

Niagara Mohawk

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May 10, 1999
NMP1L 1434

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Nine Mile Point Unit 1
Docket No. 50-220
DPR-63

Subject: *Response to an Apparent Violation in Investigation Report No. 1-98-033*

Gentleman:

The purpose of this letter is to respond to the apparent violation described in Mr. Wayne D. Lanning's letters of April 13, and April 30, 1999. Niagara Mohawk Power Corporation (NMPC) agrees that the apparent violation occurred on June 16, 1998, but disagrees with the characterization that the violation was willful or deliberate. NMPC is concerned that the individual's apparent violation is being characterized as deliberate when in NMPC's analysis, it does not rise to this level.

NMPC believes that having an unqualified individual assuming a control room position is a very serious matter, and took prompt corrective actions to emphasize the significance and prevent recurrence of this event. If NMPC's investigation had revealed that the individual's action was willful, deliberate, or performed with careless disregard, a significantly different course of action would have been taken with the individual.

NMPC reported the noncompliance with Technical Specifications Sections 6.2.2.a and 6.2.2.e for control room staffing in Nine Mile Point Unit 1 Licensee Event Report 98-14, "Control Room Staffing in Violation of Technical Specification due to an Unqualified Senior Reactor Operator." The reason for the apparent violation as documented in the licensee event report was "management's failure to emphasize the importance and expectation to maintain and verify personal qualification status and did not instill the appropriate level of sensitivity to the issue. As a result, licensed personnel did not attach a high level of priority or sufficient ownership to the requirement of maintaining license qualifications." The corrective steps that have been taken and results achieved, the corrective steps that have been taken to avoid further violations, and the date when full compliance was achieved are also documented in the licensee event report.

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The NRC letter to NMPC, dated April 13, 1999, states that "The investigation found that the SRO [senior reactor operator] deliberately violated license conditions..." and "involves a willful violation of your TS [Technical Specifications] requirements for shift staffing." NMPC disagrees that the individual deliberately or willfully failed to comply with the Technical Specifications for shift staffing. In drawing this conclusion, NMPC reviewed the details discussed in the licensee event report, reviewed information provided by the NRC to NMPC and the individual, and held additional discussions with the individual. Based on these reviews, NMPC verified its licensee event report conclusion is still valid.

NMPC reviewed NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions", Revision 1 and NUREG/BR-0195, "NRC Enforcement Manual," which provided the NRC definition for the term willful. In essence, willful is defined as an act of non-compliance that ranges from *deliberate intent* to *careless disregard*. After carefully comparing the facts surrounding this non-conformance with the NRC definition, NMPC concluded that the facts fail to support the willful or deliberate characterizations applied to this situation.

The subject act, in our view, was not *deliberate* as demonstrated by the fact that, while the individual was aware of the requirement at an earlier time, he failed to take into account at the time and associate his circumstances with the requirement prior to assuming the shift. In addition, his supervisor, an instructor, and other members of his crew, were aware of the crews' failure and his plans to assume the shift. They also failed to make the association. He made no effort to hide his actions, and fully cooperated with the subsequent investigation.

The subject act, in our view, was not committed with an *intent* to not comply with the requirements in that the individual had nothing to gain by assuming the shift.

The subject act, in our view, was not an act of *careless disregard* for the requirements as demonstrated by a substantial history of commitment to compliance with regulations and requirements by the individual.

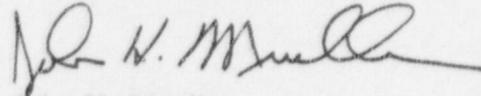
The enclosure in the 1 RC letter to NMPC, dated April 30, 1999, stated that the senior reactor operator gave two explanations for his conduct: 1) the requirement was not applicable because the training failure was a crew failure, and 2) the requirement was forgotten. NMPC's investigation revealed that the individual did not consider the first explanation in his original decision to assume the shift. The first explanation was suggested by others after the fact.

Based on this information, NMPC concluded that the individual did not act willfully, deliberately, or with careless disregard. The individual made an inadvertent error due to his failure to consider whether or not he was qualified after the crew failed the simulator exam. Therefore, NMPC disagrees with the characterization that the apparent violation was willful.

Page 3

An NMPC senior manager will be attending the individual's pre-decisional enforcement conference at his request.

Sincerely,



John H. Mueller
Senior Vice President and
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JHM/CES/mlb
Attachment

xc: Mr. H. J. Miller, NRC Regional Administrator
Mr. S. S. Bajwa, Section Chief PD-I, Section 1, NRR
Mr. G. K. Hunegs, NRC Senior Resident Inspector
Mr. D. S. Hood, Senior Project Manager, NRR
Records Management

