

WISCONSIN PUBLIC SERVICE CORPORATION



P.O. Box 1200, Green Bay, Wisconsin 54305

DCS

September 8, 1983

Mr. Richard C. DeYoung, Director
Office of Inspection and Enforcement
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gentlemen:

Docket 50-305
Operating License DPR-43
Kewaunee Nuclear Power Plant
Response to Order Imposing Civil Monetary Penalty

Reference: Letter from R. C. DeYoung (US NRC) to P. D. Ziemer (WPSC)
dated August 9, 1983

Your letter of August 9, 1983 ordered Wisconsin Public Service Corporation to pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000) for a violation of the Kewaunee Nuclear Power Plant Technical Specifications which WPS discovered on October 4, 1982. Enclosed is the company's check for said amount. This represents WPSC's agreement to resolve this matter at this level.

This agreement notwithstanding, we have also detailed below several items of continuing difference of position between WPSC and NRC regarding the nature of this incident and the NRC's handling and analysis of it.

Because both parties agree that this event is of significance, we do not wish to let these differences interfere with an appropriate and prompt resolution. However, so that WPSC's position as to the technical and regulatory aspects of this matter remains clear on these important points, we feel comment on the staff analysis in the order imposing penalty is appropriate.

The appendix to the order expresses the opinion that the guidelines in the enforcement policy are non-exhaustive examples. This is a fundamental misreading of the definitions of the various severity levels. Level III does not include all "significant violations," but only those which have certain defined characteristics.

Unlike Levels IV and V, Level III does not include general language to encompass undefined situations. In light of the drastically higher penalties for Level III and higher violations, this distinction in definitional approach is significant.

The enforcement policy serves to provide licensees with known and defined guidelines for the consequences of their acts. It also binds the NRC, which is not free to disregard its own rules. Allowing unwritten, vague, post hoc definitions to escalate enforcement action defeats the principles inherent in the formal promulgation of an enforcement policy.

The specter that significant violations need go unpenalized is illusory. The common interest in encouraging actions to preserve public safety can be served by use of penalties under Levels IV and V in appropriate cases.

The staff's analysis further notes that the NRC may categorize a violation as severity level III and assess a civil penalty based on the violation's potential safety significance. WPSC does not disagree. However, the implication made in the analysis is that this violation had potential safety significance. WPSC has provided analyses, which the staff has acknowledged as correct, which have clearly shown that this event had no actual or potential adverse effects on public health and safety. Accordingly, this argument does not support a Severity Level III classification in this case.

With respect to the concern that this event could have materially mislead the operator, the staff has disagreed with WPSC's conclusion that this would not have been the case. The staff has stated that the operators would have been without a diagnostic parameter which would be used to "make certain decisions such as whether to change equipment status which would affect the containment environment, to monitor the effects of such changes, and to evaluate the status of containment integrity during certain accident conditions." WPSC's analyses have shown that the loss of this diagnostic parameter would not have affected the operators' actions in a manner adverse to the health and safety of the public. Consequently, WPSC remains adamant that our initial conclusion, i.e., that the loss of this diagnostic parameter would not have materially mislead the operator, is correct.

The last area of disagreement is in regard to mitigation because WPSC identified the event and promptly reported it. The enforcement policy clearly states that mitigation "may be given when a licensee identifies the violation and promptly reports the violation to the NRC." The enforcement policy continues by noting that the duration of the violation is a factor weighed in consideration of mitigation.

The staff has declined to mitigate this violation because "the licensee could have identified the event earlier (emphasis added). WPS agrees that the possibility of identifying this event earlier did exist; however, it is arguable as to whether this event should have been identified earlier. WPSC believes that the substantially longer durations of similar events which have occurred at other licensee's facilities supports the conclusion that the duration of this violation was not extreme.

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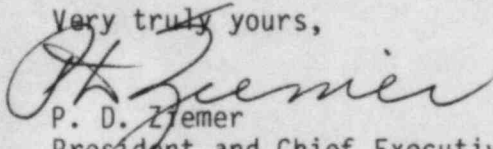
More importantly, however, is the staff's combination of "prompt identification and reporting." The purpose of this mitigation category, as explained in the enforcement policy, is two-fold: "to encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance." This implies that the staff intends to reward (through mitigation) prompt and accurate reporting as well as prompt identification.

While it could be argued that WPSC could have identified this event earlier, there is no doubt that WPSC promptly and accurately reported it to the NRC. The staff should have granted mitigation for this, consistent with the intent of the enforcement policy.

Notwithstanding the foregoing disagreements with the staff's analysis, WPSC recognizes the significance of this event and, accordingly, accepts the enforcement action imposed. WPSC appreciates the staff's consideration of our May 11, 1983 response, especially in regard to the arguments on escalation and mitigation which were presented therein. WPSC further appreciates the staff's recognition of the prompt and extensive corrective actions we have taken to prevent the recurrence of events of this nature.

We trust that the foregoing comments will be considered constructively as possible assistance in the future.

Very truly yours,


P. D. Ziemer
President and Chief Executive Officer

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Enc.

cc - Mr. S. A. Varga, US NRC
Mr. Robert Nelson, US NRC
Mr. David Baker, Foley & Lardner