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July 24, 1996

50-410

EA 96-116

Mr. B. Ralph Sylvia
Executive Vice President
Generation Business Group
Niagara Mohawk Power Corporation
Nine Mile Point Nuclear Station
Post Office Box 63
Lycoming, New York 13093

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$80,000 (Administrative Law Judge's Recommended Decision and
Order - 95-ERA-005)

Dear Mr. Sylvia:

This letter refers to the U.S. Department of Labor (DOL) Administrative Law Judge's (ALJ) Recommended Decision and Order, dated March 15, 1996 (95-ERA-005), which found that a former employee of Nine Mile Point (NMP) was discriminated against by Niagara Mohawk Power Corporation (NMPC) for raising safety concerns at the NMP facility. Based on the ALJ's Recommended Decision, a violation of the Commission's regulations set forth in 10 CFR 50.7, "Employee protection," has occurred. Under 10 CFR 50.7, discrimination by a Commission licensee against an employee or contractor employee for engaging in protected activities is prohibited.

On May 10, 1996, a transcribed predecisional enforcement conference was held with you and members of your staff, to discuss this matter, the apparent violation, its cause and your corrective actions. In accordance with current policy, the NRC intends to base its enforcement action on the ALJ's decision, concluding that a violation of NRC requirements occurred in this case. We note that at the enforcement conference you denied that you discriminated against the individual, and have indicated that you intend to appeal the ALJ's decision if it is affirmed by the Secretary of Labor. The violation of 10 CFR 50.7 is described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty. The circumstances surrounding the violation are described in detail in the ALJ's Recommended Decision and Order. Specifically, according to the ALJ decision, the employee had raised concerns regarding compliance with the licensing basis in that the emergency method analyzed in the licensing basis was not employed in any operating or emergency operating procedure for the residual heat removal (RHR) system. Subsequently, the engineer's employment with NMP was terminated.

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Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. Protected activities are described in Section 211 of the Energy Reorganization Act of 1974, as amended, and, in general, are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy

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Reorganization Act. Protected activities include, but are not limited to, an employee providing the Commission or his or her employer information about alleged violations of either the Atomic Energy Act or the Energy Reorganization Act. Since discriminatory actions in this case involved the then-Manager of Engineering for Unit 2, this violation has been categorized at Severity Level II in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. Such violations are significant, because they could have a chilling effect on other licensee or contractor personnel and deter them from identifying and/or raising safety concerns.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$80,000 is considered for a Severity Level II violation. The NRC considered whether credit was warranted for Identification and for Corrective Action in accordance with the civil penalty process in Section VI.B.2 of the Enforcement Policy. Because the violation in this case was identified by the DOL, credit is not warranted for identification. Credit is warranted for your corrective actions, because your actions were considered both prompt and comprehensive. These actions, which were discussed during your presentation at the conference, include but are not limited to the following: (1) reemphasizing to management the rights and responsibilities of employees to raise safety issues; (2) reinforcing, at all levels of management, the value of reporting issues to improve performance; (3) reemphasizing the availability of the Quality First Program, and (4) offering comparable reemployment to the individual on May 3, 1996.

Therefore, to emphasize the importance of continuously assuring a work environment that is free of any harassment, intimidation, or discrimination against those who raise safety concerns, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$80,000 for this Severity Level II violation in accordance with the civil penalty assessment process set forth in the Enforcement Policy.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Since the NRC enforcement action in this case is being proposed prior to a final Secretary of Labor (SOL) decision on this matter, you may delay payment of the proposed civil penalty, as well as certain portions of the response, as described in the enclosed Notice, until 30 days after the SOL decision, at which time you also may supplement your earlier responses. In the response required by this letter and Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence of violations of this type, and any actions that you have taken or planned to minimize any chilling effect arising from this incident that might inhibit or prevent your employees from raising safety concerns either to your own organization or to the NRC. 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.



Niagara Mohawk Power
Corporation

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

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.

Sincerely,

ORIGINAL SIGNED BY:

William F. Kane for

Thomas T. Martin
Regional Administrator

Docket No. 50-410
License No. NPF-69

Enclosure:
Notice of Violation and Proposed
Imposition of Civil Penalty

cc w/enclosure:

R. Abbott, Vice President & General Manager - Nuclear
C. Terry, Vice President-Nuclear Engineering
M. McCormick, Vice President - Safety Assessment and Support
N. Rademacher, Unit 1 Plant Manager
J. Conway, Unit 2 Plant Manager
D. Wolniak, Manager, Licensing
J. Warden, New York Consumer Protection Branch
G. Wilson, Senior Attorney
M. Wetterhahn, Winston and Strawn
Director, Electric Division, Department of Public Service, State of New York
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law
J. Vinqvist, MATS, Inc.
P. Eddy, Power Division, Department of Public Service, State of New York
State of New York SLO Designee



Niagara Mohawk Power Corporation

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