

March 28, 1997

Mr. B. Ralph Sylvia
Executive Vice President Generation Business
Group and Chief Nuclear Officer
Niagara Mohawk Power Corporation
Nuclear Learning Center
450 Lake Road
Oswego, NY 13126

**SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR NIAGARA MOHAWK
POWER CORPORATION REGARDING NINE MILE POINT UNIT 2
(NOED No. 97-1-001)**

Dear Mr. Sylvia:

By letter dated March 27, 1997, you requested that the U.S. Nuclear Regulatory Commission (NRC) exercise discretion not to enforce compliance with the actions required in Technical Specification (TS) 3.0.3. That letter documented information previously discussed with the NRC in a telephone conversation on March 27, 1997 at 3:00 p.m. You stated that on March 27, 1997 at 3:30 p.m., Nine Mile Point Unit 2 would not be in compliance with TS 3.0.3 which would require placing the plant in a Cold Shutdown condition within 24 hours by 3:30 p.m. on March 28, 1997. You requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.C. of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, and be effective for a 48 hour period beginning on 3:50 p.m. March 27, 1997 and ending 3:50 p.m. March 29, 1997.

You stated that the Nine Mile Point Unit 2 facility was complying with the Required Action 3.3.3.b of Table 3.3.3-1 as a result of a failure to perform response time testing on the drywell pressure and reactor vessel water level channels of the High Pressure Core Spray (HPCS) actuation instrumentation. You also stated that inappropriate wording in a previous TS amendment application that changed Required Action 36 of Table 3.3.3-1 has resulted in the Action Statement not addressing the present plant condition of more than one inoperable channel per trip function in the HPCS instrumentation, thus invoking TS 3.0.3, requiring the plant to shut down in 24 hours. As a result, at 3:30 p.m. on March 26, 1997, Nine Mile Point Unit 2 entered 3.0.3. However, in accordance with TS 4.0.3, entry into the TS 3.0.3 actions were delayed 24 hours to perform the surveillance tests. During this period, testing was not able to be fully completed in the allowed time and additional time was necessary.

The staff has reviewed your request to grant enforcement discretion for an additional 48 hours from 3:50 p.m. on March 27, 1997 to 3:50 p.m. on March 29, 1997 to complete response time testing for the affected instrumentation without the need to challenge plant equipment by taking the plant to cold shutdown. Justification for discretion was based on the information provided during the telephone conference which included:

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- The condition of the HPCS being inoperable has already been evaluated for the operation of Nine Mile Point Unit 2 and is reflected in TS 3.5.1 which permits up to 14 days to restore the system to operable. Therefore, not enforcing TS 3.0.3 for an additional 48 hours in order to complete the necessary testing of the instrumentation does not result in a condition outside that already evaluated and addressed by the TS.
- The requirement to shutdown the unit results from inappropriate wording in the phrasing of the TS Action Statement for this condition and does not represent a potential detriment to the health and safety of the public.
- Niagara Mohawk will correct the inappropriate wording with a TS amendment request submitted on a non-emergency basis by June 30, 1997.

On the basis of the staff's evaluation of your request, the staff concluded that a NOED is warranted because we are clearly satisfied that this action involves minimal or no safety impact and has no adverse radiological impact on public health and safety. Therefore, we will exercise our discretion not to enforce compliance with the requirements of TS 3.0.3 from 3:50 p.m. March 27, 1997 to 3:50 p.m. March 29, 1997 for the purpose of completing testing on HPCS drywell pressure and reactor water level actuation instrumentation.

On March 28, 1997, the NRC staff was informed by Niagara Mohawk Power Corporation that response time testing was successfully completed and the HPCS was operable as of 2:38 p.m.

However, as stated in the Enforcement Policy, action will normally be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

Sincerely,

Original Signed by:
Larry E. Nicholson for
Charles W. Hehl, Director
Division of Reactor Projects

Docket No. 50-410
NOED No. 97-1-001



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cc:

R. Abbott, Vice President & General Manager - Nuclear
C. Terry, Vice President- Safety Assessment and Support
M. McCormick, Vice President - Nuclear Engineering
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
J. Rettberg, New York State Electric and Gas Corporation
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
F. Valentino, President, New York State Energy Research
and Development Authority
J. Spath, Program Director, New York State Energy Research
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