enforcement conference, the NRC understands that you will be implementing corrective actions for these findings, and it will review your actions to correct these issues during future inspections.

To emphasize the importance of ensuring full management control of SGI, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of \$75,000. The base value of a civil penalty for a Severity Level III violation is \$50,000. A civil penalty of \$50,000 is being proposed for the Severity Level III violation described in Violation I.A and a civil penalty of \$25,000 is being proposed for the Severity Level III violation described in Violation I.B.

The escalation and mitigation factors in the Enforcement Policy were considered for Violation I.A. The base civil penalty amount was mitigated by 50 percent due to your identification of the violation and an additional 50 percent due to the extensive corrective actions to identify and promptly secure all affected safeguards materials. While the current SALP 1 rating in security might have justified mitigation for licensee performance, this was offset by less than adequate performance in other areas as evidenced by a number of escalated enforcement actions against all three sites including a failure to properly search packages entering the protected area at the McGuire site (Severity Level III, EA 93-013). The civil penalty was increased by 100 percent for duration because of the length of time the violation existed, increasing the opportunities for unauthorized access to SGI, and because NUREG-0794 and Information Notice 88-49 were issued during the fifteen years that this problem existed. The situation existed between 1978 and 1993 and clearly should have been identified since the CADS was accessed on a routine basis during this time period by licensee personnel, some of whom had sufficient training to be expected to recognize the inappropriate handling and control of SGI. Therefore, on balance, the application of the escalation and mitigation factors results in a civil penalty of the base amount for Violation I.A.

The escalation and mitigation factors in the Enforcement Policy were considered for Violation I.B. The base amount of the civil penalty was mitigated by 50 percent because you identified the violation. Neither escalation nor mitigation was applied for corrective action because your immediate corrective action was offset by the failure to develop comprehensive long term actions to preclude recurrence at all Duke Power sites, as described above. Neither escalation nor mitigation was warranted for licensee performance for the same reasons stated above for Violation I.A. The other adjustment factors in the Enforcement Policy were considered and no further adjustment to the base civil penalty was appropriate. Therefore, based on the above, the base civil penalty has been mitigated by 50 percent for Violation I.B.

In addition to the Severity Level III violations, Part II of the Notice contains three Severity Level IV violations which include other examples where

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you identified unlocked safeguards storage containers and improper handling of SGI. Normally, the occurrence of several similar events might be categorized in the aggregate as a Severity Level III violation. However, due to the fact that the information at issue was not significant, they are being categorized at Severity Level IV. Nonetheless, these violations represent additional failures to adequately protect and control SGI and, if similar future violations are not prevented by appropriate corrective actions, they may result in escalated enforcement action.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Should you have any questions concerning this letter, please contact us.

Sincerely,



Stewart D. Ebnetter  
Regional Administrator

Enclosure:  
Notice of Violation and Proposed  
Imposition of Civil Penalty

cc w/encl:  
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(cc w/encl cont'd - See next page)

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