

PDR

UNITED STATES

7590-01

NUCLEAR REGULATORY COMMISSION

In the Matter of) Docket Nos. 50-317 and 50-318
Baltimore Gas and Electric Company) License Nos. DPR-53 and DPR-69
Calvert Cliffs, Units 1 and 2) EA 87-77

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Baltimore Gas and Electric Company, Baltimore, Maryland (the "licensee") is the holder of License Nos. DPR-53 and DPR-69 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the operation of the Calvert Cliff's nuclear reactors in Lusby, Maryland.

II

An NRC safety inspection of the licensee's activities under the license was conducted on March 23-27, 1987. During the inspection, the NRC staff determined 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 April 28, 1988. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the civil penalty amount for the violations. Two responses, dated July 12 and July 18, 1988, to the Notice of Violation and Proposed Imposition of Civil Penalty, were received from the licensee. In its response, the licensee admits the violations, but requested reduction of the severity level of the violations and full or partial mitigation of the civil penalty.

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III

Upon consideration of the responses received, the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalty contained therein, and as set forth in the Appendix to this Order, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Support Operations has determined that 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 (42 U.S.C. 2282, PL 96-295), and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay a civil penalty in the amount of Three Hundred Thousand Dollars (\$300,000) within thirty 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 U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

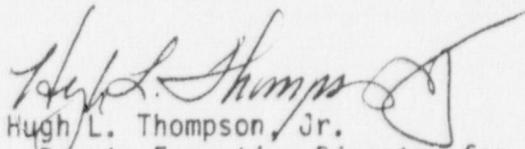
V

The licensee may, within thirty days of the date of this order, request a hearing. A request for a hearing shall be clearly marked as a request for hearing and shall be addressed to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, D.C., with a copy to the Regional Administrator, Region I.

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 thirty days 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, on the basis of the violations confirmed by the licensee in its July 12 and July 18, 1988 responses, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Support Operations

Dated at Rockville, Maryland
this 24th day of March 1989

APPENDIX
EVALUATION AND CONCLUSION

On April 28, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Baltimore Gas and Electric Company (licensee) for violations that occurred at Calvert Cliffs. The licensee responded to the Notice by two letters, dated July 12 and July 18, 1988, and admits the violations, but requested reduction of the severity level of the violations and full or partial mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's responses are as follows:

I. Restatement of Violations

10 CFR 50.49(d), (f), and (j), respectively, require, that (1) a list of electric equipment important to safety be prepared, and information concerning performance specifications, electrical characteristics and postulated environmental conditions for this equipment be maintained in a qualification file; (2) each item of electric equipment important to safety shall be qualified by testing and/or analysis of identical or similar equipment, and the qualification based on similarity shall include a supporting analysis to show that the equipment to be qualified is acceptable; and (3) a record of the qualification shall be maintained in an auditable form to permit verification that the electrical equipment important to safety is qualified and that the equipment meets the specified performance requirements under postulated environmental conditions.

Contrary to the above, as of March 27, 1987, certain environmental qualification files did not include the required documentation to demonstrate environmental qualification, or the listing of electrical equipment important to safety was found not to be complete. Examples of each violation include:

1. Tape splices, an item of electric equipment important to safety, were installed on Unit 1 and 2 components in various safety systems, including solenoid blocking valves, 4 KV motor terminations, 480 V motor splices, and 120 V control and instrument splices. These tape splices were made using standard electrical tape and neither test data nor analysis existed in a qualification file to demonstrate qualification of these splices. This condition existed since at least November 30, 1985.
2. Numerous other items of electric equipment important to safety were installed at both units but were not included on the list of electric equipment important to safety, and did not have a record file to demonstrate qualification. This condition existed since at least November 30, 1985 and the items included: (1) unqualified heat shrink assemblies (Raychem and Ideal); (2) unqualified terminal blocks (Buchanan 100, GE CR151, and unidentified phenolic-type); (3) unqualified relays (Square D, Struthers Dunn, and Telemecanique); (4) weepholes in electrical junction boxes absent or not in the proper orientation; (5) T-drains in motor operated valves not installed; (6) an unqualified coil; and (7) unqualified hand switches.

These violations constitute an EQ category A problem.

Civil Penalty - \$300,000 (These EQ violations existed in excess of 100 days of plant operation).

II. Summary of Licensee Response

The licensee, in its responses, admits the occurrence of the violations. However, the licensee contends that the NRC must first find, under the Modified Enforcement Policy Relating to 10 CFR 50.49 (Modified EQ Enforcement Policy) which was attached to Generic Letter 88-07, that a violation is safety significant before issuing a civil penalty. The licensee states that the NRC did not, in the April 28, 1988 letter and Notice, address this issue and submits that none of the violations were safety significant. In support of its argument, the licensee indicates that (1) both units were shutdown for two months, and before restarted, all EQ items were found to be operable, qualified or qualifiable; (2) it is inappropriate for the NRC not to consider the operability of equipment in determining safety significance and civil penalty assessment, i.e., it is inappropriate to assume that the unqualified equipment is inoperable; and (3) these violations were simply documentation violations, most of which were identified by the licensee after the NRC inspection and corrected prior to startup, and therefore, should be classified at Severity Level IV as would any NRC-identified EQ finding that is corrected by the licensee prior to completion of the inspection, or shortly thereafter.

The licensee also claims that any NRC enforcement action must conform to 10 CFR Part 2, Appendix C, and that, should application of the Modified EQ Enforcement Policy result in civil penalties that would be inappropriate under 10 CFR Part 2, Appendix C, the penalties cannot stand. The licensee indicates that the importance of safety significance for purposes of NRC enforcement is one of the key elements of 10 CFR Part 2, Appendix C, and, since the proposed civil penalties have not, in the licensee's judgment, considered the safety significance of the violation, the civil penalties are inappropriate.

The licensee also requests that, if the NRC makes the determination that imposition of a civil penalty is appropriate, in accordance with the Modified EQ Enforcement Policy, the penalty should be substantially mitigated since (1) the licensee contends that the deficiencies at Calvert Cliffs constitute at most a Category C EQ problem, (2) if fairness and equity among licensee's is to be achieved, there should be comparability between the civil penalties assessed under 10 CFR Part 2, Appendix C and the Modified EQ Enforcement Policy, and (3) the NRC should have allowed the full 50% mitigation for the licensee's corrective actions rather than the 25% allowed.

III. NRC Evaluation of Licensee Response

With regard to the licensee's arguments concerning the safety significance of the violations and the categorization of the violations as a Category A problem, the NRC, under the Modified EQ Enforcement Policy, considers violations of EQ requirements to be safety significant because the electrical equipment required to be qualified are those which are important to safety. This is a case in which it appears that components were properly categorized

as important to safety. If a licensee cannot demonstrate that such a component is qualified, for enforcement purposes, a significant violation has occurred. The only exceptions include those cases in which a documentation deficiency is essentially one of a minor nature which is readily correctable based on existing knowledge, tests, or analyses. These would then be considered at a Severity Level IV or V. In this case, the licensee failed to have sufficient documentation, including adequate analyses, in qualification files prior to November 30, 1985, to support the environmental qualification of equipment important to safety affecting many systems and components.

The NRC recognizes that most of the items were qualified or found to be qualifiable and corrected prior to startup. However, as set out in the Modified EQ Enforcement Policy, the NRC will assume, for enforcement purposes, that equipment whose qualification cannot be demonstrated could affect operability of the associated system. Furthermore, the items did not constitute simple documentation problems. Some of these components were replaced prior to startup. In addition, substantive engineering analyses were performed by the licensee during the shutdown, or would have been required to be performed to support qualification for those items which were replaced, and these reanalyses could not have been done within the period of an NRC inspection. Minor documentation deficiencies which can be corrected within a short period of time are considered by the NRC staff to be of lesser significance (Severity Level IV or V violations) whether or not identified during an inspection. Because substantive analyses were needed or would have been necessary had equipment not been replaced, the violations here are not appropriate for Severity Level IV or V classification. Furthermore, since these deficiencies affected many systems and components, the deficiencies constituted a Category A problem and the imposition of a civil penalty is clearly proper under the Modified EQ Enforcement Policy.

With respect to the licensee's arguments concerning the legality of issuance of civil penalties in accordance with the Modified EQ Enforcement Policy, the NRC rejects the licensee's claim that this action must conform with 10 CFR Part 2, Appendix C. 10 CFR Part 2, Appendix C, is a Statement of Policy and not a regulation. It was not promulgated in accordance with rule making procedures. As a Statement of Policy, it is the Commission's statement as to how it generally intends to approach enforcement of its requirements. In accordance with 10 CFR Part 2, Appendix C, the Commission may deviate from this guidance in circumstances when it is considered warranted. The Commission established a special EQ enforcement policy (initially in August 1985 and modified in April 1988) because a departure from this guidance is warranted in the context of EQ to emphasize that, when the deadline for equipment qualification was established, the Commission expected it to be met. The April 1988 Modified EQ Enforcement Policy describes how the NRC will exercise its enforcement authority for licensees who did not comply with the EQ rule as of November 30, 1985.

With respect to the licensee's argument that the civil penalties under 10 CFR Part 2, Appendix C, and the Modified EQ Enforcement Policy should be comparable, the staff notes that the Commission established a special EQ enforcement policy because of the delays by licensees in achieving compliance with the requirements of 50.49. The purpose of this special policy was to send a message to all licensees that the Commission would issue significant civil penalties for licensees who had a clear opportunity but who failed to meet EQ requirements as of November 30, 1985. The Commission determined that these special circumstances required a different approach to enforcement than that specified by 10 CFR Part 2, Appendix C, and it exercised its discretion in accordance with 10 CFR Part 2, Appendix C, and Section 234 of the Atomic Energy Act of 1954, as amended, to create and implement a special enforcement policy for violations of EQ requirements in such circumstances.

With respect to the licensee's request for mitigation of the civil penalty, the NRC's escalation and mitigation factors set forth in the Modified EQ Enforcement Policy include (1) identification and reporting (Factor 1); (2) best efforts to complete the requirements within the deadline (Factor 2); (3) corrective actions (Factor 3); and (4) duration of the violation (Factor 4). In this case, the base civil penalty for the Category A problem at Calvert Cliffs was mitigated by 25% based on Factor 1 and 25% based on Factor 3, but was escalated 50% based on Factor 2.

The NRC maintains that it has appropriately evaluated the application of the factors when considering the licensee's actions taken after its initial identification of the tape splice deficiencies in December 1986. While the NRC recognizes that extensive corrective actions were taken after the NRC's follow-up inspection in March 1987, the corrective actions taken when the tape deficiencies were first identified in December 1986 were unacceptable and reflected a narrow review of the deficiencies. Thus, mitigation by not more than 25% based on this factor was appropriate. To give full mitigation for corrective actions under these circumstances would inappropriately reward the licensee's poor initial corrective actions. The NRC also recognizes that most of the violations were identified by the licensee and, therefore a 25% reduction based on this factor was appropriate. However, full 50% mitigation based on this factor was deemed inappropriate because it was the NRC inspection in March 1987 which identified additional EQ deficiencies and which caused the licensee to perform additional reviews and evaluations.

Therefore, in summary, the licensee's arguments do not provide an adequate basis for mitigation of the civil penalty.

IV. NRC Conclusion

The licensee did not provide a sufficient basis for reclassification of the severity of the problem or for mitigation of the amount of the civil penalty. Therefore, the NRC concludes that the deficiencies constitute an EQ Category A problem and a civil penalty of \$300,000 should be imposed.

Baltimore Gas and Electric Company

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* See previous concurrence

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DEDS

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