



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

January 30, 1997

MEMORANDUM TO: *[Signature]* Luis A. Reyes, Regional Administrator

FROM: *[Signature]* Ellis W. Merschoff, Acting Deputy Regional Administrator  
Richard V. Crlenjak, Acting Deputy Director  
Division of Reactor Projects *[Signature]*  
Richard S. Baldwin, Reactor Engineer *[Signature]*  
Operator Licensing and Human Performance Branch  
Division of Reactor Safety

SUBJECT: DIFFERING PROFESSIONAL VIEW REGARDING ST. LUCIE  
NUCLEAR INSTRUMENTATION

On January 8, 1997, you appointed me Chairman of an Ad Hoc Review Panel to review a Differing Professional View submitted by Mr. Curtis Rapp. We have completed our review of this matter and have attached the report documenting our efforts.

In summary, the panel found that while the report was correct as written, Mr. Rapp's concerns were not addressed consistent with Regional expectations as defined in Regional Office Instruction 2210. Our specific conclusions and recommendations are attached.

Attachments:

1. Differing Professional View Concerning St. Lucie Nuclear Instrumentation
2. Inspection Report 50-335/96-22, 50-389/96-22
3. Memo dtd January 10, 1997, Evans to Merschoff
4. Notice of Violation and Proposed Imposition of Civil Penalties EA 96-458, 464, 457
5. Statement of Mr. Caudle Julian

## DIFFERING PROFESSIONAL VIEW CONCERNING ST. LUCIE NUCLEAR INSTRUMENTATION

### I. Issue

On January 6, 1997, Mr. Curtis W. Rapp provided, in a memorandum to Caudle A. Julian, (Attachment 1) concerns regarding the accuracy of NRC Special Inspection Report 50-335/96-22, 50-389/96-22. Specifically, he stated that he told Mr. Julian he would not concur on the report as written because the conclusion concerning Nuclear Instrumentation indications was not technically correct. The report was subsequently issued, without Mr. Rapp's concurrence and without the issue of his disagreement being resolved.

The Differing Professional View (DPV) contains two issues. One dealing with the technical accuracy of the inspection report, the second dealing with the process that resulted in the issuance of an inspection report without resolving an inspector's comments.

Both of these issues were addressed by the Ad Hoc Panel. A third issue in Mr. Rapp's memorandum of January 6, 1997 alleges unprofessional conduct on the part of Mr. Caudle Julian. This aspect is being handled separately in accordance with Regional Office Instruction No. 1801.

### II. Approach

January 6, 1997 - Memorandum from C. Rapp received

January 8, 1997 - Regional Administrator appoints Ad Hoc Review Panel

January 9, 1997 - Ad Hoc Review Panel meets, collects germane information, interviews C. Rapp, J. York and M. Miller

January 23, 1997 - Ad Hoc Review Panel meets, interviews C. Julian, C. Christensen, C. Casto, and P. Fredrickson

January 30, 1997 - Ad Hoc Panel meets to develop final conclusions and recommendations.

### III. Findings

#### A. Technical Accuracy of Inspection Report

Mr. Rapp's concern involves the use of the words "the first indications" in the last paragraph on Page 10 of NRC Special Inspection Report 50-335/96-22, 50-389/96-22 (Attachment 2). This paragraph states:

"The inspector further concluded that a failure to resolve the first indications of channel disagreement in a formal, technically defensible way (i.e., testing performed

Attachment.

specifically with the goal of establishing a basis for the channel-to-channel differences) delayed the identification."

Mr. Rapp agrees that the licensee should have identified the problem sooner, and would substitute the word "earlier" for the phrase "the first" as he feels the first indications, which occurred at less than 5 percent power, were not sufficiently unambiguous to conclude action should be taken. Mr. Rapp's view was that any power level less than 30 percent, considering the modifications made to the Nuclear Instrumentation System, would be difficult to support as a clear opportunity for the licensee to identify the issue, due to the uncertainty of the response of a new detector.

Mr. Miller, the author of the paragraph in question, did not intend to imply the very first indication (less than 5 percent power), but rather the first indications (plural) meaning the first few indications of divergence of the detectors, up to 13 percent. He intended to convey the thought that the licensee had opportunities, which were missed, to identify this error sooner than it was actually detected (at or near full power). Mr. Miller stated that the same thought would be conveyed by use of the adjective "earlier" in lieu of the phrase "the first," although either would be correct.

In summary, all parties agree that the issue could have been identified earlier during plant power ascension. The professional disagreement between the two knowledgeable inspectors revolves around a difference of 17 percent power at the lower power levels. In addressing the question of whether sufficient information was available for the issue to be reasonably identified, Mr. Miller's position is that sufficient information was available at or below 13 percent power while Mr. Rapp's position is that sufficient information would not have been available at least until 30 percent power had been achieved. Since both arguments are speculative, it would be difficult and of very little value to ascertain which position, if either, is precisely correct.

Based, in part, on a literal review performed by the Regional Counsel (Attachment 3), the report as written is literally correct if "the first indications" is viewed as the first group of many indications recorded over five days from one percent to 100 percent power. However, the report would have more accurately represented the views of all the inspectors by use of the word "earlier" in lieu of "the first."

Further, the ultimate enforcement action (Attachment 4) was not escalated for failure to identify the deficiency sooner. The enforcement panel (which included both Mr. Rapp and Mr. Miller)



recognized that, although recognition of the issue was delayed, the delay was not sufficiently egregious to warrant imposition of a civil penalty.

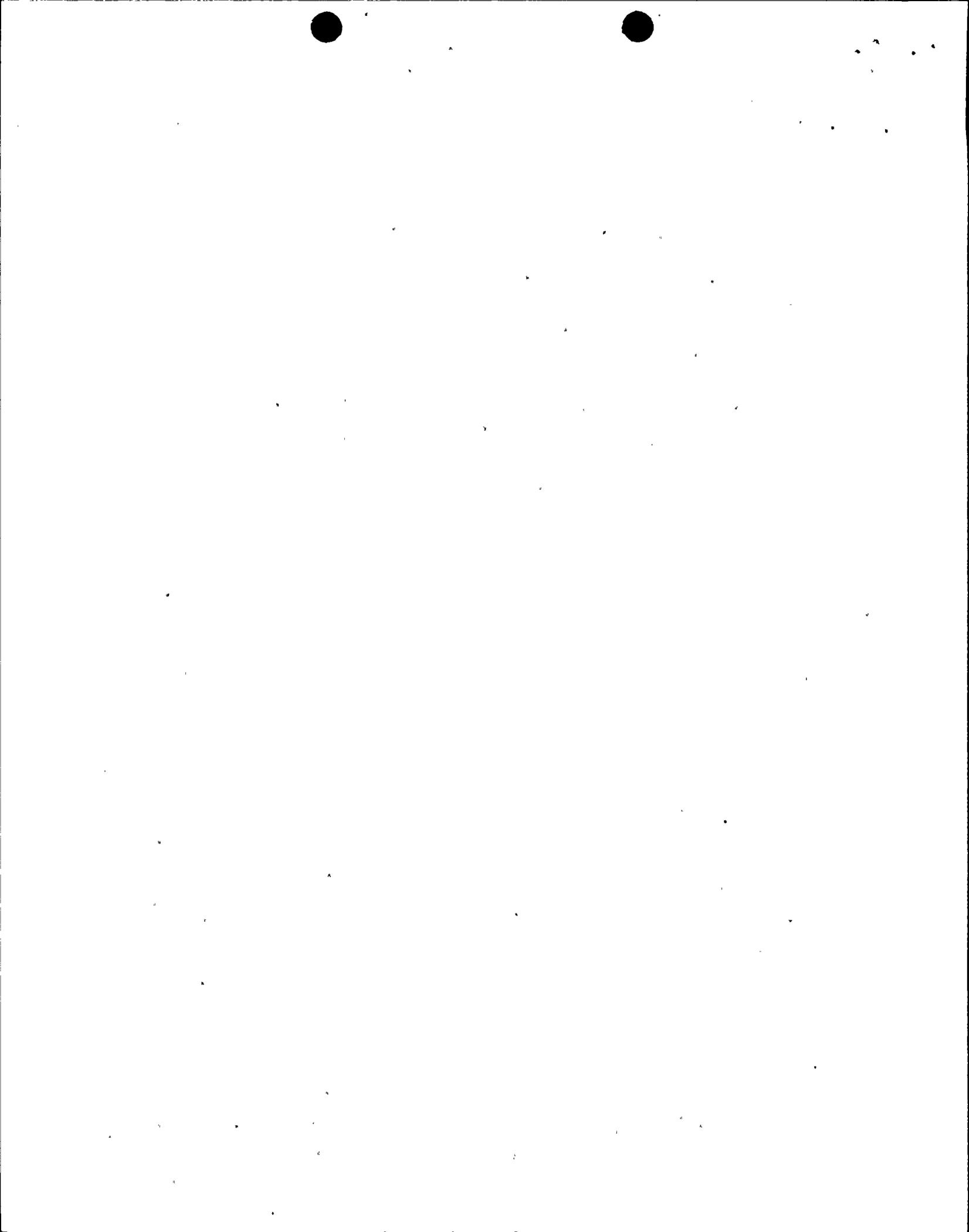
Consequently, the Ad Hoc Review Panel does not recommend changing the words in the inspection report.

B. Implementation of the Regional Expectations Concerning obtaining concurrence on inspection reports.

B.1 Requirements

NRC expectations concerning obtaining concurrences on inspection reports are provided in Management Directive 3.57, Parts II, III, and IV, and implemented for inspection reports in ROI 2210, Rev. 5. Specifically, this ROI states:

- Care must be taken in the review and issuance of the final report to assure that the intent and technical content have not been changed without the concurrence of the originating inspector(s). As a minimum, substantive changes will be discussed with the appropriate inspector(s) prior to issuing the report to assure that they concur in the final modified inspection report. Differences of opinion regarding the characterization of issues identified during the inspection are normally resolved during the report preparation process. Any differences amounting to nonconcurrence by an inspector with the Region II management position will be resolved following the guidance specified in ROI 2304, "Resolution of Differing Professional Views or Opinions."
- When issued, the inspection report must represent and contain the overall judgement of Region II. The focus on an agency document is not meant to diminish in any way an originating inspector's professional responsibility to produce a quality report that is factual, technically correct, and as aware of safety-related issues as possible. Concurrence and approval signatures in the inspection report and transmittal letter certify, to the extent known by the individual signing or concurring, that the contents are factual, complete, technically correct, and in accordance with NRC policy. The person signing the transmittal letter is responsible for the overall scope, content, conclusions, and enforcement actions associated with the inspection.



## B.2 Findings

In this instance Mr. Rapp, who normally reports to Mr. Fredrickson, was assigned to Mr. Casto to work on this special inspection. Issuance of this report was on a particularly fast track to support a previously scheduled enforcement conference. On Wednesday, November 20, 1996, with six days remaining, Mr. Casto was scheduled to be absent for surgery. Mr. Casto turned over Branch Chief responsibilities to Mr. Christensen who was acting for him, but requested that Mr. Julian continue working to issue the report (Mr. Julian's statement is attached as Attachment 5). Mr. Casto was aware of Mr. Rapp's concerns when he turned over responsibility to Mr. Christensen. On Friday, November 22, Mr. Rapp made Mr. Julian aware of his concerns, and Mr. Julian involved Mr. Christensen (Rapp's Acting Supervisor) in the discussion. Mr. Julian and Mr. Christensen each assumed the other had responsibility for capturing and resolving Mr. Rapp's specific concerns when in fact, neither one did. On the evening of Friday, November 22, Mr. Julian telephoned Mr. Casto to inform him he (Mr. Julian) was unable to work on the report; that Mr. Rapp had concerns with its accuracy; and that he (Mr. Julian) would be on leave the next week (Thanksgiving). Mr. Rapp and Mr. Christensen took the week of November 25th off as well.

When Mr. Casto returned to work on Monday, November 25, he obtained a copy of the report, incorporated known comments, but elected not to change the 5% issue of concern to Mr. Rapp, as he (Casto), Julian and (in their opinion) the licensee's documentation all supported that identification should have occurred early in the startup. Mr. Casto requested that Mr. Fredrickson obtain Mr. Rapp's concurrence. Mr. Fredrickson had returned that day from a four week absence, but was aware of Mr. Rapp's concern. Mr. Fredrickson attempted to contact Mr. Rapp unsuccessfully, but left a message on Mr. Rapp's home telephone answering machine and e-mailed him a copy of the report. Mr. Fredrickson then marked Mr. Rapp's concurrence N/A and initialed it for Mr. Rapp and included the note "N/A called, left message and e-mail not available."

Mr. Fredrickson and Mr. Casto met with Mr. A. Gibson, Director, Division of Reactor Safety, and briefed him on the report and Mr. Rapp's concerns. Mr. Gibson signed and issued the report on the following day, the report's due date, without resolving Mr. Rapp's concerns.

#### IV. Conclusions

1. Mr. A. Gibson failed to assure that a staff concern was appropriately addressed in accordance with Region II ROI 2210.
2. There was a lack of ownership by both DRS and DRP management in assuring that a concerned staff member's issues were appropriately resolved during the report review and concurrence process.
3. There was a lack of clear understanding of the guidance in ROI 2210 concerning obtaining concurrences and resolving staff concerns by all managers involved.
4. Mr. Rapp's e-mail of December 2, 1996 to Mr. Julian and Mr. Casto which stated "...I would not concur with the report as written" was not handled appropriately.
5. The Inspection Report as written is literally correct and need not be changed.
6. ROI 2210 does not include guidance on actions to be taken when an employee will not concur in a document.

#### V. Recommendations

1. Provide training to all managers concerning addressing staff concerns.
2. Use this instance as a case study in DRS, DRP, and DNMS managers concerning the need for clear ownership of technical products.
3. Provide training to Region II staff and managers on the responsibilities of both management and staff concerning concurring in inspection reports as described in ROI 2210 and Management Directive 3.57.
4. Revise ROI 2210 to include agency guidance on concurrence and provide additional guidance on the meaning of concurrence particularly in integrated reports and actions to be taken when an employee refuses to concur in an action.