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VICE PRESIDENT  
NUCLEAR ENERGY

July 18, 1988

U. S. Nuclear Regulatory Commission  
Washington, DC 20555

ATTENTION: Document Control Desk

SUBJECT: Calvert Cliffs Nuclear Power Plant  
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318  
Reply and Answer to Notice of Violation, EA 87-77

REFERENCE: (a) Letter from Mr. J. A. Tiernan (BG&E) to Mr. J. Lieberman (NRC),  
dated July 12, 1988, same subject

Gentlemen:

There is a typographical error in Attachment B to Reference (a) in that four lines that should be on page 8 are at the end of page 9.

Please replace pages 8 and 9 of Attachment B to Reference (a) with the two pages that are attached.

We apologize for any inconvenience this may have caused.

Very truly yours,

JAT/WPM/dlm

Attachment

cc: D. A. Brune, Esquire  
J. E. Silberg, Esquire  
R. A. Capra, NRC  
S. A. McNeil, NRC  
W. T. Russell, NRC  
D. C. Trimble/V. L. Pritchett, NRC  
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ATTACHMENT B

ANSWER to NOTICE of VIOLATION,  
and  
REQUEST for ADDITIONAL MITIGATION

B. Additional Mitigation Should be Allowed

The new Enforcement Policy, in Subpart IV B, discusses Mitigation/Escalation Factors. It reads as follows:

<u>Mitigation/Escalation Factors</u>	<u>Maximum Mitigation/ Escalation Amount (from base civil penalty)</u>
1. Identification and prompt reporting, if required of the EQ violations (including opportunities to identify and correct the deficiencies).	+/- 50%
2. Best efforts to complete EQ within the deadline.	+/- 50%
3. Corrective actions to result in full compliance (including the time taken to make an operability or qualification determination, the quality of any supporting analysis, and the nature and extent of the licensee's efforts to come into compliance).	+/- 50%
4. Duration of violation which is significantly below 100 days.	- 50%

As had already been emphasized, extensive corrective actions were taken in order to achieve full compliance, including (among other things) shutting down an operating reactor for a period of two months, extensive analysis and testing of equipment, hiring of outside experts and, in general, focusing considerable Company attention on the scope and nature of the problem. In short, it is difficult to conceive of any corrective activity or measure which could have been taken by BG&E that was not taken in this case. Nor is it reasonable to claim that, once the violations were discovered, that corrective action could have been more prompt. It is noted with interest, however, that in applying the above mitigation/escalation factors to this particular case, the NRC, instead of allowing the full 50% mitigation under Factor No. 3, only allowed BG&E 25%. The reason stated for not granting the full 50% mitigation is that BG&E's corrective action should have been initiated sooner. The wording of Factor No. 3, however, can only be interpreted to encompass an evaluation of the licensee's corrective actions. The promptness or delay in identifying the underlying deficiencies which led to the corrective actions is more properly within the scope of Mitigation/Escalation Factor No. 1.

## ATTACHMENT B

### ANSWER to NOTICE of VIOLATION, and REQUEST for ADDITIONAL MITIGATION

In this instance, BG&E has in essence been penalized three times for the same offense. First, NRC determined that BG&E "should have known" of the existence of a violation. This conclusion necessarily assumes a delay in recognizing the underlying deficiency. Second, BG&E's penalty was escalated 25% pursuant to Factor No. 1 because it failed to discover the violations soon enough. Third, the mitigation available under Factor No. 3 was reduced by 25%, again because the violations were not discovered promptly enough. We believe this "triple-counting" was erroneous and, in fact, it tends to provide a disincentive for other licensees to follow BG&E's example upon the discovery of similar problems in the future. It is suggested that, not only for the fair application of the Enforcement Policy in BG&E's case, but, in fact, for the more efficient and appropriate application to the industry as a whole, this type of precedent is ill advised.

### CONCLUSION

For the above reasons, BG&E requests that:

1. the violations be re-classified as Severity Level IV or V, and/or
2. additional mitigation be granted, thereby reducing or eliminating the proposed civil penalty.