

DCS

DEC 13 1990

Docket No. 50-333

New York Power Authority
James A. FitzPatrick Nuclear Power Plant
ATTN: Mr. William Fernandez
Resident Manager
Post Office Box 41
Lycoming, New York 13093

Gentlemen:

Subject: NRC Response to NYPA's Disagreements with Region I Division of
Reactor Projects Inspection Reports

During the September 14, 1990 mid-cycle management meeting in Region I, you presented ten (10) specific issues for which you felt a response from NRC was in order. The five specific issues that dealt with Division of Reactor Projects inspection reports are discussed in the Attachment to this letter. The other Region I divisions will respond separately to your other concerns.

In the instances discussed in the Attachment, you did not disagree with any violations, but disagreed with either wording or inspector assessment of specific issues. In these cases we relied upon followup of these items during subsequent inspections to provide feedback.

In response to your general question about the appropriate course of action when you believe that inspection reports contain substantive inaccurate characterizations of site activities, it is appropriate that New York Power Authority provide a response to correct or clarify the public record and if necessary, request an NRC response to your concern. In order to minimize miscommunications and administrative burdens, we encourage you to communicate with the Senior Resident Inspector or directly with Regional management when you perceive such disagreements after meetings with the inspector(s) to discuss inspection findings. Further, we encourage you to discuss disagreements with the characterizations of issues in issued inspection reports before submitting a written response in order to agree upon an approach to resolution and minimize the number of iterations in such cases.

Sincerely,

ORIGINAL SIGNED BY:

Charles W. Hehl, Director
Division of Reactor Projects

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Attachment: NRC Region I Response to NYPA Disagreement in Inspection Reports

cc w/Attachment:

J. Phillip Bayne, President
J. Brons, Executive Vice President
A. Klausmann, Senior Vice President - Appraisal and Compliance Services
G. Tasick, Quality Assurance Superintendent
G. Wilverding, Manager - Nuclear Safety Evaluation
G. Goldstein, Assistant General Counsel
R. Beedle, Vice President - Nuclear Support
S. Zulla, Vice President - Nuclear Engineering
W. Josiger, Vice President - Nuclear Operations
J. Gray, Director Nuclear Licensing - BWR
Department of Public Service, State of New York
State of New York, Department of Law
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
K. Abraham, PAO (2) NRC Resident Inspector
State of New York, SLO Designee

bcc w/Attachment:

Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encl)
J. Joyner, DRSS
W. Hehl, DRP
J. Wiggins, DRP
J. Linville, DRP
D. Vito, DRP
R. Summers, DRP
G. Meyer, DRP
M. Miller, DRP
R. Capra, NRR
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RCapra
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JLinville
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MWA
RI:DRS
WHodges
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ATTACHMENT

NRC Region I DRP Response to NYPA Disagreement in Inspection Reports

- 1) Inspection Report 89-03; Violation 89-03-01: In your response you agreed with the violation. At issue was failure to make a 10 CFR 50.72 notification following determination that temperature control valves for safety related unit coolers could not have performed as designed (i.e., fail closed vs. open on loss of air). You also requested, during the May 1989 mid-cycle meeting and January 1990 SALP Management Meeting, a clarification of NRC's position on the reportability (10 CFR 50.72) of conditions identified to be outside the design basis of the plant.

It is the staff's position that upon discovering a condition that is potentially outside the design basis, a subsequent evaluation is needed to clarify the issue. If determined to be outside the design basis, 10 CFR 50.72 notification is warranted. This is true even if actions were taken to correct the design error, prior to the completion of your evaluation.

You raised a related, but different issue in your response. Specifically, you presented a situation in which a condition (outside the design basis) that had previously existed was corrected without questions of the design basis at the time. We believe that the wording of 10 CFR 50.72, (i.e., found while operating) renders notification under 10 CFR 50.72 unnecessary in this situation. However, the condition may still be reportable under 10 CFR 21, 10 CFR 50.9 or 10 CFR 50.73.

In addition, a workshop was held in Region I on October 2, 1990 to address industry concerns relative to 10 CFR 50.72 and 10 CFR 50.73 reporting requirements. We hope this was helpful in responding to your questions.

- 2) Inspection Report 89-09; Unresolved Item 89-09-02: In this case you disagreed with statements made about entering a standby gas treatment system (SBGT) limiting condition for operation (LCO) action statement, based on an environmental qualification (EQ) issue. In this instance the shift supervisor had adequate information, with which he made a determination to remove the timer from the circuit of the A train of SBGT. The temporary modification used to remove the timer stated that it was not EQ, even though the evaluation had not yet been completed. There is no dispute that this was a conservative action. In this case, once the shift supervisor made the decision, prior to receiving the final EQ evaluation, to lift the leads, he had in effect made an operability decision. Once this decision was made, the shift supervisor should have entered the applicable LCO action statement and properly logged the events that transpired.

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We do not dispute the fact that time is needed to evaluate situations and information, on a case by case basis. However, when a decision is made to take corrective actions, it must be properly dispositioned with regard to technical specifications.

- 3) Inspection Report 90-01; Violation 90-01-01: In your response you agreed with the violation. Your disagreement was with the wording of the Notice of Violation. The wording was taken directly from your Operations Department Standing Order (ODSO)-1, Section 4.6, dealing with control room command. The staff understands your sensitivity to the wording of such violations, and feel that the inspection report gave adequate information to indicate that the individual was not inattentive and could have responded to an event in the control room.
- 4) Inspection Report 90-03; Unresolved Item 90-03-04: Your response questioned whether this instance represented an inadequacy in your 10 CFR 50.59 evaluation process. The issue relates to your procedures for determining if a change to your technical specifications is required prior to implementation of a modification. While specific situations in the past have permitted the completion of modifications that involved changes to the technical specifications (i.e., TMI Action Plan items) prior to submittal and approval of the amendment, it is not intended that this became a standard practice.

Once it is determined that a change to the technical specifications is required, it should be recognized that 10 CFR 50.59 does not apply and the regulations regarding application for license amendment govern. While the staff acknowledges that implementation of a modification prior to receiving approval for a requested technical specification change may be a more practical approach in certain situations of little or no safety significance, such action should be formally agreed upon between NYPA and NRC.

It is true that a misunderstanding did occur with respect to telephone conversations on this specific issue. Initially, a NYPA memo documenting the conversations stated that the project manager (PM) and senior resident inspector (SRI) were going to use discretionary enforcement to address this issue. The content of this memo was incorrect. Your staff was told that as long as the modifications were in accordance with 10 CFR 50.59, including a determination that a TS change was not needed, there would be no problem with you proceeding. This did not imply concurrence with any of your subsequent actions.

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- 5) Inspection Report 90-04; Comment on HPCI testing: In this instance you appear to want us to discuss testing that was completed prior to the testing that was observed by the inspector. This testing was not relevant to the point that the shift supervisor did not properly document the failed surveillance test. As stated during the mid-cycle meeting, we see no reason to change the wording or provide any additional clarification on this issue.

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