



H. B. Barron
Vice President, McGuire
Nuclear Generation Department

Duke Power Company
A Duke Energy Company
McGuire Nuclear Station
MG01VP
12700 Hagers Ferry Rd.
Huntersville, NC 28078-9340

(704) 875-4800 OFFICE
(704) 875-4809 FAX

February 2, 1998

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C.
20535

Attached is a Reply to a Notice of Violation contained in inspection report 50-369/97-19 and 50-370/97-19 regarding notification requirements under 10 CFR Part 73 Appendix G. This reply is submitted in accordance with the requirements of 10 CFR 2.201. This reply does not contain safeguards, privacy or proprietary information.

Duke Energy acknowledges that the failure to make a one hour notification was a violation of regulatory requirements. However, Duke requests that this violation be reviewed against the criteria for a Non-Cited Violation as described in NUREG 1600 "General Statement of Policy and Procedures for NRC Enforcement Action". Duke bases this request on the low safety significance and regulatory significance of the violation. In addition, Duke has previously provided the NRC with Special Report 370/97-04(S) filed in LER format. This report describes circumstances surrounding the security event including issues related to reportability and the corrective actions Duke has undertaken. Details supporting the basis for the requested exercise of discretion are provided in the reply. Duke believes the NRC and licensees would be better served with respect to resource utilization if non-cited violations are used in enforcement cases such as this case.

There are no regulatory commitments in this correspondence or the attachment to this correspondence. Please contact Mike Cash (704) 875-4117 for questions regarding this response.

H.B. Barron
Vice President
McGuire Nuclear Station
Duke Energy Corporation

9802120283 980202
PDR ADOCK 05000369
G PDR

120108

IE01/1



Oath or Affirmation

H.B. Barron, being duly sworn, states that he is a Vice President of Duke Energy Corporation; that he is authorized on the part of said company to file and sign with the U.S. Nuclear Regulatory Commission this Reply to a Notice of Violation for McGuire Nuclear Station; and, that all statements and matters set forth therein are true and correct to the best of his knowledge.

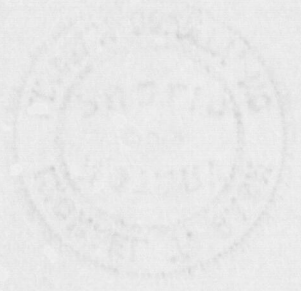
H.B. Barron

H.B. Barron, McGuire Site Vice President
Duke Energy Corporation

Subscribed and sworn to before me this date: 2/2/98

by: Michael T. Cohn
Notary Public

My Commission Expires: Jun. 22, 2003



cc:

L.A. Reyes
Regional Administrator
Region II
Nuclear Regulatory Commission

S.M. Shaffer
Senior Resident Inspector
McGuire Nuclear Station
Nuclear Regulatory Commission

J. Lieberman
Director Office of Enforcement
Nuclear Regulatory Commission

A.T. Boland
Director of Enforcement
Region II
Nuclear Regulatory Commission

bcc:

M.S. Kitlan
Catawba Nuclear Station

J.E. Burchfield
Oconee Nuclear Station

L.A. Keller
Nuclear Regulatory Affairs

P.R. Newton
Legal

Reply to a Notice of Violation

I. Reason for Violation and basis for classification as NCV

I (A) Restatement of Violation

"This is a Severity Level IV violation (Supplement III)

10 CFR 73.71 (b) requires licensees subject to the provisions of 73.55 to notify the NRC Operations Center within one hour after discovery of the safeguards events described in paragraph I (a) (2) of Appendix G to Part 73.

Appendix G to Part 73, paragraph I (a) (2), requires that any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a credible threat to commit or cause significant physical damage to a power reactor or its equipment to be reported within one hour of discovery.

Contrary to the above, an event occurred in which a person or persons made a credible threat to commit or cause significant physical damage to a power reactor or its equipment and it was not reported within one hour of discovery to the NRC Operations Center."

Duke agrees that this is a violation of regulatory requirements and agrees with the facts as stated in the notice of violation. Duke requests that the NRC review this violation for exercise of discretion to categorize the violation as a non-cited violation. Duke believes this violation is not of a severity level consistent with a level IV cited violation.

I (B) Review of Events (Reference NRC Inspection Reports 50-369/97-19, 50-370/97-19 and No. 50-369/97-18 and 50-370/97-18)

12/04/97	8:15 a.m.	Site Vice President informs NRC Senior Resident Inspector of condition
12/04/97	8:30 a.m.	Site management determines that condition constitutes tampering
12/04/97	9:05 a.m.	Operations review of Reportability
12/04/97	9:15 a.m.	Security review of Reportability
12/04/97	3:00 p.m.	Conference Call between NRC Region II and NRC Headquarters Reportability determination discussed during call
12/04/97	6:00 p.m.	Teleconference between NRC Region II management and McGuire management regarding reportability of similar events.
12/04/97	6:48 p.m.	NRC Operations center notification.

I (C) Informal Notification made to the NRC

The Senior Resident Inspector was notified of the condition concurrently with the determination that there was a tampering event. The Senior Resident notified Region II NRC management shortly after the licensee's contact. This demonstrates that Duke management was aware of the regulatory significance of tampering events and the importance of informing the NRC. In addition, this notification allowed NRC Region II management to evaluate the situation with the resident inspectors and make a determination with regards to additional inspection resources. The resident inspectors were afforded the opportunity to go quickly into the field to independently evaluate the condition of the damaged seals. The resident inspectors were able to quickly move into the field to assess the status of other plant equipment with respect to potential tampering. The management and staff of NRC Region II had the same relevant information that would likely have been provided by a formal report under Appendix G of Part 73. The information was supplied in a timely manner to the resident inspectors and in less time than required by regulation.

Duke's informal notification had the practical effect of having made a formal notification under Appendix G of Part 73.

I (D) Timing Requirements of Notifications

The potential that seal damage was due to a deliberate act was first discussed according to the security inspection report at 4:00 p.m. on 12/03/97. On 12/04/97 at 8:10 a.m. security management was advised that engineering had discovered a potential tampering condition. The determination that a tampering event had occurred was made at 8:30 a.m. Operations and security immediately began a review of reporting requirements. Based on a review of the facts and the reporting requirements a determination was made within one hour that the occurrence was not reportable.

Appendix G of Part 73 states in part,

"1. Events to be reported within one hour of discovery, followed by a written report within 30 days.

(a) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a credible threat to commit or cause:

- (1) A theft or unlawful diversion of special nuclear material; or*
- (2) Significant physical damage to a power reactor or any facility possessing SSNM or its equipment or carrier equipment transporting nuclear fuel or spent nuclear fuel, or to the nuclear fuel or spent nuclear fuel a facility or carrier possesses; "*

The reportability clock of one hour is based on time of discovery. This refers to the discovery of tampering. Discovery of the condition is that point where appropriate site staff and management have determined based on the collected facts that a condition exists. For example, a determination that a component is inoperable is the discovery of a condition. In this case, discovery was the 8:30 a.m. determination that the cut seals were a result of tampering as opposed to incidental contact with mirror insulation.

Therefore, the one hour clock for the tampering event began at 8:30 a.m. on 12/04/1997. The NRC Security Inspection Report notes that operations and security staff made this reportability determination within the one hour timeframe required by the regulation. This demonstrates that McGuire staff was aware of the reporting requirements of 10 CFR Part 73 Appendix G.

I (E) Interpretation of 10 CFR Part 73 Appendix G

Site staff and management reviewed the section of Part 73 cited in this Notice of Violation as part of the initial reportability determination. Of particular importance to this initial determination of reportability is the phrase,

"...Significant physical damage to a power reactor or any facility possessing SSNM or its equipment..."

In the opinion of the individuals involved in the original determination of reportability the damage to the seals was not significant physical damage. This determination was based on a review of the nuclear safety consequences of the damage. The logic was that significance of damage was to be judged by effect of the damaged equipment on plant nuclear safety. The seals were not in service at the time and the reactor was in no MODE condition, therefore the seals were not providing a nuclear safety function. In addition, the seals would be tested prior to restart which would guarantee the discovery of the damaged seals prior to them being placed in service. Therefore, the damaged seals did not represent a condition adverse to nuclear safety and this served as the basis for concluding the damage was not significant.

Further review and research by Duke Regulatory Compliance staff found the following definition for significant physical damage in Regulatory Guide 5.62,

"...Damage to the extent that the facility, equipment, transport, or fuel cannot perform its normal function..."

The damaged seals were cut thru-wall in some locations, this would prevent them from pressurizing as required by design. This damage would most likely have prevented the seals from performing their intended function in this condition. Based on this regulatory guidance Duke made a determination that the damage to the seals would constitute significant physical damage and therefore would be reportable. It should be noted that a Regulatory Guide does not constitute a regulatory requirement but specifies one acceptable method to meet regulatory requirements.

The original determination on reportability was a reasonable interpretation although further research uncovered regulatory guidance that contradicts that determination. Duke's current position is that this condition was reportable using the guidance for significant physical damage provided in Regulatory Guide 5.62.

I (F) Review of Enforcement Policy

From the discussion above it can be concluded that Duke,

- ◇ Made a reasonable reportability determination within one hour
- ◇ Notified the NRC resident inspectors simultaneous with the determination that a tampering event had occurred at McGuire.
- ◇ Was aware of the regulatory significance of tampering
- ◇ Reviewed the reportability determination and independently found specific regulatory guidance regarding reportability of significant physical damage.

The NRC Enforcement Policy specified in NUREG 1600 "General Statement of Policy and Procedures for NRC Enforcement Action" states in part that,

"IV. Severity of Violations"

"...Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern."

"...The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they are noted as Non-Cited Violations."

"...VII. Exercise of Discretion"

The ability to exercise discretion is preserved with the revised policy. Discretion is provided to deviate from the normal approach to either increase or decrease sanctions where necessary to ensure that the sanction reflects the significance of the circumstances and conveys the appropriate regulatory message."

"...Supplement III--Safeguards"

D. Severity Level IV--Violations involving for example:

- 1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;*
- 2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;*
- 3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;*
- 4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;*
- 5. A failure to conduct a proper search at the access control point;*
- 6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;*
- 7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;*
- 8. A failure to conduct an adequate search at the exit from a material access area;*
- 9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or*
- 10. Other violations that have more than minor safeguards significance."*

The above sections of the enforcement policy demonstrate that the NRC can exercise discretion to categorize low safety or regulatory significant violations as non-cited violations.

I (G) Summary

Duke request the NRC review this violation and consider exercising discretion to categorize this violation as a Non-Cited Violation. Duke respectfully asserts that the facts of this case demonstrate low safety or regulatory significance associated with this violation. In particular, the NRC was made aware of the situation in a timely manner, the NRC was able to take action in a timely manner based on this notification, Duke made a reasonable notification determination within one hour. Duke has demonstrated an understanding of the regulatory significance of tampering as well as timely reporting. At no time did a condition adverse to nuclear safety exist or was further tampering discovered at McGuire.

In addition, McGuire has made follow-up notification under 10 CFR 73 Appendix G and submitted a 30 day followup report. Further corrective action by Duke and NRC review of corrective actions is not warranted considering the low regulatory and safety significance of this issue

Review of Supplement III of the enforcement policy reveals that Level IV safeguards violations typically involve some potential challenge to the security of the plant. No such potential existed in this case.

II. Corrective steps that have been taken and results achieved

1. Notification via Emergency Notification System under 10 CFR 73 Appendix G
2. Special Report 370/97-04(S) filed in LER format to the NRC and associated corrective actions.

III. Corrective steps that will be taken to avoid further violations

None

IV. Date when full compliance will be achieved

McGuire Nuclear Station is currently in full compliance