

July 27, 1999

Ernest C. Hadley, Esq.
1040 B Main Street
P.O. Box 549
West Wareham, MA 02576

Dear Mr. Hadley:

I am responding to the Petition you submitted pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), on August 21, 1995, on behalf of George Galatis and We the People, Inc. (the Petitioners), and a supplement to that Petition, which was submitted on August 28, 1995. These two letters will hereinafter be referred to as the "Petition." The Petitioners' request was referred to the U.S. Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation for preparation of a response in accordance with 10 CFR 2.206.

The Petitioners requested that NRC (1) institute a proceeding under 10 CFR 2.202 to suspend the license for the Millstone Unit 1 facility operated by Northeast Nuclear Energy Company (NNECO or the licensee) for a period of 60 days after the unit is brought into compliance with the license and the design basis; (2) revoke the operating license until the facility is in full compliance with the terms and conditions of its license; (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of spent fuel pool water; and (4) take enforcement action pursuant to 10 CFR 50.5 and 50.9. As grounds for these requests, the Petitioners listed three issues. First, the Petitioners asserted that the licensee had knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40. Second, the Petitioners asserted that License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the licensee in documents submitted to the NRC. And third, the Petitioners asserted that the license amendment proposed in a letter dated July 28, 1995, should be denied and the licensee should be required to operate in full conformance with License Amendment No. 40.

In the supplement to the Petition dated August 28, 1995, there were additional assertions in support of the Petitioners' first and third issues. In addition, the Petitioners requested a public hearing in the vicinity of Millstone Unit 1 for the purpose of permitting comment by the public on the issues raised in the Petition.

The NRC acknowledged receipt of the Petition in a letter dated October 26, 1995. In the acknowledgment letter, the NRC staff informed you that the Petitioners' third issue was not within the scope of 10 CFR 2.206. Therefore, this issue would not be addressed in the Director's Decision. The supplemental letter of August 28, 1995, contained assertions relating to this third issue. As this issue is outside the scope of 10 CFR 2.206, these assertions will not be addressed in the Director's Decision. However, as committed to in a Partial Director's

Decision (DD-96-23) dated December 26, 1996, the staff forwarded to you by letter dated July 1, 1999, its findings related to these assertions. In its letter of October 26, 1995, the NRC staff advised you that an informal public hearing would be held in the vicinity of Millstone Unit 1. This hearing was held on April 8, 1996.

In the Partial Director's Decision, the staff documented its technical review of the full core offload issue at Millstone Units 1, 2, and 3 and Seabrook Unit 1. The staff concluded that Millstone Units 1 and 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full core offloads as asserted by the Petitioners. However, the staff's followup of spent fuel pool issues raised by the Petitioners led, in part, to the identification of a broad spectrum of configuration management concerns that had to be corrected before the Commission allowed restart of any Millstone unit.

On August 14, 1996, the NRC staff issued a Confirmatory Order establishing an Independent Corrective Action Verification Program (ICAVP) for each Millstone unit to ensure that the plant's physical and functional characteristics were in conformance with its licensing basis and design basis. The ICAVP was performed and completed for Millstone Units 2 and 3 to the satisfaction of the NRC before the Commission allowed the plants to restart. Because of the licensee's decision to permanently shut down rather than restart Millstone Unit 1, the staff determined that the requirement to perform an ICAVP at Millstone Unit 1 was no longer necessary. To this extent, as stated in the Partial Director's Decision, the staff determined that the Petitioners' requests for suspension and revocation of the Millstone Unit 1 operating license was partially granted. In addition, the staff stated that it had evaluated spent fuel accidents beyond the design bases, and, to this extent, the Petitioners' request to perform analyses of such accidents was partially granted.

In the Partial Director's Decision, the staff stated that it was still considering the Petitioners' assertions that the licensee knowingly, willfully, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40 and submitted material false statements to obtain License Amendment Nos. 39 and 40. As explained in the enclosed Final Director's Decision (DD-99-09), the NRC staff has taken actions that, in part, address the Petitioners' request. Therefore, for the reasons explained in the Final Director's Decision, Request 4 of the Petition is partially granted. The Petition raised a number of important concerns with regard to a licensed facility, and we appreciate your interest in and concern for ensuring public health and safety and the continued operational safety of nuclear power reactors.

E. Hadley

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A copy of the Final Director's Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time. I have also enclosed a copy of the notice of "Issuance of Final Director's Decision Under 10 CFR 2.206," including the complete text of DD-99-09, which is being filed with the Office of the Federal Register for publication.

Sincerely,

Original signed by:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Enclosures: 1. Director's Decision 99-09
2. Federal Register Notice

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A copy of the Final Director's Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time. I have also enclosed a copy of the notice of "Issuance of Final Director's Decision Under 10 CFR 2.206," including the complete text of DD-99-09, which is being filed with the Office of the Federal Register for publication.

Sincerely,

Original signed by:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

- Enclosures: 1. Director's Decision 99-09
2. Federal Register Notice

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Director's Decision 99-09, Response from S. Collins to E. Hadley dated _____

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Samuel J. Collins, Director

In the Matter of)	Docket No. 50-245
)	
NORTHEAST NUCLEAR ENERGY COMPANY))	License No. DPR-21
)	
(Millstone Nuclear Power Station,)	(10 CFR 2.206)
Unit 1))	

FINAL DIRECTOR'S DECISION PURSUANT TO 10 CFR 2.206

I. INTRODUCTION

On August 21, 1995, George Galatis and We the People, Inc. (Petitioners), filed a Petition with the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). A supplement to the Petition was submitted on August 28, 1995. These two submittals will hereinafter be referred to as the "Petition."

The Petition raised three issues regarding the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), operated by Northeast Nuclear Energy Company (NNECO or the licensee). First, the Petitioners asserted that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40. Specifically, Petitioners asserted that NNECO had offloaded more fuel assemblies into the Millstone Unit 1 spent fuel pool (SFP) during refueling outages than permitted under these license amendments. Second, Petitioners asserted that License Amendments Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the licensee in documents submitted to the NRC. Third, Petitioners asserted that the license amendment proposed by the licensee under cover of a

letter dated July 28, 1995, regarding offloading of the entire core of spent fuel assemblies at Millstone Unit 1, should be denied and the licensee should be required to operate in full conformance with License Amendment No. 40.

On the basis of these assertions, the Petitioners requested that the NRC (1) institute a proceeding under 10 CFR 2.202 to suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the licensing basis and the design basis, (2) revoke the operating license for the Millstone Unit 1 facility until it is in full compliance with the terms and conditions of its license, (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of SFP water, before reinstatement of the license, and (4) take enforcement action against NNECO pursuant to 10 CFR 50.5 and 50.9. Finally, Petitioners requested that the proposed license amendment sought by NNECO be denied.

In the supplement to the Petition dated August 28, 1995, the Petitioners made additional assertions in support of their first and third issues. Specifically, in support of Issue 1, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full core offloads in violation of their licenses. In support of Issue 3, the Petitioners asserted that there is a material false statement in a submission used to support a previous Millstone Unit 3 license amendment request, and that there is an unanalyzed condition in the Millstone Unit 3 Updated Final Safety Analysis Report in that system piping had not been analyzed for the full core offload normal end-of-cycle event. Also, with regard to Seabrook Station Unit 1, the Petitioners asserted that there are Technical Specification violations related to criticality analysis and gaps in Boraflex material.

By letter dated October 26, 1995, the NRC informed the Petitioners that the Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of the Commission's regulations for preparation of a response. The NRC also informed the

Petitioners that the NRC staff would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. Additionally, the NRC staff informed the Petitioners that their request with regard to issues associated with the requested license amendment (i.e., Petitioners' third issue) was not within the scope of 10 CFR 2.206 and thus was not appropriate for consideration under 10 CFR 2.206.

In a Partial Director's Decision (DD-96-23) dated December 26, 1996, the staff documented its technical review of the full core offload issue at Millstone Units 1, 2, and 3 and Seabrook Unit 1. The staff concluded that Millstone Units 1 and 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full core offloads as asserted by the Petitioners. However, the staff's followup of SFP issues raised by the Petitioners led, in part, to the identification of a broad spectrum of configuration management concerns that had to be corrected before the Commission allowed restart of any Millstone unit.

On August 14, 1996, the NRC staff issued a Confirmatory Order establishing an Independent Corrective Action Verification Program (ICAVP) for each Millstone unit to ensure that the plant's physical and functional characteristics were in conformance with its licensing and design basis. The ICAVP was performed and completed for Millstone Units 2 and 3 to the satisfaction of the NRC before the Commission allowed the plants to restart.¹ To the extent that Millstone Unit 1 permanently ceased operation, as stated in the Partial Director's Decision, the staff determined that the Petitioners' requests for suspension and revocation of the Millstone Unit 1 operating license was partially granted. The staff further stated that it had evaluated

¹ The staff notes that by letter dated July 21, 1998, the licensee informed the NRC of its decision to permanently shut down Millstone Unit 1. Upon the permanent shutdown of Millstone Unit 1, the staff determined that the requirement to perform an ICAVP at Millstone Unit 1 was no longer necessary.

spent fuel accidents beyond the design bases and, to this extent, the Petitioners' request to perform analyses of such accidents was also partially granted.

In the Partial Director's Decision, the staff stated that since the Petitioners' letter of August 28, 1995, contained assertions relating to the third issue (that the license amendment proposed by the licensee under cover of a letter dated July 28, 1995, should be denied) and that the issue was not appropriate for consideration under 10 CFR 2.206, the staff would forward its findings to the Petitioners by separate correspondence. In a letter to the Petitioners dated July 1, 1999, the staff addressed these assertions.

In the Partial Director's Decision, the staff stated that it was still considering the Petitioners' assertions that the licensee knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40 and submitted material false statements to obtain License Amendment Nos. 39 and 40 (as they support the Petitioners' fourth request). As explained below, the NRC staff has taken actions that, in part, grant the Petitioners' request.

II. DISCUSSION

Request for Enforcement Action against NNECO Pursuant to 10 CFR 50.5 and 50.9

The Petitioners based their requests on their assertion that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40 and that License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements. Specifically, the Petitioners stated that the licensee conducted full core offloads as a routine practice when its licensing basis analyses assumed one-third core offloads as the normal refueling practice. In their supplemental letter of August 28, 1995, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full

core offloads in violation of their licenses. The Petitioners further contend that the licensee's actions subjected the public to an unacceptable risk.

As explained in the Partial Director's Decision, the staff concluded that Millstone Units 1 and 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full core offloads as asserted by the Petitioners.

In a letter to the licensee dated May 25, 1999, regarding a Notice of Violation and Exercise of Enforcement Discretion, the staff stated that it had completed the investigations concerning the performance of fuel offloads at Millstone Unit 1. Regarding the Petitioners' assertion concerning the Millstone Unit 1 full core offload practice, the NRC has drawn a distinction between routinely conducting full core offloads and conducting any offloads before the delay times assumed in the Final Safety Analysis Report (FSAR). The NRC has concluded that enforcement action is not warranted at Millstone Unit 1 and other nuclear facilities for conducting full core offloads on a routine basis. The NRC determined that the use of the terms "abnormal" and "emergency" in describing the full core offload scenario in the FSAR did not appear to be presented by the licensee nor understood by the staff as a commitment to limit the frequency with which full core offloads were conducted at Millstone Unit 1. In this regard, the licensee informed the NRC staff of its practice of offloading the full core at Millstone Unit 1 in a meeting on June 16, 1988, associated with the License Amendment No. 40 request pertaining to SFP reracking. Further, although the analytical constraints and assumptions for the full core offload were generally less restrictive than those for a partial core offload, in licensing actions (typically rerack amendments) for nuclear plants, including Millstone Unit 1, the NRC found the plant design for removing the full core acceptable. Finally, as a way of addressing shutdown risk, the NRC encouraged, and still does, the practice of full core offloads. Thus, consistent with the conclusions drawn for all other plants that routinely performed full core offloads, enforcement is not being proposed for the Millstone Unit 1 full core offloading practices.

The staff's followup of spent fuel pool issues raised by the Petitioners, however, led, in part, to the identification of a broad spectrum of configuration management concerns that had to be corrected before the Commission allowed restart of any Millstone unit. On the basis of information developed during the investigation by the NRC's Office of Investigations, the NRC cited the licensee for four violations of NRC requirements. Specifically, the NRC determined that, in careless disregard of NRC requirements, the licensee (1) performed both partial and full core offloads before the delay times assumed in the FSAR without the appropriate engineering analysis; (2) utilized unapproved and unanalyzed system configurations to augment SFP cooling during refueling outages, without procedures to govern those activities; and (3) in two instances, submitted incomplete and inaccurate information to the NRC (violations of 10 CFR 50.9(a)) related to the performance of fuel offloads that were actually commenced before the delay times assumed in the analysis submitted to the NRC.

In its May 25, 1999, letter transmitting the Notice of Violation, the NRC also stated that these violations, which existed for a long time, appeared to be the result of the deficient safety culture, which contributed to the shutdown of all three Millstone units for an extended period and resulted in a number of other violations for which the NRC issued a \$2,100,000 civil penalty to the licensee on December 10, 1997. That penalty was based, in part, on (1) the licensee's failure to ensure that the plant was maintained in the configuration as designed and specified in the licensing basis and (2) the licensee's failure to promptly correct nonconforming conditions. The NRC concluded that the failure of licensee management to establish standards to ensure that the plant was maintained and operated as designed, and to ensure that nonconforming conditions were promptly identified and corrected, constituted careless disregard of requirements. As such, the violations that resulted from that deficient safety culture, which fostered such disregard, were considered willful in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions NUREG-1600" (Enforcement Policy).

In its May 25, 1999, letter, the NRC further stated that in consideration of (1) the undesirable consequences of performance of unanalyzed core offloads and the licensee's failure to ensure that SFP heat removal was conducted in accordance with approved procedures; (2) the significance of the licensee's providing incomplete and inaccurate information to the NRC; and (3) the significance that the NRC places on careless disregard of its requirements, the four violations had been classified, in the aggregate, as a Severity Level III violation in accordance with the NRC Enforcement Policy. For the reasons outlined in its letter of May 25, 1999, the staff exercised enforcement discretion and did not issue a civil penalty for the violations. In its letter, the NRC staff stated that discretion is appropriate because the licensee already implemented corrective actions to address the underlying performance problems at Millstone and further enforcement action is not necessary to achieve additional remedial actions.

In their Petition, the Petitioners requested that the NRC take enforcement action against the licensee pursuant to 10 CFR 50.5 and 50.9. Although not specifically for the reasons cited by the Petitioners (the Petitioners based their requests on their assertion that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40 and that License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements), the NRC did find that in two instances the licensee submitted incomplete and inaccurate information to the NRC related to the performance of fuel offloads that were actually being commenced before the delay times assumed in the analysis submitted to the NRC. Therefore, for the reasons previously given, the NRC's actions constitute a partial granting of the Petitioners' request regarding enforcement action pursuant to 10 CFR 50.5 and 50.9.

III. CONCLUSION

The staff has completed the investigations concerning the performance of fuel offloads at Millstone and has taken enforcement action as outlined in its letter and Notice of Violation to the licensee dated May 25, 1999. Therefore, to this extent, Petitioners' request for enforcement action against NNECO pursuant to 10 CFR 50.5 and 50.9 is partially granted.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Final Director's Decision will constitute the final action of the Commission (for Petitioners' Request 4) 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 27th day of July 1999.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

UNITED STATES NUCLEAR REGULATORY COMMISSIONNORTHEAST NUCLEAR ENERGY COMPANYMILLSTONE NUCLEAR POWER STATION, UNIT 1DOCKET NO. 50-245ISSUANCE OF FINAL DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation has issued a Final Director's Decision with regard to a Petition dated August 21, 1995, and supplemented on August 28, 1995, submitted by George Galatis and We the People, Inc. (the Petitioners), requesting action under Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206). The Petition pertains to Millstone Nuclear Power Station, Unit 1, operated by Northeast Nuclear Energy Company (licensee).

The Petitioners requested that the NRC (1) suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the license and the design basis; (2) revoke the operating license until the facility is in full compliance with the terms and conditions of its license; (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of spent fuel pool water; and (4) take enforcement action pursuant to 10 CFR 50.5 and 50.9. As bases for their requests, the Petitioners raised the following three issues: (1) the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40; (2) License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the licensee in documents submitted to the NRC; and (3) the license amendment proposed in a letter dated July 28, 1995, should be denied and the licensee should be required to operate in full conformance with License Amendment No. 40. By letter dated October 26, 1995, the staff

informed the Petitioners that Issue 3 was determined to be a request for a licensing action and therefore, was beyond the scope of 10 CFR 2.206.

In a Partial Director's Decision dated December 26, 1996, the Acting Director of the Office of Nuclear Reactor Regulation partially granted Requests 1, 2, and 3 of the Petition on the basis of the staff's technical review of the core offloading issues presented by the Petitioners. The reasons for that decision were explained in the "Partial Director's Decision Pursuant to 10 CFR 2.206" (DD-96-23).

As stated in the Partial Director's Decision, the staff noted that the focus of the Petition was on assertions of wrongdoing on the part of the licensee in certain of its actions and, at the time, that the assertions were still being reviewed by the staff. The staff has completed its review in this area and for the reasons given in the "Final Director's Decision Pursuant 10 CFR 2.206" (DD-99-09), Request 4 of the Petition is partially granted.

Additional information is included in the "Final Director's Decision Pursuant to 10 CFR 2.206" (DD-99-09), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555-0001, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the

final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 27th day of July 1999.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by:

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation