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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 16, 1995

EA 95-105

John M. Gallagher
[HOME ADDRESS DELETED FROM COPIES
PURSUANT TO 10 CFR 2.790]

SUBJECT: REPLY TO NOTICE OF VIOLATION

Dear Mr. Gallagher:

This is in reference to your September 12, 1995 and September 27, 1995 letters which were submitted in reply to the NRC's August 17, 1995 letter and Notice of Violation. The Notice of Violation was issued to document an April 9, 1995 failure to follow procedures governing the operation of a valve in the Reactor Water Cleanup System at Washington Nuclear Project-2. In its August 17 letter, the NRC acknowledged that your actions did not place the plant in an unsafe condition, but classified the violation at Severity Level III based on the NRC's conclusion that you displayed a careless disregard for whether your actions complied with procedural requirements.

In your replies to the Notice of Violation, you admitted, as you have from the beginning, that your actions placed the plant in violation of its operating procedures. However, you disagreed that you acted in careless disregard of the procedural requirements and requested that the NRC reconsider its enforcement action against you.

Many of the arguments that you make to support your position that you did not act with careless disregard were known to the NRC prior to making its enforcement decision. For example, our interviews with others on shift on April 9, 1995 led us to conclude that other control room personnel may not have discussed with you, or made certain that you were aware of, the exact wording of the procedure, i.e., the "shall not" wording. The NRC relied on this and other information from its inspections and investigations, as well as the information you provided at the July 17, 1995 predecisional enforcement conference, to conclude that you did not deliberately violate the procedural requirements.

However, we could not reconcile your actions with your experience, your training, and your position, i.e., that of an NRC-licensed Senior Reactor Operator and Control Room Supervisor. We based our "careless disregard" conclusion on what we considered to be uncontroverted facts: that you opened the valve in question, that your actions were challenged by other control room personnel, that you then opened and claim to have reviewed portions of the relevant procedure, that the procedure was clear in prohibiting the opening of this valve, and that you took no action to correct the violation. Once challenged, you had not only the opportunity but the responsibility to make certain that your actions were in accordance with the involved RWCU system operating procedure.

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You also stated in your replies to the Notice that discussing your actions with the Shift Manager on April 9, 1995 is an indication that you were not acting in careless disregard. The evidence developed by the NRC, however, indicates that you discussed this with the Shift Manager only after you had opened the valve, that you did not inform the Shift Manager that you had already opened the valve, and that you did not inform the Shift Manager of any concerns expressed by other control room personnel.

With regard to your comments about the actions of other licensed personnel and licensee management, the NRC has taken enforcement action against the Washington Public Power Supply System for the violation that you caused¹ as well as other procedural violations. In our reports and our discussions with the Supply System leading up to this action, the NRC clearly stated its concern with the performance of licensee management and licensed personnel. Our concerns about the April 9, 1995 violation are not limited to your actions. However, we do draw a distinction between the violation you committed and others because we have no evidence associated with other procedural or Technical Specification violations that the involved operating personnel had been challenged or made aware that a violation might exist before the violation was discovered and corrected.

In summary, the NRC has reviewed all of the information you provided in reply to the Notice of Violation, including the decision reached by the Administrative Law Judge in your appeal before the Washington State Employment Security Department, and has reaffirmed its conclusion that your actions, while not intentional and not significant from a reactor safety standpoint, involved careless disregard of the involved requirements.

We reiterate that your actions did not place the plant in an unsafe condition and that we do not believe, based on the circumstances of this case, that your future involvement in NRC-licensed activities need be restricted in any way. The Notice of Violation issued to you is based on the NRC's conclusion that on April 9, 1995 you did not act responsibly and in accordance with the NRC's expectations for senior licensed operating personnel. Our action against you was not affected by the Supply System's employment action; we would have taken the same action even if you were still performing licensed duties at WNP-2.

To address one final point, the issuance of the Notice of Violation to you was processed in accordance with the NRC's "General Statement of Policy and Procedure for Enforcement Actions" and was approved by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research before issuance.

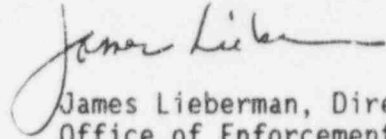
¹ A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$50,000 was issued on August 17, 1995.

John M. Gallagher

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

Sincerely,



James Lieberman, Director
Office of Enforcement

Docket No. 55-9405
License No. SOP 50300-1

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John M. Gallagher

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w/ CFS 11/7/95