

April 24, 2001

MEMORANDUM TO: Docket File

FROM: L. Raghavan, Senior Project Manager, Section 2 */RA/*  
Project Directorate IV-2 and Decommissioning  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

SUBJECT: YELLOW TICKET NO. 020010059 - RESPONSE TO A CITIZEN'S  
CONCERN RE: NOTICES OF ENFORCEMENT DISCRETION POLICY

The purpose of this note is to place in the public document room the attached staff's response to a concern on the staff guidance to the Notices of Enforcement Discretion raised by a member of the public.

Docket Nos: 50-361  
50-362

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Docket Nos: 50-361  
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ADAMS ACCESSION NUMBER: ML011140350

NRR-106

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|--------|--------------|-------------|-----------------|--|
| OFFICE | PDIV-2/PM    | PDIV-2/LA   | PDIV-2/SC       |  |
| NAME   | LRaghavan:sp | MMcAllister | JND for SDembek |  |
| DATE   | 4/24/01      | 4/24/01     | 4/24/2001       |  |

**OFFICIAL RECORD COPY**

From: Lakshminaras Raghavan  
To: Mulligan, Michael  
Date: 4/18/01 7:30AM  
Subject: Re: NOER

Dear Mr. Mulligan

I am responding to your email to me on April 6, 2001 regarding certain concerns on the NRC's Regulatory Issue Summary 2001-010 "Revisions to Staff Guidance on Notices of Enforcement Discretion." On April 10, 2001, I acknowledged your email, and had a telephone discussion with you so we can better understand your concerns. My supervisor, Herb Berkow also participated in the call.

Your April 6, 2001, email stated that the public should not be forced to choose between "risk to the economy and public safety (Blackouts)." You expressed general concern on the overall Notices of Enforcement of Enforcement Discretion (NOED) policy, rootcause determination for the violation and enforcement action. You did not provide any specific detail or basis for your concerns. Absent any specific detail we are unable to initiate any further action on your concern. However, a general clarification of our NOED policy may alleviate your concerns.

The NRC considers the NOED policy as an appropriate and necessary regulatory mechanism because it is difficult to anticipate every contingency that might arise during the lifetime of a facility. The NRC's issuance of NOEDs provides a mechanism to assure that public health and safety is served by the regulatory process. However, plant safety is still the main consideration. In each case where the NRC chooses to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Based on the above discussion, we do not find it necessary to initiate any further actions. Please be assured that we take our safety responsibilities to the public very seriously, and will continue to do so within the bounds of lawful authority.

L. Raghavan, Office of Nuclear Reactor Regulation  
(301) 415-1471

>>> "Michael Mulligan" <steamshovel685@earthlink.net> 04/06/01 09:31AM >>>

Dear Mr. Raghavan:

If you looked up what stirred 20-10, I wouldn't be surprised if it came from issues I generated in a recent letter to the NRC. I can understand the issue of flexibility you would need in a grid emergency and down powering the plant during the event. In reality we are being forced into an unconscionable set of choices. We are at a place with grid capacity margins that we should have been prevented from entering due to the large risk to the economy and public safety(Blackouts). A situation that becomes a choice between two sets of reckless decisions. The good part of 20-10 is that many different levels of the NRC and other GOV. agencies will be involved in the decision.

Issues:

- 1) The chronological order of the NOED doesn't give the public the opportunity to understand related events at different plants.
- 2) You need a running NOER evaluation on what is the root causes; why the industry needs NOERs. Is it basically utility negligence or bureaucratic confusion, what percentage is it? Is it a single unforeseen event or was it preventable?
- 3) As an example lets look at some of the DG issues this year. Most seem to be about issues discovered after a maintenance outage during its testing and run-in period. Did they use enough resources and organization ability to get the maintenance over with inadequate time? Where is the objective data about what led up to the NOER and it should be included on the NOER page. Is heavy maintenance appropriate

for a LCO. Why not build or construct a swing DG that can replace a DG that is down for maintenance.  
4) On the infinite heat sink, was there a opportunity to see long term trends in climate, which they just neglected to compensate for with engineering? Is it really NRC negligence in not compensating for global warming.

In sum is NOER just a special financial benefit to the utilities that is driven from negligence?

ne·glect (nî-glèkt¹) verb, transitive

ne·glect·ed, ne·glect·ing, ne·glects

1. To pay little or no attention to; fail to heed; disregard: neglected their warnings.
2. To fail to care for or attend to properly: neglects her appearance.
3. To fail to do or carry out, as through carelessness or oversight: neglected to return the call.

noun

1. The act or an instance of neglecting something.
2. The state of being neglected.
3. Habitual lack of care.

neg·li·gence (nèg¹lî-jens) noun

1. The state or quality of being negligent.
2. A negligent act or a failure to act.
3. Law. Failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

Thanks,

mike mulligan

CC: Berkow, Herbert; Dembek, Stephen; Richards, Stuart