

September 28, 2005

Mr. Mano K. Nazar  
Senior Vice President and  
Chief Nuclear Officer  
Indiana Michigan Power Company  
Nuclear Generation Group  
One Cook Place  
Buchanan, MI 49106

SUBJECT: DONALD C. COOK NUCLEAR PLANT, UNITS 1 AND 2 - SUMMARY OF  
TELEPHONE CONFERENCE RE: FUEL UPGRADE (TAC NOS. MC5646 AND  
MC5647)

Dear Mr. Nazar:

By letter to the Nuclear Regulatory Commission (NRC) dated August 26, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML052500307), Mr. J. Zwolinski of your staff summarized a telephone discussion held on July 25, 2005, between him, representing the Indiana Michigan Power Company (I&M), the licensee for the Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, and Mr. J. Wermiel, et al., of the NRC staff. The subject of the discussion was I&M's planned upgrade of fuel in CNP, Unit 1 to address fuel fretting wear issues. The upgrade was previously discussed at a public meeting on February 3, 2005 (ADAMS Accession No. ML050390246) and during a telephone conference on March 16, 2005, between Mr. K. Steinmetz, et al., of your staff, and Mr. F. Orr, et al., of the NRC staff. The purpose of this letter is to clarify items discussed during the telephone discussion held on July 25, 2005.

The letter dated August 26, 2005, stated that, "[i]t is I&M's understanding that the staff agreed with I&M's determination that the fuel upgrade would not require prior approval since the fuel upgrade has essentially no affect on the 10 CFR [Title 10 of the *Code of Federal Regulations*] 50.46 model. The NRC staff emphasized the importance of documenting the 10 CFR 50.59 review to ensure prior NRC approval is not required."

The NRC staff believes that clarification to your understanding of the issues above is appropriate. As you are aware, the NRC does not make regulatory determinations through telephone discussions or other verbal communications. A regulatory determination is made following NRC staff review of licensee submittals and is documented with an NRC safety evaluation. Other opinions expressed by the NRC staff, whether explicitly stated or implied in meetings or other discussions, do not constitute regulatory determinations. Licensees should not rely on verbal NRC positions except in special circumstances, e.g., Notices of Enforcement Discretion, verbal authorization of a relief request. These infrequent exceptions are subsequently documented in NRC correspondence.

The NRC staff understands that I&M has determined that the fuel upgrade would not require prior NRC approval since the fuel upgrade has essentially no affect on the 10 CFR 50.46 model. The NRC has not made a regulatory determination on this issue, since I&M has not made a submittal to the NRC for review and approval.

As noted in previous discussions of this issue, it is the responsibility of the licensee to meet the requirements of 10 CFR 50.59 when making changes to the facility. Note that NRC approval of the Westinghouse fuel criteria evaluation process (FCEP) does not obviate the need for the licensee to determine the FCEP's application to their plant-specific design. As always, the licensee's completed 10 CFR 50.59 evaluation is subject to NRC review.

The licensee is also required to comply with 10 CFR 50.46. The requirements of 10 CFR 50.59 do not supersede the requirements of 10 CFR 50.46. Part 50.46 requires 30-day or annual reports of changes to or errors in the evaluation model based on the significance of the change or error. If the use of the upgraded fuel does not result in a change to or error in the evaluation model, then a report under 10 CFR 50.46(a)(3) would not be required. The licensee is also required to comply with the documentation requirements of the evaluation model in accordance with 10 CFR 50.46(a)(1)(i). The NRC expects that the licensee will verify that the current loss-of-coolant accident analysis Methodology of Record continues to apply to the plant operating with the new fuel, that the mixed core penalty is appropriately calculated, and that the licensee has committed (if needed in accordance with 10 CFR 50.46(a)(3) requirements) to reanalysis or other action.

Should you have any questions concerning this matter, please contact me at (301) 415-1389.

Sincerely,

**/RA/**

L. Raghavan, Chief, Section 1  
Project Directorate III  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-315 and 50-316

cc: See next page

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OFFICE	PM:PD3-1	LA:PD3-1	SRXB/BC	PDIII	SC:PD3-1
NAME	DSpaulding	THarris	JWermiel	RCorreia	LRaghavan
DATE	9/23/05	9/23/05	9/26/05	9/26/05	9/28/05

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Donald C. Cook Nuclear Plant, Units 1 and 2

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