

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
DUKE POWER COMPANY)
McGuire Nuclear Station Unit 1)

Docket No. 50-369
License No. NPF-9
EA 87-163

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Duke Power Company (licensee) is the holder of Operating License No. NPF-9 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 8, 1981. The license authorizes the licensee to operate McGuire Nuclear Station, Unit 1 in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on August 3-7, 1987. The results of that inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 28, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 25, 1987 admitting the violations, but disputing the proposed escalation of the base civil penalty.

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III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive

Director for Regional Operations has determined as set forth in the Appendix to this Order that the escalation of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDER THAT:

The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) within 30 days of the date of this order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

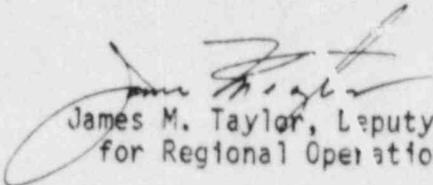
The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector, McGuire Nuclear Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be

effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the portion of the proposed penalty above the base civil penalty should be imposed, in whole or in part.

FOR NUCLEAR REGULATORY COMMISSION


James M. Taylor, Deputy Executive Director
for Regional Operations

Dated at Bethesda, Maryland
this 3rd day of March 1988

APPENDIX

EVALUATIONS AND CONCLUSIONS

On October 28, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a routine NRC inspection. Duke Power Company responded to the Notice of November 25, 1987. In its response, the licensee admitted that the subject violations occurred and did not contest the base civil penalty or the proposed Severity Level of the violations; however, the licensee did contest escalation of the base civil penalty. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

A. General Arguments

Summary of Licensee's Response

The licensee contends that the NRC escalated the base civil penalty because of past poor performance and inadequate corrective action related to independent verification and failure to follow procedures in the area of plant operations. The licensee believes that reasons given by the NRC for escalation are either inconsistent with the factors set forth in the Enforcement Policy or are otherwise improper.

NRC Evaluation of Licensee's Response

The NRC letter of October 28, 1987, included the following statement:

The base civil penalty amount was increased by 100 percent because of: (1) past poor performance in the area of concern as documented generally by Systematic Assessment of Licensee Performance (SALP) in the operations area and specifically by the similar occurrence discussed earlier [see page 2 of the October 28, 1987 letter paragraphs 2 and 3 regarding IVP], (2) the corrective actions taken on July 29, 1987, were not only inadequate and non-conservative, in that it was assumed the problem was in the control panel indicators and not in the diesel generator itself, but untimely in that it was not recognized promptly that the indicator light was out. Specifically, multiple shift turnovers occurred during the time the diesel generator was inoperable yet, none of the licensed operators involved recognized the significance of the multiple indications of the problem available to them.

The NRC staff's evaluation of the licensee's arguments concerning the details associated with the above summary statement will be addressed in specific below.

B. Arguments Regarding Past Performance

1. Effectiveness of previous corrective action
 - a. Independent Verification Program (IVP)

Licensee Assertion

The licensee cites a number of efforts to improve their IVP subsequent to a March 1983 incident at Oconee in an effort to

demonstrate how these previous corrective actions have been successful in minimizing future problems. In the licensee's view, this justifies removal of the escalation for prior poor performance.

NRC Evaluation

Five changes were made to the McGuire IVP prior to 1984. No subsequent changes are relied upon in the licensee's argument prior to the current incident. The licensee then cites statistics to show a declining trend in the number of related incidents over four years from three per year to one per year.

The reason for escalation was poor performance. The NRC staff made no contention that there had been no progress in improving the IVP. Using the licensee's statistics, we note that all eight problems cited by the licensee in the IVP have occurred since full implementation of the five changes to the program. No subsequent changes were made to the IVP over a four year period preceding the current incident even though additional violations have occurred. Thus, it cannot be found that earlier changes in the IVP constituted adequate corrective action insofar as the subject violations are concerned. Therefore, escalation based on continued poor performance in IVP is appropriate.

b. Personnel Failure to Follow Procedures

Licensee Assertion

The licensee cites corrective actions and a decreasing number of Reportable Events which are argued to be indicative of a declining number of personnel errors. It is the licensee's view that such trends support removal of escalation for prior poor performance.

NRC Evaluation

It is the staff's position that the licensee's statistical trends alone are not sufficient to weigh against escalation. First, the relationship between the corrective actions cited by the licensee and the trends is not readily apparent given the dates of implementation of the corrective actions and the intervening unfavorable SALP findings. Second, statistics indicating an overall declining trend in personnel errors do not provide assurance that progress has been made in a specific area such as IVP or that recurring problems are being prevented. Finally, the occurrence of a significant problem such as the inoperability of DG-1A, which involved a number of procedural as well as cognitive personnel errors, calls into question the effectiveness of past corrective actions regardless of statistical trends. This incident underscores the need to make the determination of whether escalation is appropriate on a qualitative as well as quantitative basis.

2. Overall Performance (prior SALP reports)

Licensee Assertion

The licensee contends that recent events weigh against the NRC's reliance upon the SALPs for the purpose of escalation, specifically the recently awarded category 2 SALP rating in Operations.

NRC Evaluation

The licensee relies heavily on the most recent SALP as evidence of improvement. The licensee assumes that the most recent category 2 SALP rating should be considered as the primary indication of previous performance for escalated enforcement.

There are several points that must be noted in this regard:

(a) previous performance, for purposes of escalated enforcement, includes more than consideration of numerical SALP ratings or the fact that the previous SALP rating shows improvement, (b) despite the recent improvement in the SALP rating, the licensee's past performance in specific areas has not been good, (c) a SALP rating of 2 does not necessarily mean that a penalty may not be escalated.

3. Prior Enforcement History

Licensee Assertion

The licensee asserts that the two events discussed should not be used as a basis for escalating a civil penalty for prior enforcement history because one of the events was not cited in a Notice of Violation and because the events occurred more than two years ago (January 3 and October 22, 1985).

NRC Evaluation

The NRC is not required by the Enforcement Policy to limit in its consideration of the basis for escalation for "Past Performance" (10 CFR Part 2, Appendix C, Section V.c.3) to the licensee's prior enforcement history. (See also "Prior Notice of Similar Events" *id* V.c.4.) Information in inspection reports, whether or not used to support a violation, is relevant for past performance and provides notice for the need for corrective action. Accordingly, the NRC's reference, in the October 28, 1987 letter, to the two events, which were noted as similar to the incident for which the instant notice was issued, was appropriate. It is further noted that the emphasis of the NRC's reference to the two events was that the corrective action for those events was not successful in preventing the current incident.

The NRC typically reviews events over an approximate two year period in evaluating past performance. In this case the Notice of Violation was issued on October 28, 1987, the inspection took place on August 3-7, 1987; and the violations occurred between July 26 and 30, 1987. Therefore, consideration of the two events that occurred in 1985 is appropriate especially given the distinct similarities that exist between the recent incident and those events.

C. Arguments Regarding Corrective ActionsLicensee Assertion

The licensee contends that there are two separate reasons for objecting to the NRC's assertion that improper corrective action should serve as the basis for escalating the base civil penalty. The licensee's reasons for objecting are listed below:

1. such use constitutes improper double counting (i.e., improper corrective action cannot serve as basis for both the violation and the escalation), and
2. conflict with the Enforcement Policy (i.e., the licensee asserts that the policy prohibits considering actions taken before discovery of the problem as "corrective.")

NRC Evaluation

The violation for failure to take corrective actions (Violation C of the Notice of Violation) was cited because of the operator's failure to recognize the significance of the multiple indications of the problem available to him. Further, when the problem was identified, it was improperly diagnosed as a faulty switch. The basis for escalation rests on the fact that multiple shift turnovers occurred, with the diesel generator 1A (DG-1A) in fact inoperable for approximately 90 hours. Each turnover provided an opportunity to identify and correct the violation. The Enforcement Policy (10 CFR 2, Appendix C) allows for escalation based on duration of the violation. Paragraph B.V.5(3) of the Policy states that whether or not a licensee is aware or should have been aware of a violation that continues for more than a day, the civil penalty imposed for the violation may be increased to reflect the added significance resulting from the duration of the violation. The reference to corrective action in the October 28, 1987 cover letter's discussion of escalation was not intended to address the factor of inadequate corrective action but rather the duration caused by inadequate action on July 29, 1987.

In summary, the violation (Violation C of the Notice of Violation) is based on the failure of the operator to recognize the significance of the multiple indications of DG-1A inoperability, as well as the improper diagnosis of the problem, while the escalation is based on the duration of the event. It is not impermissible to issue a citation for failure to take corrective action and at the same time escalate a penalty based on the significance of that failure.

D. NRC Conclusion

The purpose of this penalty is remedial. It is designed to emphasize (1) the need to maintain lasting corrective action and (2) that performance of the type underlying this civil penalty action cannot be accepted. The staff recognizes efforts Duke is making to improve its performance. But for those actions the penalty might have been higher.

An adequate basis for reduction of the 100 percent escalation of the base civil penalty has not been presented by the licensee. Consequently, the proposed civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) should be imposed.

Duke Power Company

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