

EA-06-073

July 13, 2006

Mr. Pete Dietrich  
Site Vice President  
Entergy Nuclear Northeast  
James A. FitzPatrick Nuclear Power Plant  
Post Office Box 110  
Lycoming, NY 13093

SUBJECT: JAMES A. FITZPATRICK NUCLEAR GENERATING STATION – NOTICE OF VIOLATION (NRC Investigation Report No. 1-2005-023)

Dear Mr. Dietrich:

This letter refers to an investigation initiated by the NRC Office of Investigations (OI), Region I, on May 13, 2005, after your staff informed the NRC concerning your identification of licensed operators' personal use of the internet in the control room and potential inattentiveness by licensed operators. Procedure AP-12.03, "Conduct of Operations," Standard 8.6.2, stated that on watch operators may use the internet for only work related activities. Based on its investigation, OI substantiated that a deliberate violation of the station Conduct of Operations procedure had occurred when licensed operators knowingly used the internet in the control room for personal use contrary to the procedure.

OI interviewed seven operators whose internet use was greater than their peers. During the interviews, three reactor operators and one senior reactor operator admitted to accessing the internet in the control room for non-business use while knowing that the Conduct of Operations procedure prohibits such activity. As such, the NRC concluded that those four licensed operators deliberately violated the Conduct of Operations procedure. The three other operators interviewed also used the internet for personal use in the control room; however, OI could not conclude that their actions were in deliberate violation of the Conduct of Operations procedure. In addition, based on the OI investigation, the NRC did not conclude that the operators involved were inattentive to licensed duties as a result of their internet use. A factual summary of the OI investigation is enclosed.

The failure of the licensed operators to adhere to the Conduct of Operations procedure constitutes a violation of NRC requirements set forth in Technical Specification 5.4.1. Technical Specification 5.4.1 requires procedures be established covering activities in Regulatory Guide 1.33, Appendix A, which includes AP-12.03, "Conduct of Operations." The violation has been classified at Severity Level IV in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at [www.nrc.gov](http://www.nrc.gov); select 'What We Do', 'Enforcement', then 'Enforcement Policy.' The NRC would normally determine this to be a minor violation of Technical Specification 5.4.1 because safety was not affected since (1) OI did not conclude that the individuals were inattentive to licensed duties as a result of their internet use since they were not "at the controls" at the time, (2) the extent of time of internet use for non-work related purposes was minimal, and (3) the operators stated that they were not

distracted from licensed duties when using the internet. However, since the actions involved a willful violation of station procedures, the NRC has increased the severity of the violation to Level IV in accordance with Section IV.A.4 of the Enforcement Policy.

The NRC also considered issuing a non-cited violation (NCV) for this issue because you (1) identified the concern and promptly reported the matter to appropriate NRC personnel, (2) initiated an investigation immediately after discovery of the issue, (3) restored compliance in a reasonable manner, (4) placed the violation into the corrective action program, and (5) took significant remedial action commensurate with the circumstance which created a deterrent effect within the licensee's organization. Some of these actions included issuance of written reprimands to the operators found using the internet for personal use while in the control room and providing retraining for all operators. Additionally, two of the operators were required to research all the procedures and present their findings of what is required and their failures to the operations department, and two operators provided written letters to the Operations Manager apologizing for their personal use of the internet and explaining why they should be allowed to continue to work. However, because the willful violation involved licensee officials (licensed operators) as described in the Enforcement Policy and did not appear to involve isolated acts, the violation is being cited. The violation is described in the enclosed Notice of Violation.

You are required to respond to this letter and the enclosed Notice and should follow the instructions specified in the Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

Please note that final NRC documents, such as the OI report described above, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under FOIA. Requests made under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Sincerely,

/RA/

A. Randolph Blough  
Director, Division of Reactor Safety

Docket No. 50-333  
License No. DPR-59

Enclosures: Notice of Violation  
Factual Summary of OI Investigation

cc w/encl:

G. Taylor, CEO, Entergy Operations, Inc.  
M. Kansler, President, Entergy Nuclear Operations, Inc (ENO)  
J. Herron, Sr, VP and Chief Operating Officer, (ENO)  
C. Schwarz, VP, Operations Support (ENO)  
K. Mulligan, General Manager, Plant Operations (ENO)  
O. Limpas, VP, Engineering (ENO)  
J. McCann, Director, Licensing (ENO)  
C. Faison, Manager, Licensing (ENO)  
M. Colomb, Director of Oversight (ENO)  
D. Wallace, Director, Nuclear Safety Assurance (ENO)  
J. Costedio, Manager, Regulatory Compliance (ENO)  
T. McCullough, Assistant General Counsel (ENO)  
P. Smith, President, New York State Energy Research and Development Authority  
P. Eddy, New York State Department of Public Service  
S. Lyman, Oswego County Administrator  
Supervisor, Town of Scriba  
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law  
J. Sniezek, PWR SRC Consultant  
M. Lyster, PWR SRC Consultant  
S. Lousteau, Treasury Department, Entergy Services

Mr. Pete Dietrich

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\* See previous concurrence.

\*\* NLO via e-mail to L. Trocine on 6/14/06.

\*\*\* Via e-mail to R. Summers on 7/6/06.

## NOTICE OF VIOLATION

Entergy Nuclear Operations, Inc.  
James A. FitzPatrick

Docket No. 50-333  
License No. DPR-59  
EA-06-073

During an investigation conducted by the NRC's Office of Investigations completed on February 14, 2006, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Technical Specification 5.4.1, requires procedures to be established, implemented, and maintained covering the applicable procedures recommended in Regulatory Guide 1.33, Appendix A, November 1972 (Safety Guide 33). Safety Guide 33, Appendix A, Section A.2, specifies authorities and responsibilities for safe operation and shutdown as an example of administrative procedures. FitzPatrick station procedure, AP-12.03, "Conduct of Operations," specifies administrative requirements for the safe operation of the plant. Procedure AP-12.03, step 8.6.2, specifies in part that on watch operators may use the internet for only work related activities.

Contrary to the above, from February 2005 to April 2005, while standing on watch positions in the control room, several employees (licensed operators) used the internet for non-work related activities.

This is a Severity Level IV violation (Supplement I).

Pursuant to the provisions of 10 CFR 2.201, Entergy Nuclear Operations, Inc., is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-06-073" and should include for each violation: (1) the reason for the violation or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at

<http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days.

Dated this 13<sup>th</sup> day of July 2006

FACTUAL SUMMARY OF OI INVESTIGATION  
REPORT NO. 1-2005-023

An investigation was initiated on May 13, 2005, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI), Region I, after the licensee informed the NRC that it had identified licensed operators using the internet for personal use while in the main control room on various occasions. Licensee senior management became aware of this concern based on an April 16, 2005, event when the night shift manager witnessed a licensed reactor operator viewing non-business internet material on a computer in the control room. About a week later, the NRC resident inspectors were informed and OI commenced an investigation regarding the internet use in the control room and potential inattentiveness by licensed operators. The purpose of the OI investigation was to determine if licensed control room operators (1) deliberately accessed the internet for personal use and (2) were inattentive to licensed duties. Based on evidence developed during its investigation, as well as a review of the licensee's investigation of this matter, OI substantiated that four licensed operators deliberately violated station procedure, AP-12.03, "Conduct of Operations," by accessing the internet for non-business use, but OI did not conclude that any operators were inattentive to licensed duties.

As evidence that four of the licensed operators interviewed by OI deliberately violated station procedures when accessing the internet for personal use in the control room, the four licensed operators admitted to OI that they accessed the internet for personal use in the control room while knowing it was prohibited by procedure. As such, OI concluded these four licensed operators deliberately violated procedures. Three other licensed operators interviewed by OI admitted to personal use of the internet in the control room but were not aware of the prohibition contained in the Conduct of Operations procedure. As a result, OI did not conclude that these three licensed operators deliberately violated procedures. In addition, OI noted that the licensee's investigation report concluded that all shifts displayed some incidental and occasional personal internet use.

OI determined that it was unlikely to prove, through additional interviews, that any licensed operators, including those previously interviewed, were inattentive or distracted from licensed duty as a result of their personal internet use. This was based on evidence revealed during the investigation including, the limited amount of time that operators used the internet, the fact that all of the interviewed licensed operators denied being distracted or inattentive when using the internet, and there was no evidence that the licensed operator who was "at the controls" accessed the internet. Based on consultation with the NRC staff, OI and the staff agreed that no further investigation was warranted.