

ACCELERATED DISTRIBUTION DEMONSTRATION SYSTEM

REGULATOR INFORMATION DISTRIBUTION SYSTEM (RIDS)

ACCESSION NBR: 9002260288 DOC. DATE: 90/02/16 NOTARIZED: YES DOCKET #
 FACIL: 50-397 WPPSS Nuclear Project, Unit 2, Washington Public Power 05000397
 AUTH. NAME AUTHOR AFFILIATION
 BOUCHEY, G.D. Washington Public Power Supply System
 RECIP. NAME RECIPIENT AFFILIATION
 LIEBERMAN, J. Ofc of Enforcement (Post 870413)

SUBJECT: Responds to NRC 891221 notice of violation & proposed imposition of civil penalty.

DISTRIBUTION CODE: IE14D COPIES RECEIVED: LTR 1 ENCL 1 SIZE: 43
 TITLE: Enforcement Action Non-2.790-Licensee Response

NOTES:

	RECIPIENT ID CODE/NAME	COPIES LTTR ENCL	RECIPIENT ID CODE/NAME	COPIES LTTR ENCL
	PD5 LA	1 1	PD5 PD	1 1
	SAMWORTH, R	1 1		
INTERNAL:	AEOD/DOA	1 1	AEOD/DSP/TPAB	1 1
	DEDRO	1 1	NRR/DOEA/OEAB11	1 1
	NRR/PMAS/ILRB12	1 1	NUDOCS-ABSTRACT	1 1
	OE DIR	1 1	OE FILE 01	1 1
	REG FILE 02	1 1	RGN5 FILE 03	1 1
	RGN2/DRSS/EPRPB	1 1		
EXTERNAL:	LPDR	1 1	NRC PDR	1 1
	INSIC	1 1		

NOTE TO ALL "RIDS" RECIPIENTS:

PLEASE HELP US TO REDUCE WASTE! CONTACT THE DOCUMENT CONTROL DESK,
 ROOM P1-37 (EXT. 20079) TO ELIMINATE YOUR NAME FROM DISTRIBUTION
 LISTS FOR DOCUMENTS YOU DON'T NEED!

TOTAL NUMBER OF COPIES REQUIRED: LTTR 17 ENCL 17

IA-4

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352

February 16, 1990
Docket No. 50-397
License No. NPF-21
EA 89-130
G02-90-028

Mr. James Lieberman
Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

Dear Mr. Lieberman:

Subject: RESPONSE TO NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF
CIVIL PENALTY - EA 89-130

- Reference: 1) Letter, J. B. Martin (NRC) to G. C. Sorensen (Supply System), Notice of Violation and Proposed Imposition of Civil Penalty, dated December 21, 1989.
- 2) Letter, G. C. Sorensen (Supply System) to J. Lieberman (NRC), Extension of Response Time for EA 89-130, dated December 29, 1989.
- 3) Letter, G. D. Bouchey (Supply System) to J. Lieberman (NRC), Request for Further Extension of Response Time for EA 89-130, dated February 6, 1990.

Pursuant to 10 CFR 2.201 and 2.205, the Supply System is submitting its response to the Notice of Violation and Proposed Imposition of Civil Penalty (Ref. 1). Because the NOV and proposed civil penalty was received just prior to the Christmas holidays, the Supply System requested, and was granted, a 30 day extension to the response time for this NOV (Ref. 2).

In preparing our response to the NOV and proposed civil penalty, Freedom of Information Act Requests were made for records related to prior NRC inspections related to our procurement process. Because we have not yet received a response to these FOIA requests, an additional extension of time was requested on February 6, 1990. In a telephone conversation of February 15, 1990, with Mr. Ed Baker, Deputy Director, Office of Enforcement, we were advised that this request was denied (February 13 letter from Mr. Lieberman). He noted that the denial letter did provide us the opportunity to supplement our response at a later date based on information received in response to our FOIA requests. Accordingly, we reserve the right to supplement this response pending receipt of the FOIA response.

9002260288 900216
PDR ADOCK 05000397
Q PDC

1/1
IEIA

Mr. James Lieberman

Page 2

February 16, 1990

RESPONSE TO NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
EA 89-130

Attachment I to this letter provides our response to the Notice of Violation in accordance with 10 CFR 2.201.

Attachment II provides our response to the proposed civil penalty in accordance with 10 CFR 2.205 and provides reasons why the penalty should not be imposed and requests remission of the penalty.

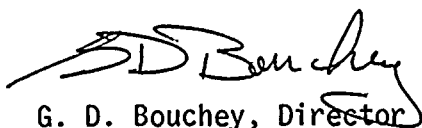
As discussed in the attached response, it is the Supply System's position that NRC guidance on commercial grade procurement has been an evolving standard. Our programs have met the guidance available at any given point in time. Our reevaluations of past commercial grade procurements have confirmed that our process has resulted in items installed in the plant which are capable of meeting their intended function. The NRC inspection of items identified in the NOV has also confirmed that those items are "acceptable for the function intended" (Ref. 1, pg. 2).

The attachments provide new information not previously provided as well as amplification and clarification of information supplied verbally in the enforcement conference and management meeting. In particular, details related to the backfit issues have not been previously discussed and provide information not evaluated by the staff in issuing the NOV and proposed civil penalty.

Based on the lack of any safety significant finding, the backfit considerations, and the new information provided herein, we believe there is sufficient justification for the NRC to reclassify this issue and provide remission of the civil penalty.

Should you have any questions regarding our response, please contact me.

Very truly yours,



G. D. Bouchey, Director
Licensing & Assurance (MD 280)

cc: Mr. C. J. Bosted, Resident NRC Inspector (901A)
Mr. J. B. Martin, Region V NRC
Mr. N. S. Reynolds, Bishop, Cook, Purcell & Reynolds
Mr. R. B. Samworth, NRC
Mr. D. L. Williams, BPA (399)


STATE OF WASHINGTON)

COUNTY OF BENTON)

Subject: RESPONSE TO NOTICE OF VIOLATION
AND PROPOSED IMPOSITION OF CIVIL
PENALTY - EA 89-130


I, G. D. Bouchey, being duly sworn, subscribe to and say that I am the Director, Licensing and Assurance, for the WASHINGTON PUBLIC POWER SUPPLY SYSTEM, the applicant herein; that I have full authority to execute this oath; that I have reviewed the foregoing; and that to the best of my knowledge, information, and belief the statements made in it are true.

DATE February 20, 1990


G. D. Bouchey, Director
Licensing and Assurance

On this day personally appeared before me G. D. Bouchey, to me known to be the individual who executed the foregoing instrument, and acknowledged that he signed the same as his free act and deed for the uses and purposes herein mentioned.

GIVEN under my hand and seal this 20th day of February 1990.


Notary Public in and for the
STATE OF WASHINGTON

Residing at Richland, WA
My commission expires 7/14/91

ATTACHMENT I

Washington Public Power Supply System
(NRC Inspection Report Nos. 50-397/89-21, 50-397/89-22, and 50-397/89-28)

REPLY TO THE NOTICE OF VIOLATION (EA 89-130)

I. Introduction

Pursuant to 10 C.F.R. Section 2.201, Washington Public Power Supply System (Supply System) hereby submits its reply to the Nuclear Regulatory Commission's (NRC) Notice of Violation and Proposed Imposition of a Civil Penalty issued on December 21, 1989. Consistent with the Supply System's letter (No. G02-89-233) to Mr. James Lieberman, dated December 28, 1989, we are submitting this response on or before the due date of February 20, 1990.

II. Restatement of the Alleged Violation

During the Nuclear Regulatory Commission (NRC) inspections conducted between March 27 and September 14, 1989, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," 10 C.F.R. Part 2, Appendix C (1989) the following violation was identified:

10 C.F.R. Part 50, Appendix B, Criterion III, "Design Control," requires, in part, that measures shall be established to assure that applicable regulatory requirements and the design basis are correctly translated into specifications, drawings, procedures, and instructions. These measures shall include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from such standards are controlled. Measures shall also be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the structures, systems, and components.

Contrary to the above, the licensee failed to establish and implement adequate measures to assure that quality standards are specified and included in design documents, and for the selection and review for suitability of application of materials, parts, and equipment that are essential to the safety-related functions of systems and components. Specifically, the following examples of items purchased commercial grade that were either installed or available for installation in safety-related systems for which an adequate evaluation for suitability of application had not been performed:

1. Evaluation 668 dedicated a commercial grade Potter-Brumfield MDR type control circuit relay for use in the safety-related emergency diesel generator "Loss of Power" control circuit. The evaluation did not specify appropriate quality standards nor otherwise assure that the replacement component was selected and reviewed for suitability of application in its safety-related function. The evaluation was primarily based upon advertised specifications that

the licensee failed to verify either through audits of the manufacturing process or through identification of critical characteristics that must be inspected or tested. Consequently, the component was installed in a safety-related application on May 17, 1988, without assurance that design seismic requirements were met.

2. Evaluation 1179 dedicated Anchor-Darling valve parts purchased commercial grade for use in the safety-related high pressure core spray system. The evaluation did not specify quality standards, such as fabrication under appropriate aspects of the vendor's approved Quality Assurance Program, or identify the replacement parts' critical characteristics that must otherwise be inspected or tested to assure suitability for application prior to the components' installation per Maintenance Work Request dated April 11, 1988.
3. Standard Procurement Policy No. 6, dated June 30, 1987, dedicated commercial grade fuses for installation in safety-related electrical systems. The policy did not specify appropriate quality standards nor assure that critical characteristics were identified for inspection or testing. The policy was inadequate in that it was based in part on: (1) the licensee's understanding of the manufacturing process for which no audits of the manufacturer were performed or required to be performed by the licensee, (2) Underwriters Laboratory (UL) activities which UL advised are not sufficient to derive any statistical inference with regard to product quality, and (3) functional compliance demonstrated by inspection and installation tests that did not cover the expected range of component operating conditions.
4. A pressure switch was purchased commercial grade under Purchase Order (PO) 89583 and installed on July 20, 1987 in a safety-related application in the control circuitry for the emergency diesel generator starting air compressor. The licensee failed to either (1) properly audit the vendor's manufacturing process or (2) specify and conduct appropriate inspections or testing to assure that critical characteristics of the components were suitable for their intended safety-related application.
5. Metallic O-rings were purchased commercial grade under PO 90163 and were installed in the discharge flange assembly of RHR relief valve RHR-RV-1B, during the 1988 refueling outage (April-June, 1988). The PO required a Certified Material Test Report (CMTR) from the vendor to assure appropriate quality standards. However, the licensee failed to either assure the validity of the CMTR through an audit of the vendor, or specify inspections or tests to verify the critical characteristics of the O-rings.
6. Various General Electric relays were purchased under PO 94920 from North Coast Electric as replacement parts for safety-related applications. As of May 26, 1989, the licensee's evaluation

process performed to dedicate these components was inadequate in that the licensee dedicated the components for use in safety-related applications prior to (1) auditing the suppliers of the components and (2) conducting tests to assure that the components would perform in accordance with applicable critical characteristics.

7. A York (Division of Borg-Warner) chiller shaft was purchased under PO 20173. As of May 26, 1989, the licensee failed to either perform an audit of the vendor's manufacturing process or evaluate the critical characteristics and specify any inspection or testing necessary to assure the adequacy of the component for its intended safety-related application.
8. A pump shaft was purchased as commercial grade from Ingersoll-Rand under PO 70808 for use as a spare part for emergency cooling water pumps. As of May 26, 1989, the licensee failed to either (1) audit the vendor's manufacturing process or (2) specify inspections or tests to assure that the component's critical characteristics were suitable for its intended safety-related application.
9. Pressure gauges were purchased from Paramount Supply for various safety-related applications under PO 83283 in 1986. The licensee failed to either conduct or verify that an appropriate audit of the vendor's manufacturing process was conducted until another utility performed a February 1989 audit.

This is a severity Level III Violation (Supplement I).

Civil Penalty - \$50,000.

III. Supply System Position

The Supply System respectfully denies the alleged violation. As will be discussed below, the Supply System submits that its commercial grade item (CGI) procurement program has complied with NRC requirements and available guidance. Further, our process has resulted in the installation in the plant of commercial grade items which are fully capable of performing their intended safety function. The NRC examination of the 10 items addressed in the NOV has confirmed that items already installed in the plant are "acceptable for the function intended" (Ref. 1, pg. 2). The enforcement action seeks to impose new staff positions in the review of past procurements and, as such, represents an inappropriate backfit. Furthermore, as discussed in the Supply System's separate answer to the proposed civil penalty (Attachment II), even if the items cited in the enforcement action represented a violation, they would not individually or collectively rise to the level of escalated enforcement and, therefore, any civil penalty that may be considered should be fully mitigated.

IV. Response to the Alleged Violation

A. Backfitting Implications

1. The Violation Is Not Supported By Existing Regulatory Requirements

The Supply System respectfully submits that the NOV is not supported by regulatory requirements or guidance existing at the time of the procurements involved. The enforcement action in fact represents a new Staff position for WNP-2 which is inconsistent with prior NRC acceptance of our CGI procurement and dedication practices. We believe, therefore, that the NOV should be withdrawn. As a matter of fundamental fairness, enforcement should not be taken without prior notice of the NRC Staff's requirements. If the enforcement action is not withdrawn, or at a minimum reduced to the level of non-escalated enforcement, we respectfully request that the NOV be reviewed as a backfit pursuant to 10 C.F.R. Section 50.109 before being imposed.

a. The NRC Has Previously Approved The Supply System's CGI Procurement and Dedication Practices

The Supply System believes that its past CGI procurement activities are not only consistent with the guidance and standards available at the time of its dedications in 1987 and 1988, but that the NRC has, on certain occasions, already approved these activities. The following discussion will review these positions. As will be demonstrated below, the Supply System believes the alleged violation represents a plant-specific backfit and, thus, is an inappropriate basis for enforcement action.

To begin with, the Supply System has consistently maintained a CGI procurement program that is adequate to ensure the proper suitability of items installed or available for installation in safety-related applications. The Supply System's program is generally consistent with those of other licensees which we understand have been found acceptable by the NRC.

Specifically, the Supply System first issued its procedure, PPM 1.3.13, for material procurement, which included replacement and spare parts, in 1976. The procedure indicated, inter alia, that the technical requirements for the purchase request were to be specified consistent with ANSI 45.2.13 and the procedure also provided for an engineering review.

The earliest revisions of PPM 1.3.13 did not explicitly focus on commercial grade or "off-the-shelf" items. However, in Revision 2, dated April 20, 1978, the Supply System did discuss commercial quality purchases. Revision 2 (at p. 1.3.13-4) indicated that CGIs may be purchased "when it has been determined by engineering that a commercially available item will enable a component or system to perform its safety-related function."

The Supply System continued to upgrade its CGI program. For example, in Revision 7, dated May 28, 1982 (at p. 1.3.13-4), the Supply System indicated that "critical characteristics" shall be identified. In 1986,



the Supply System significantly upgraded its CGI procurement process by implementing PPM 1.3.39, dated May 13, 1986, "Plant Technical Procurement Review." This procedure provided detailed guidance for the reviews being performed by the Plant Technical organization. PPM 1.3.39 has been revised several times to provide further program enhancements and is in compliance with recently issued EPRI guidelines.

In summary, since the issuance of its initial procurement procedures, the Supply System has included program controls consistent with contemporaneous NRC requirements and available industry guidance. Moreover, the consistent requirement for specification of technical criteria and engineering involvement demonstrates that the Supply System's CGI purchases were made in accordance with the "suitability" requirement of Appendix B, Criterion III.

In addition to the Supply System's acceptable program as described above, the NRC has on prior occasions reviewed and approved the Supply System's CGI procurement practices. The first instance of this occurred in early 1982. Specifically, in the March 1982 Safety Evaluation Report (SER), the NRC staff reviewed the Supply System's CGI procurement practices pursuant to Section 17.1, Item 7B4 of the Standard Review Plan (SRP). This part of Revision 2 to the SRP appears to be the first time that NRC specifically addressed CGIs.

Section 17.1, Item 7B4 of the SRP states that:

For commercial 'off-the-shelf' items where specific quality assurance controls appropriate for nuclear applications cannot be imposed in a practicable manner, special quality verification requirements shall be established and described to provide the necessary assurance of an acceptable item by the purchaser.

The Staff's SER (at pp. 17-1 to 17-2) reviewed the Supply System's procurement controls and noted that the Supply System's QA program did not contain these additional controls for the application of "off-the-shelf" items. Notwithstanding, the SER stated that "[b]ecause the staff does not consider these controls to be of such importance as to require their implementation for WNP-2, adequate quality assurance program controls exist without these additional items." Therefore, at the time of licensing the NRC had reviewed and approved the Supply System's procurement controls in this area.

The next clear instance where the NRC reviewed the Supply System's CGI procurement practices occurred between late 1984 and early 1985. As Inspection Report No. 50-397/84-38 (at p. 2) indicates, the NRC Staff reviewed procurement "documents to ascertain that the licensee had developed and implemented a QA program relating to the control of procurement activities that was in conformance with regulatory requirements, commitments in the application, and industry guides and standards." In particular, the staff reviewed Administrative Procedure PPM 1.3.13, the Supply System's CGI dedication procedure along with several CGI procurements. This



inspection report demonstrates the acceptability of the Supply System's CGI procurement practices as of 1985.

More importantly, however, Inspection Report No. 50-397/84-38 also demonstrates the acceptability of the Supply System's CGI procurement program in 1987 and 1988, during which the NRC alleges inadequate CGI dedications occurred. Specifically, when a comparison is made between PPM 1.3.13 (as in effect during 1984-1985) and 1.3.39 (as in effect in 1987-1988), the only changes made were improvements. Thus, if the NRC accepted the Supply System's CGI program under PPM 1.3.13 during 1984-1985, then our program under the improved procedures has to be acceptable.

It should be noted that there have been other specific instances of prior Staff review. For example, in 1984 the NRC Staff reviewed the Supply System's procedure for controlling vendor information and found no violations or deviations. See Inspection Report No. 50-397/84-26, dated November 2, 1984, at pp. 9-10. More recently, in 1987, the NRC staff reviewed the Supply System's response to NRC Bulletin 87-02 which involved concerns about fasteners, including commercial grade fasteners. NRC's review found no violations or deviations. See Inspection Report No. 50-397/87-30, dated January 15, 1988, at pp. 8-9.

In addition to the NRC's past procurement reviews discussed above, there have been recent inspections where the staff has evaluated the Supply System's CGI procurement practices. During the Safety System Functional Inspection conducted in August 1987, the Supply System was requested by the NRC to provide representative samples of CGI dedications for review. See Affidavit of Steven H. Peck, Kenneth R. Wise, and J. Michael Curren (attached hereto). Four packages were provided to the NRC. Significantly one of the packages reviewed at that time by the NRC was Evaluation 668 relating to Potter-Brumfield relays. This same dedication package was cited in the NOV as one of the examples of inadequate dedication (See NOV at 1). As explained in the attached affidavits, the four dedication packages were selected on the basis that they were not clear cut cases, but rather were examples of more complex cases where it was not clear what actions were sufficient for dedication. It was felt that, if the NRC found these packages acceptable, the Supply System would have a much better understanding of what technical requirements were necessary for the dedication process. The NRC was also provided a copy of PPM 1.3.39.

In meetings with Supply System personnel (including a meeting on August 26, 1987) the NRC inspectors discussed their review of the dedication packages as well as a design change package which included installation of a commercial grade switch in the ADS system. The inspectors did not identify any significant concerns with the packages reviewed and indicated general acceptance of the Supply System's dedication process. A minor concern was raised regarding one of the dedications, but no concerns were identified with the other three, which included Evaluation 668.

See Affidavit of Messrs. Peck, Wise, and Curren at p. 4.

Similarly, during an inspection of the emergency diesel generator system in August and September 1988, an NRC inspector asked to review Evaluation 301, the CGI dedication package for a Viking pump associated with the diesel generator. See Affidavit of Messrs. Peck, Wise, and Curren at p. 5. The inspector reviewed the Evaluation as part of his examination of maintenance practices. He discussed with Supply System personnel a question as to how seismic qualification was maintained and was provided a satisfactory explanation. Supply System personnel also generally described the dedication process for the inspector. The inspector identified no further questions or concerns with the package or the dedication process. See Affidavit of Messrs. Peck, Wise, and Curren at p. 5.

Based on this information, it is apparent that our CGI dedication process has been previously reviewed and accepted by the NRC. Certainly, in the past reviews, the NRC has not brought to our attention any significant concerns with the CGI procurement and dedication process, despite the opportunity to do so. It is the Supply System's firm belief, therefore, that the NOV represents a change in the NRC Staff position. In these circumstances, enforcement action is inappropriate.

b. The Staff Position Reflected In The NOV
Is Not Supported By Existing NRC Requirements

Part 50, Appendix B establishes general Quality Assurance requirements for safety-related structures, systems and components. It does not explicitly address CGI procurement and dedication. Criterion III, "Design Control," contains a broad provision which states that "[m]easures shall also be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the structures, systems and components." This provision, which the NRC cites as the basis for the violation, is not further defined in Appendix B or in the rulemaking history. Criterion III also does not address CGI procurement programs.^{1/}

There has been little, if any, previous guidance on the meaning of Criterion III. The provision quoted above relative to selection and review for suitability of parts is not specifically discussed in any relevant industry or NRC guidance documents. Significantly, even the current NRC's Standard Review Plan (SRP) fails to provide any guidance on the meaning of this provision. SRP Section 17.1.3, "Design Control," is silent regarding the "suitability of application" provision, and the related guidance in acceptance criterion 3A of SRP Section 17.1 merely states that design control activities should address "compatibility of materials."

^{1/} See 35 Fed. Reg. 10498 (1970), which noted that this provision was added to the proposed rule published in 1969, but did not further explain its purpose.

The broad provisions of Appendix B have been somewhat clarified in various industry guidelines. The primary guidance document since the mid-1970s has been ANSI N18.7, to which the Supply System is committed for its QA program. ANSI N18.7 provides general guidance on QA for procurement.^{2/} The NRC endorsed ANSI N18.7-1976 in Regulatory Guide 1.33, Rev. 2, published in February 1978, as an adequate basis for complying with the requirements of Appendix B. ANSI N18.7 addresses commercial grade items only very briefly,^{3/} and does not discuss "dedication" of CGIs for safety-related use.

ANSI N45.2.13-1976, which was endorsed by the NRC in Regulatory Guide 1.123, Rev. 1, published in July 1977, provides more specific guidance on QA for procurement of items and services.^{4/} The standard, however, does not explicitly address commercial grade procurement and dedication. Moreover, neither ANSI N18.7-1976 nor ANSI N45.2.13-1976 provides specific guidance on the "suitability of application" provision of Appendix B, Criterion III.

The term "commercial grade item" finds its only regulatory definition in 10 C.F.R. Part 21. CGI was nowhere explicitly mentioned in NRC regulations until the first revision to 10 C.F.R. Part 21 in 1978 (43 Fed. Reg. 48621 (1978)), when the following definition appeared:

"Commercial grade item" means an item that is (1) not subject to design or specification requirements that are unique to facilities or activities licensed pursuant to Parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and (2) used in applications other than facilities or activities licensed pursuant to parts 30, 40, 50, 60, 61, 70, 71, or 72 of this chapter and (3) to be ordered from the manufacturer or supplier on the basis of specifications set forth in the manufacturer's published product description (for example a catalog).

Section 21.3(c-1) also contains a reference to "dedication" of a CGI in order to denote the point in time when Part 21 reporting obligations attach.

Part 21, then, clearly contemplates that licensees may make commercial grade purchases and "dedicate" the items to safety-related applications. Certainly, nothing in Part 21 -- the only regulation specifically addressing the subject of CGI procurement and dedication -- supports the Staff position reflected in the NOV.

^{2/} ANSI N18.7, "Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants."

^{3/} See Section 5.2.13.

^{4/} ANSI N45.2.13, "Quality Assurance Requirements for Control of Procurement of Items and Services for Nuclear Power Plants."

It can be seen, therefore, that no significant guidance exists as to the nature of activities that licensees are expected to undertake to satisfy Appendix B, Criterion III, the specific regulatory provision cited as the basis for the violation. Indeed, as the NRC's own Inspection Procedure 38703 (at p. 2) on CGI procurement (issued in June 1988) states, "consistent criteria for determining an item's suitability for its intended application have not been clearly established."

It follows that, even as of mid-1988, licensees have been free to implement programs that in their reasoned judgment meet the intent of the requirement. For this reason, enforcement action that would establish specific new procedural and documentation requirements is inappropriate. As a matter of fair notice and sound policy, the Supply System submits that new requirements to upgrade CGI review procedures and documentation should be applied (and enforced) only prospectively.

The Supply System is well aware that beginning in 1988, as a result of fraudulent and counterfeit equipment problems which were detected by licensee procurement programs in effect at the time, the NRC for the first time published detailed guidance on CGI procurement and dedication. Specifically, Generic Letter 89-02, "Actions to Improve the Detection of Counterfeit and Fraudulently Marketed Products," issued March 21, 1989, conditionally endorsed the industry initiatives of NCIG-07 related to licensees' dedication processes. While the Generic Letter stated that the guidelines of NCIG-07, as modified by the Generic Letter, established methods satisfying "existing" requirements of Appendix B, the Staff did not explain the legal basis for this conclusion. We believe that the intent of NCIG-07 was to legitimately and prospectively upgrade procurement programs; not to provide an enforcement basis for past procurements.

Significantly, on March 16, 1989, the NRC published an Advance Notice of Proposed Rulemaking (54 Fed. Reg. 9229) on procurement practices, specifically including commercial grade item dedication. The Commission noted that it was reconsidering the adequacy of current regulations in this area. Questions posed in the ANPR strongly suggest that the Commission did not believe that existing regulations require the extensive verification tests assumed in the present NOV against the Supply System. For example, the Commission asked:

How should products . . . be inspected to verify that all critical characteristics are satisfied?

Should all upgrade inspections be restricted to inspections and tests or should they include, on a sample basis, destructive inspections and tests to verify chemical and physical characteristics?

How should inspections verify all critical characteristics (for example, chemistry, physical properties, dimensions, special processes, etc.)?5/

Had the Commission believed that these actions were already mandated by existing regulations (as the NOV assumes), there would have been no need to pose these questions. The only conclusion that can be drawn is that the Commission did not believe these requirements were within the contemplation of the current regulations (or at least current interpretations of those regulations).

B. Clarification to the Notice of Violation and Supporting Inspection Reports

The cover letter dated December 21, 1989, transmitting the Notice of Violation states (at p. 2) that "A fundamental flaw in your procurement program appears to be the failure to adequately identify each commercial grade item's critical characteristics that must be inspected or tested to verify its suitability for use in a safety-related application. This failure conflicts with the requirement to implement ANSI 18.7 specified in your FSAR as the method chosen to comply with 10 C.F.R. Part 30, Appendix B." ANSI N18.7 does not specifically address "critical characteristics." It does require that an appropriate "engineering evaluation shall be conducted by qualified individuals to establish the requirements and controls. This evaluation shall ensure that interfaces, interchangeability, safety, fit, and function are not adversely affected . . . The results of this evaluation shall be documented." The Supply System's process has required an evaluation by qualified individuals as well as meeting other requirements of ANSI N18.7.

The staff requirement that each critical characteristic be inspected or tested differs from the guidance provided in the EPRI "Guideline for the Utilization of Commercial Grade Items in Nuclear Safety-Related Application (NCIG-07)," which states that ". . . only certain of these [critical characteristics] must be verified to provide reasonable assurance that the item specified is the item received." This difference in interpretation is currently an item of discussion between the NRC and NUMARC.

C. Conclusion

In summary, it can be seen from the above that the Supply System's CGI procurement and dedication practices have been previously reviewed and accepted by the NRC. Further, this has been an area in which no explicit guidance existed until industry publication of NCIG-07. NRC regulations do not contain explicit standards and requirements for CGI procurement and dedication. Under these circumstances, enforcement action is wholly inappropriate. The Supply System therefore respectfully requests that the Notice of Violation be withdrawn.

We must also observe that the NRC's reliance on new standards to review past procurement activity, as is implied by Generic Letter 89-02 and Inspection Procedure 38703 (both of which rely on NCIG-07 criteria), could greatly discourage industry self-improvement. For this additional reason, enforcement action would not be in the public interest.

V. Procurement Program Enhancements

As discussed above, the Supply System believes that it has conducted its procurement activities in accordance with the standards and guidance that existed at the time the items cited in the NOV were dedicated and that the programs in place have resulted in equipment installed in the plant capable of performing its intended safety function. Nevertheless, in an effort to fully ensure the NRC and ourselves that no significant deficiencies exist in our past procurement activities, the Supply System has taken the following steps:

1. A verification of the 10 CGIs evaluated by the NRC was conducted. Utilizing NCIG-07 methodology, information was established which demonstrates that each item is capable of performing its intended safety function. This information was reported to the NRC at the November 20, 1989, management meeting. In addition, our findings were reviewed and are supported by our contractor, Cygna Energy Services. The NRC has also found that those items installed in the plant are capable of performing their intended function.
2. A verification of an additional sample of 50 CGIs was conducted by Cygna Energy Services. The purpose of this evaluation was to expand the sample size beyond the initial 10 CGIs to achieve a statistically valid sample of our entire CGI population. As with the initial 10 items, NCIG-07 methodology was used to evaluate the technical adequacy of our past procurement activities. Although the procurement packages for the 50 CGIs reviewed did not meet the documentation "requirements" specified under today's guidance (i.e., NCIG-07), Cygna Energy Services determined that the Supply System's CGI dedication process was technically sound and that each item was capable of performing its intended safety function. These findings combined with those for the initial 10 items provide significant evidence that there is reasonable assurance that the Supply System's entire population of CGIs can perform their intended safety function when called upon.
3. The Supply System is conducting an internal reverification review of an additional 60 CGIs to provide further assurance of the quality of our past procurement activities. This sample will focus on items purchased prior to 1985. Although Supply System personnel are performing the review, individuals not involved in the previous reviews are being used to obtain an independent assessment. This work is being performed by the Nuclear Safety Assurance Group.

4. Another important action is our ongoing process of evaluating all reorders of CGIs currently installed in the plant or in storage. Whenever a reorder is requested, we will review the past procurement process to determine whether any deficiencies existed. NCIG-07 criteria will be applied to the review process. If a hardware concern is identified, we will conduct the appropriate generic reviews and take prompt and comprehensive action, as necessary.

In conclusion, the Supply System believes that it has taken and is taking prompt and comprehensive program enhancements to ensure the continued adequacy of our CGI dedication practices. We believe that our additional sampling efforts will further demonstrate the technical quality of our past procurement activities. Furthermore, our ongoing efforts should ensure that we meet or exceed the industry initiative to conform all future CGI purchases to NCIG-07 standards. Our commercial grade dedication program was upgraded in 1986 and subsequent enhancements have been made since that time to bring the program into conformance with NCIG-07 in accordance with the NUMARC initiative on this issue.

ATTACHMENT II

Washington Public Power Supply System
(NRC Inspection Report Nos. 50-397/89-21,
50-397/89-22, and 50-397/89-28)

ANSWER TO THE NOTICE OF VIOLATION (EA 89-130)

I. Introduction

Pursuant to 10 C.F.R. Section 2.205, Washington Public Power Supply System (Supply System) hereby submits its Answer to the Nuclear Regulatory Commission's (NRC) Notice of Violation and Proposed Imposition of a Civil Penalty issued on December 21, 1989. Consistent with the Supply System's letter (No. G02-89-233) to Mr. James Lieberman, dated December 28, 1989, we are submitting this answer on or before the due date of February 20, 1990.

II. Supply System Position

The Supply System believes that the discussion provided in the Reply to the Notice of Violation (Attachment I) identifies more than sufficient facts to support the conclusion that enforcement action is wholly unwarranted. However, as discussed below, the Supply System believes that, even if the NRC disagrees with this position, the alleged violation rises at most to the level of a Severity Level IV or V violation. Therefore, no civil penalty is warranted.

Notwithstanding the above, the discussion below also offers facts to support the conclusion that the Enforcement Policy adjustment factors properly provide for full mitigation of the proposed civil penalty.

III. Severity Level Determination

A. NRC Did Not Identify Hardware/Operability Concerns

The NRC has indicated on several occasions that it did not have concerns about the operability of the installed items cited in the Notice of Violation (NOV). This position is supported by the NOV (at p. 2) where the Staff states that during a "follow-up inspection of items already installed [NRC] found the items to be acceptable for the function intended." Therefore, the cited concerns can have no actual safety significance.

The NOV (at p. 2) indicates that the Supply System's CGI procurement activities during 1987 and 1988 demonstrated "the underlying programmatic problem of [not] adequately identifying critical characteristics of commercial grade items and [not] properly verifying their adequacy." This apparently, to the NRC Staff, represents a regulatory concern. While the Supply System can accept that its (and many licensees') CGI procurement programs may need to be improved to reflect increasing emphasis on this concern, it cannot accept that the problems identified rise to the level of a significant regulatory concern. The examples cited represent only minor procedural or documentation problems. Perhaps even more importantly, as discussed in the Reply to the NOV, NRC's enforcement action appears to be viewing yesterday's procurements in light of today's sensitivities. In this light, the examples should not be held out as a significant regulatory concern.

Further support for the Supply System's position on Severity Level can be found in the NRC's Enforcement Policy (53 Fed. Reg. 40019, 40023 (October 13, 1988)). The Enforcement Policy states that "the severity of a violation will be characterized at the level best suited to the significance of the particular violation." Thus, the Enforcement Policy establishes a hierarchy of significance in its Supplements I through VIII. Each Supplement is "designed to illustrate the significance which NRC places on a particular type of violation of NRC requirements" (53 Fed. Reg. at 40023).

It is noteworthy that, in the Severity Level I through III categories for Supplement I of the Enforcement Policy, the examples refer specifically to systems "not being able to perform [their] intended function[s]" (53 Fed. Reg. at 40030). This same concept, however, is not used for the Severity Level IV or V categories. Therefore, because the NOV explicitly states that all of the items cited are "acceptable for the function intended," it logically follows that the significance of these items does not rise above Severity Level IV or V.

In addition to the above, the Supply System has demonstrated the lack of safety significant deficiencies in its commercial grade item (CGI) procurements other than those cited in the NOV. Specifically, during the November 20, 1989 management meeting, the Supply System presented findings concerning a reverification sample for its CGI population totalling approximately 9700. The sample size was 50 items plus the 10 items reviewed by the NRC. The findings show no CGIs which are not capable of performing their intended safety function.^{1/} Therefore, based on this sample, the Supply System believes there is at least a 95 percent confidence level that reasonable assurance exists that all CGIs procured and installed (or available for installation) in safety related applications can perform their intended safety function.^{2/} These results clearly do not indicate a program that is a "significant regulatory concern."

With regard to NRC's assertion that a "programmatic problem" exists, there are several other pertinent points that should be considered.

First, as discussed above, the items cited in the NOV represent, at most, minor procedural or documentation concerns. When the dedication of the cited items is viewed in light of the guidance and standards available at the time, it is clear that the Supply System exercised effective controls to ensure safe operation of its nuclear facility. Therefore, a "programmatic problem" only exists in the Staff's view, if at all, because the Supply System's past activities are being evaluated against recently issued guidance.

1/ See NRC Meeting Report No. 50-397/89-36 (December 8, 1989) at p. 3; see also Cygna Energy Services, "Commercial Grade Dedication Project for Washington Public Power Supply System Contract No. C-30298" (August 14, 1989).

2/ The NRC as well as various federal courts have accepted the use of the 95 percent confidence standard to demonstrate that specific sampling data is valid. See e.g., Commonwealth Edison Co., LBP-84-41, 20 NRC 1203 (1984), aff'd, ALAB-793, 20 NRC 1591 (1984) (involved the issue of adequacy of a reinspection program concerning QA/QC activities at Byron); see also Schall by Kross v. Tippecanoe County School Corp., 864 F.2d 1309 (7th Cir. 1989).

Second, the Supply System has not been subject to prior escalated enforcement action in the procurement area. Further, the non-escalated actions that have occurred are few in number, isolated in nature and do not relate directly to the concerns addressed in the NOV. In addition, as discussed in the Reply to the NOV, NRC has previously evaluated the Supply System's procurement activities without finding significant concerns. Thus, our enforcement history coupled with the lack of safety significance of the concerns demonstrates that there is no programmatic problem.

In summary, based on the NRC's independent evaluation and the Supply System's reverification efforts, including its sampling efforts, it may be reasonably concluded that the items cited in the NOV do not represent safety significant concerns. Furthermore, when all of the facts and circumstances surrounding the NOV are considered, as is the purpose of the Enforcement Policy, it may also be reasonably concluded that there was no programmatic problem which could rise to a level of regulatory significance that would warrant escalated enforcement action. In fact, even applying today's standards, the Supply System's past procurement activities represent, at most, low severity level procedural or documentation violations.

B. Prior Enforcement Precedent

In 1989, a number of NRC inspections concentrating on CGI procurement activities took place. In each case, the inspection reports indicated that the utilities involved allegedly failed to ensure the "suitability" of CGIs installed in safety-related applications. The NRC's findings have generally involved concerns such as inadequate verification of critical characteristics and inadequate determination of safety function. In several cases, the inspections have resulted in the issuance of escalated enforcement actions (e.g., EA 89-16 and EA 89-135).

On the other hand, a recent NRC team inspection which identified similar concerns as those listed above resulted in no escalated enforcement action (EA 89-43). As distinguished from the two cases previously referenced, the utility involved in EA 89-43 performed a reverification effort which demonstrated there was reasonable assurance that CGIs installed in safety-related applications could perform their intended safety functions. Consequently, the NRC determined that the CGIs reviewed were not of indeterminate quality or defective. The NRC thus concluded that escalated enforcement action was not warranted and cited the utility for minor documentation concerns.

In the case of the Supply System's alleged CGI procurement violations, the only deficiencies which exist, if in fact there are any, involve mere procedural or documentation concerns. This position is supported by NRC's finding of no actual safety significance as well as by the Supply System's reverification results. As we discussed with you at the November 20, 1989 management meeting, our reverification effort used NCIG-07 type methodology. The results demonstrate that there is no safety significance to the NRC's concerns and that there is reasonable assurance that CGIs installed (or available for installation) in safety-related applications can perform their intended safety function.

The Supply System's reverification results are very similar to those presented by the utility involved in EA 89-43. While the Supply System acknowledges that its documentation could have been improved by today's standards, we maintain, that our CGI procurement efforts were consistent with the limited regulations and guidance available to industry at the time. In addition, because our reverification efforts demonstrate reasonable assurance of adequate suitability, no escalated enforcement is warranted. This position is consistent with NRC's prior enforcement precedent.

C. Application of Enforcement Discretion

The Enforcement Policy states that the NRC

must exercise judgement and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

53 Fed. Reg. at 40029. We believe that in light of (1) the purposes of the Policy, (2) the significance of the violations, and (3) the surrounding circumstances, enforcement discretion is appropriate in this case.

The Supply System believes that in this case escalated enforcement is neither appropriate nor necessary to achieve the purposes of the Policy. The Policy states four principal purposes:

- (1) Ensuring compliance with NRC regulations and license conditions;
- (2) Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- (3) Deterring future violations and occurrences of conditions adverse to quality; and
- (4) Encouraging improvement of licensee and vendor performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

53 Fed. Reg. 40022.

With regard to item (1), the Supply System is well aware of the need for compliance with NRC regulations. The NRC Staff has consistently recognized in its Systematic Assessment of Licensee Performance evaluations that, overall, the Supply System has a well established safety culture, a tradition of technical competence, and a long-standing reputation for proactive programs. In fact, the NRC acknowledged our "overall good performance" in the NOV (at p. 2).

With regard to items (2) and (3), the Supply System has already implemented procurement program enhancements which will further ensure that violations or conditions adverse to quality do not occur in the future (See Attachment I, Section V, supra).

With respect to the completeness and effectiveness of this action, it is noteworthy to reemphasize that the positive findings of our reverification effort (i.e., concerning the 60 items) are supported by the former Chairman of the NCIG-07 Task Group, Mr. William E. Craig, who can best provide the proper interpretation and application of this EPRI guidance document.

Finally, concerning item (4), escalated enforcement action and/or a civil penalty is not necessary to encourage the Supply System's improvement. As we noted during the June 28, 1989 enforcement conference and during the November 20, 1989 management meeting, the Supply System has been proactive in the CGI procurement area. We have had a number of our personnel actively involved in industry developments in this area, such as NCIG-07 and NCIG-11. In addition, since mid-1986, the Supply System has implemented a number of significant procurement program enhancements to meet or exceed the evolving expectations of the NRC Staff. This demonstrates that the Supply System has been actively and effectively pursuing the stated goals of the Enforcement Policy.

Concerning the second element of enforcement discretion i.e., technical significance of the violations, the Supply System believes that the demonstrated lack of safety significance shows escalated enforcement is unwarranted. As previously discussed, the NRC agrees that there is no actual safety significance to the cited examples. Furthermore, even if violations exist, they rise only to the level of Severity Level IV or V procedural or documentation violations, as viewed under today's guidance.

Finally, concerning the last element of discretion, i.e., evaluation of the "surrounding circumstances," the Supply System believes that escalated enforcement action, and for that matter any enforcement action, is unwarranted because the NRC has apparently not considered all of the information relevant to the NOV.

In particular, the NOV indicates that various Supply System actions which were presented at the November 20, 1989 management meeting "have not yet been inspected." Principal among these actions is the reverification effort by Cygna Energy Services. Thus, the issuance of the NOV appears to be premature and does not appear to comport with the above stated requirements of the Enforcement Policy.

In addition, it should be noted that the failure by an agency to consider the full extent of the "surrounding circumstances" is an improper exercise of its discretion. Specifically, the Eighth Circuit has held that:

An administrative agency's exercise of its discretion cannot be 'unreasoned or arbitrary.' Courts reviewing discretionary agency action must evaluate, among other things, the agency's treatment of the evidence. The agency must have observed the necessary procedural requirements including the consideration of all relevant facts available in the administrative record as a whole.^{3/}

^{3/} Choi v. United States I.N.S., 798 F.2d 1189, 1191 (8th Cir. 1986)(emphasis supplied)(citations omitted).

In conclusion, for all of the reasons stated above, the NRC should exercise enforcement discretion in this case.

IV. Application of Enforcement Policy Adjustment Factors

With respect to the application of the Enforcement Policy Adjustment Factors, 10 C.F.R. Part 2, Appendix C, Section V.B, the NOV states (at p. 2) that the "escalation and mitigation factors of the Enforcement Policy were considered." The Supply System believes that the NRC did not properly apply the Enforcement Policy with regard to: (1) past performance and (2) corrective actions.

A. Past Performance

The Enforcement Policy, at Section V.B.3, states that:

[when evaluating past performance,]
consideration will be given to, among
other things, the effectiveness of
previous corrective action for similar
problems, overall performance such as
Systematic Assessment of Licensee
Performance (SALP) evaluations for power
reactors, and prior performance including
Severity Level IV and V violations in the
area of concern.

53 Fed. Reg. at 40025. Using these factors the Policy allows reduction of a proposed civil penalty "by as much as 100%." The NOV (at p. 2), however, indicates that the NRC believes only 50 percent mitigation is warranted for the Supply System's "prior overall good performance."

The NOV is silent as to how the NRC Staff determined that 50 percent mitigation was the appropriate amount. In this regard, the NRC should consider the fact that the Supply System has had no escalated enforcement in the procurement area nor have there been any low level violations relevant to the issues raised in the NOV.

In addition, the NRC Staff should consider the Supply System's proactive involvement with the CGI dedication issue. As previously discussed, Supply System personnel have been, and still are, actively involved in various industry groups (e.g., NCIG-07) concerning the procurement area. Moreover, as our discussion in the reply indicates, the NRC Staff has evaluated the Supply System's CGI procurement activities in the past and found them to be acceptable.

Therefore, based on the above information, it is reasonable that the Supply System should receive additional mitigation for its long-standing good performance regarding the CGI procurement issue and for its overall good performance.

B. Corrective Actions

The Enforcement Policy, at Section V.B.2, states that:

the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty.

53 Fed. Reg. at 40025 (emphasis supplied). The NOV (at p. 2) indicates that the NRC determined the Supply System's post-inspection actions to be "inadequate." Specifically, the NOV (at p. 2) states that "your corrective actions for these violations failed to fully address the need to properly evaluate and specify the critical characteristics required for proper dedication of commercial grade items." Consequently, the NRC escalated the base civil penalty by 50 percent.

The Supply System believes that the NRC misapplied the corrective actions factor. As discussed previously, the NRC guidance available at the time the cited items were dedicated was minimal. Thus, we believe that the kind of "upgrades" or "corrective actions" that the NRC Staff is apparently expecting exceed those required at the time of dedication. Notwithstanding, and as also discussed previously, the Supply System did initiate prompt enhancements to our CGI procurement program. Part of this effort included the reverification of the items cited in the NOV as well as an additional sample of CGIs.

The results of this reverification effort demonstrated no safety significance or operability concern. In addition, our reverification effort used as its principal basis the NCIG-07 methodology. According to our contractor, who is very familiar with the interpretation of NCIG-07, there is reasonable assurance that the CGIs reviewed can perform their intended safety related function when called upon.

Based on this information, the Supply System believes that it did take adequate corrective action. The "corrective actions" which the Staff believes should have been taken are the very issues at the heart of the NOV, e.g., the proper evaluation and specification of critical characteristics. Thus, the Supply System believes that requiring actions beyond those required by NCIG-07, the NRC's current guidance concerning CGI dedication, is an improper application of the Enforcement Policy. Therefore, because we have demonstrated that our past CGI procurements are consistent with the NCIG-07 methodology, the NRC should not escalate the base civil penalty.

In addition to the above position, the Supply System also believes that the NRC did not allow sufficient credit for the program enhancements described in Section V of our Reply to the NOV. We believe that when viewed together with the Supply System's proactive efforts in the CGI dedication area (both past and present) the NRC Staff has ample support for full mitigation of the proposed base civil penalty.

V. Conclusion

The Supply System believes that the NRC has more than sufficient evidence to support full mitigation of the proposed base civil penalty. This position is firmly supported by (1) the backfitting issues discussed in the reply to the NOV, (2) the demonstrated lack of safety significance, (3) the prior enforcement precedent, (4) the enforcement discretion concept and (5) an appropriate application of the Enforcement Policy adjustment factors.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIDAVIT OF STEVEN H. PECK, KENNETH R. WISE, AND J. MICHAEL CURREN

I. Introduction

I, Steven H. Peck, being first duly sworn, depose and state as follows:

I am employed by Washington Public Power Supply System ("Supply System") as Manager of Spare Parts Engineering. I have held that position since August 1989. I am responsible for performing the technical evaluations to establish procurement requirements, including the dedication requirements for items purchased commercial grade. Prior to holding my current position, I was Supervisor, Materials Support Engineering (August 1988 to August 1989) and Lead for the Spare Parts Program (July 1986 to August 1988). In those positions my technical responsibilities over procurement were the same as they are today.

I, Kenneth R. Wise, being first duly sworn, depose and state as follows:

I am employed by the Supply System as Manager of Equipment Engineering. I have held that position since October 28, 1989. Prior to holding my current position, I was Supervisor of Electrical Equipment Engineering (September 17, 1988 to October 1989). From 1983 until September 16, 1988, I was Technical Program Leader, Electrical Equipment Engineering. In that position, my responsibilities included reviewing dedication packages for electrical equipment commercial grade item purchases. My review focused on ensuring that adequate commercial grade dedication requirements were established.

I, J. Michael Curren, being first duly sworn, depose and state as follows:

I am employed by the Supply System as Senior Equipment Engineer, Equipment Engineering Group. I have held that position since July 1986. My responsibilities from June 1985 to August 1989 included involvement in the commercial grade dedication process in order to ensure maintenance of equipment qualification and operability. These responsibilities included dedication activities for commercial grade items procured for use in safety-related applications.

This affidavit is provided to support the Supply System's response to the Nuclear Regulatory Commission (NRC) Notice of Violation and Proposed Imposition of Civil Penalty (EA 89-130) related to commercial grade item ("CGI") procurement. In this affidavit, we describe certain recent instances in which the NRC has reviewed the Supply System's CGI dedication practices.

Section II below describes the NRC's review of the CGI dedication process in connection with the 1987 Safety System Functional Inspection (SSFI). Section III discusses an NRC review of CGI dedication practices during the 1988 inspection of the emergency diesel generator system.

Throughout this affidavit, we describe the facts based on the direct knowledge of each of us. For any statements where the particular facts are not personally known by all the affiants, we indicate by name which of the affiants has direct knowledge of the facts described. It should be noted that only Mr. Peck has direct knowledge of the facts discussed in Section III of this affidavit. Accordingly, Messrs. Wise and Curren do not join in Section III below.

II. 1987 Safety System Functional Inspection

The 1987 SSFI focused on the AC and DC electrical distribution systems, the standby service water system, and the automatic depressurization system. Early in the course of the SSFI, on August 3 or 4, 1987, NRC Inspector L. Stanley asked to see representative examples of commercial grade item dedications. Mr. Curren was assigned the task of assembling the dedication packages for Mr. Stanley's review. Mr. Curren conservatively selected four CGI dedications which he considered difficult cases or "gray area" situations. That is to say, these dedications were not simple cases, but rather were more difficult in the sense that the technical requirements for dedication were not clear-cut.

Mr. Curren recalls discussing the approach of selecting "gray area" cases with J. E. Rhoads, then the Supply System's Manager, Equipment Engineering. Mr. Peck also met with Mr. Curren on August 4, 1987, to get the package pulled together for review at the meeting with the NRC the following day.

The Supply System considered this a conservative approach and anticipated that NRC review of these more difficult dedications would provide useful direction to the Supply System's CGI dedication program. If these particular dedications were acceptable to the NRC, then the Supply System would have a better understanding of the actions which the NRC felt were necessary for proper dedication. Mr. Wise recalls that this approach was discussed with the NRC inspectors at the time - with Mr. Stanley and possibly with Mr. Wagner as well - and that the NRC agreed that this was an acceptable approach.

The four specific evaluations selected for review by the NRC were as follows:

1. Evaluation 668, concerning Potter-Brumfield type MDR control circuit relays.

2. Evaluation 419, concerning a pulse preamplifier to be purchased from General Electric.
3. Evaluation 377, concerning Square D temperature switches.
4. Engineering specification 15122 Rev. 0, which originated P.O. 088173, involving procurement of air pressure regulators (originally PPM 1.3.39 Evaluation 44)./1

It should be noted that Evaluation 668 was one of the examples of allegedly inadequate dedications cited by the NRC in the recent Notice of Violation (EA 89-130). Mr. Curren's notes from the time (Exhibit A) originally showed Evaluation "668" as "688." This was clearly an error in transcription, since Evaluation 668 was the only dedication of Potter-Brumfield relays in the relevant time period, and we understand that the NRC's records show that the dedication of Potter-Brumfield relays was one of the packages examined during the SSFI. (Evaluation 688 related to stainless steel staples, an item not reviewed by the NRC.)

On August 5, 1987, NRC Inspector Stanley met with us to discuss the dedication process. See Exhibit B hereto (Mr. Wise's memorandum to file reporting on this meeting). During this meeting, we explained the dedication process to the inspector by walking through the four dedication packages selected. According to Mr. Wise's record of this meeting (Exhibit B), the inspector "seemed to understand the examples and what had been done." The inspector was provided copies of the four evaluation files. The inspector was also furnished a copy of procedure PPM 1.3.39, issued July 30, 1986.

The evaluation packages provided to the NRC at that time reflected generally the same level of detail as those reviewed in the 1989 inspection leading to the NOV. More specifically, the packages contained information such as Form 4, "Commercial Grade Dedication," and Form 5, "Equipment Qualification Evaluation." Various revisions have been made to these packages as additional purchases took place. However, the dedication method reflected in those packages was the same as that used until our program was recently upgraded to NCIG-07.

-
- 1/ Appended to this affidavit as Exhibit A are copies of handwritten summaries of these evaluation packages prepared by Mr. Curren at the time of the NRC inspection. These summaries were prepared in order to provide a brief description of the dedications for use by Supply System personnel in discussing these examples with the NRC. Originals of these summaries were retained by Mr. Curren in his personal subject files and were retrieved for purposes of preparing this affidavit. In retrieving those files, Mr. Curren noticed the error in the use of the title Evaluation "688" rather than "668" (see text) and made a pen-and-ink change on the original to correct the error.

Towards the end of the SSFI, on the morning of August 26, 1987, the NRC inspector requested a meeting to discuss CGI dedication. Both NRC inspectors Stanley and Wagner attended this meeting with us. See Exhibit B (Mr. Wise's memorandum to file on this meeting). This meeting was a follow-up to discuss, among other things, the NRC's examination of the four evaluation files which had previously been provided. As reflected in Exhibit C, the NRC initially questioned whether CGI dedications were being used too frequently, since the dedication package numbers were in the 700s. We explained that not all the numbers necessarily reflected CGI dedications; quality Class 1 and nonsafety-related evaluations were included as well. The inspectors seemed to understand this and were satisfied.

Of the four dedication packages the NRC reviewed, Mr. Stanley expressed only a minor concern with one of them (Evaluation 419). This related to reliability testing requirements for components purchased through General Electric. The inspectors discussed this issue briefly and did not indicate that this was a significant concern. It is noteworthy that the NRC's Inspection Report 87-19 on the SSFI did not note any deviations or weaknesses in the area of procurement.

During the meeting, the NRC also discussed with us a Design Change Package (DCP) which they had examined. This package, DCP 85-0073-OA, had been used for installation of a commercial grade switch in the Automatic Depressurization System (See Exhibit C). Mr. Stanley asked for the documentation on the dedication of this device. According to Mr. Wise's records, the inspector later that day was provided a copy of the procurement file on this item which included the memorandum defining the required vendor certification, the Purchase Requisition, the Purchase Order, and the vendor's certification. The inspector was fully satisfied and no remaining issues were identified. See Exhibit C.

The overall impression we formed from the NRC's review during the SSFI was that the four CGI dedication packages reviewed, which were relatively more difficult examples, were acceptable to the NRC (See Exhibit C). As a result of the NRC's review, the Supply System thereafter was more comfortable with respect to the technical requirements for proper dedication. In short, we felt that the NRC had confirmed the acceptability of our CGI procurement and dedication process, and that our program was adequate. Certainly the NRC brought no significant problems to our attention.

III. 1988 Diesel Generator Inspection/2

From August 22, 1988 to September 2, 1988, the NRC conducted a special, announced inspection of the Emergency Diesel Generator (EDG) system and the Nuclear Steam Supply Shutoff System. In connection with reviewing maintenance practices on the EDGs, the NRC identified concerns with certain components. As part of this review, on August 23, 1988, an NRC inspector asked to see Evaluation 301, concerning dedication of a Viking pump, Model FH456M. See Exhibit D (Mr. Peck's log entry for this date). This procurement was selected for review because the pump in question had previously been replaced on the EDG system. I recall that the inspector identified himself as an NRC contractor, and most probably was Mr. B. L. Collins, who is listed in Inspection Report 88-24 as an NRC contractor who assisted in conducting the inspection.

I provided Evaluation 301 to the inspector and also provided him a verbal explanation of how our CGI procurement and dedication process worked. My understanding was that the inspector wanted to review Evaluation 301 to make sure that we had performed a proper dedication when replacing the pump on the EDG system. His only concern after reviewing the dedication package related to how we had maintained seismic qualification during the dedication process. I explained that this had been a like-for-like replacement and that the seismic qualification of the original pump applied to the replacement. The inspector accepted this explanation.

The inspector appeared to accept the adequacy of Evaluation 301. Except for the question regarding seismic qualification, he did not raise any questions or concerns with that package or our process in general. The inspection report did not identify any deviations or weaknesses in this regard.

During the EDG inspection, the inspector also took the opportunity to ask whether we were aware that the NRC in that time frame (second half of 1988) was beginning to focus more on commercial grade item procurement and dedication. I informed him that we were aware of the NRC's increasing focus on the subject. In fact, at the time, the Supply System was actively involved in the EPRI committee addressing this issue.

2/ As noted above, Messrs. Wise and Curren had no significant involvement in facts discussed in this section of the affidavit, and accordingly do not join in this section.

The foregoing information is true and correct to the best of my knowledge.

Steven H. Peck
Steven H. Peck

Subscribed and sworn to before me this 16th day of February 1990.

Theresa Z. Robertson
Notary Public for the County of
Benton, State of Washington

My commission expires 7/14/91

The foregoing information is true and correct to the best of my knowledge.

Kenneth R. Wise
Kenneth R. Wise

Subscribed and sworn to before me this 16th day of February 1990.

Theresa Z. Robertson
Notary Public for the County of
Benton, State of Washington

My commission expires 7/14/91

The foregoing information is true and correct to the best of my knowledge.

J. Michael Curren
J. Michael Curren

Subscribed and sworn to before me this 20th day of February 1990.

Theresa Z. Robertson
Notary Public for the County of
Benton, State of Washington

My commission expires 7/14/91



EXHIBIT A

8/19/88

1. Met w/ Cook / Schaeffe re NPRDS Update
2. Paperwork Process
3. Policy 23 issued
4. Discussed NCR w/ Kirshendahl in SAC Staff
5. Applied Policy to Eval for Amp Logo.

8/22/88

1. Reviewed EIRMS
2. Mazine Mtg
3. MMS Mtg
4. Discussed Personnel moves w/ Barker

8/23/88

1. Rad Resp. Tng
2. Discussed NCR on MCR w/ Cook
3. Linitorque Mtg
4. Status Report - Truedt & w/ Brown

8/24/88

1. Mtg on MMS/MEL - Prepare RFS to fix interface problem
2. NRC Audits - Reviewed Eval BOI for dedication.
3. Truedt & get w/ Brown re MCR Audit
4. Reviewed & Commented on Design Control QA Charts.

8/24/88

1. Worked on Sol. Issues
2. Worked on Ref. benching file

Involved Procurement of various series designated PEB relays for various CIE EBN Applications.

Dedication consisted of:

Procured CG with a Col C to the MIL spec manufactured MDR series relays and N Col C for the others which are regular commercial grade manufactured relays.

All relays are Seismically Qualified only since they are all located in MILD Plant Environments.

Analysis of design changes between originally supplied components and Direct Replacement New components was documented. (KHE and MDR Series)

Analysis of contact chatter affecting intended Safety Function was made and documented.

Associated Prece pants procured was
analyzed sistmically and documented.

Replacement Components determined To Be IFFF
and materials to The original components.

72

Procurement of a Pulse Preamplifier, PPD #117C22766001

Procured Commercial Grade and dedicated for use in CIE EPN's. GE MPL NUMBERS CORRESPONDING TO WPPSS APPLICABLE EPNs AS "NON-Essential". Pulse Preamplifier IFFF AND MATERIALS TO EXISTING APPLICATIONS EPN COMPONENTS.

ALSO PLANNING TO use this pulse preamplifier for Service Water System Rad monitoring which will be designated CIE as well.

UPON Receipt of the pulse preamps, the units will be checked and calibrated AT WPPSS Instrument shop per applicable GE GFK Documentation. Pulse preamps to be placed in applicable matcode as "RIP'ed". One of the preamps to be sent to WILE LABS for Environmental Qualification testing to prove that the units are qualified for the associated SW System Rad monitoring Plant location Environment.

Eval 377

Procurement of [D] OLA 9025 ~~SCM~~
BCW-42 and BCW-43 Temperature
Switches CG For various DCW AND
DLO system TS EPN APPLICATIONS,
which are CIE
Procured CG with NO COF C.

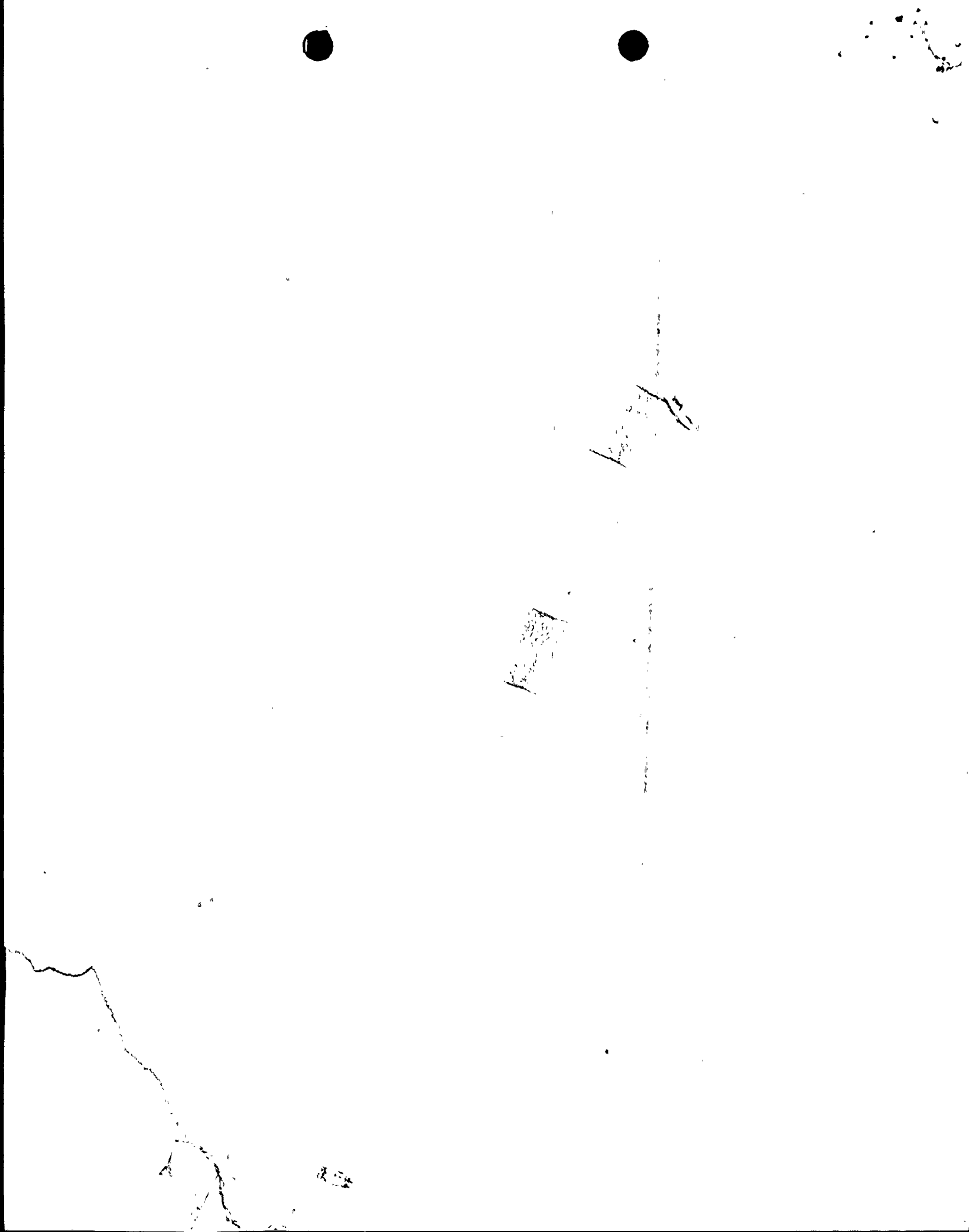
Dedication consisted of an evaluation
of [D]'s manufacturing Design
configuration control. IT was
found by determining exactly
what changes to the TS's from
TS's originally supplied under
contract 2000-53. This was documented
in the dedication Review Forms.

Analysis was performed on ALL EPN
applications w/o seismic qualification
only (EQWAT located in a MILB plant
environment), which consisted of what
would happen if TS microswitch contact
"chatter" occurred during a seismic event.
This was also documented in the dedication
Form. The original switches were tested by
WYLE LABS so similarity between the

original switches and The IFFF Replacement switches was analyzed and documented.

The only difference found was The TS Microswitch sub-assy body material. In 1980 The body material was changed from mullamix to VALOX A nylon polymer. It was determined that contact chatter would not affect the required safety functioning of the switches and the material change would not affect seismic qualification of the Temp Switch EPN APPLICATIONS.

The switches will be receipt inspected per the proper class style and revision series letter designations. Future orders will be reviewed for any subsequent design changes performed on these switches.



Example of A Procurement VIA AN ENGINEERING SPECIFICATION

Procurement started by MR Ø1ØØ62

Procurement initiated by a PR 139792
which in turn generated PO ØØØ173.

Procurement of Pressure Regulators CG
For DSA-PCV-37A and 37B ^{AWD} DSA-PCV-1CØ2C
which
are SEM EQUIPT. The referenced
Specification is No. 15122 Rev Ø

Asking for a CofC to the requirements
of the specification,

Procurement initially evaluated by PPM 1.3.39
Evaluation No. 44 But was superseded
by ENG. SPEC NO 15122 Rev Ø

Dedication consists of the AIR pressure
Regulators being made to the same
industry standards as the original
ITFE and materials equipment.

Requirements on component configuration
plant process conditions, adherence
to AWS/ASME B31.1 RQTS, Tagging and
materials composition are given in
the specification.

EXHIBIT B

AUGUST 5, 1987

NRC Reviewer: Mr. Stanley

Supply System Staff: KR Wise, S Peck, M Curren

Mr. Stanley had a two part question concerning quality class and use of commercial grade equipment in safety-related applications. We responded to the second half of the question and referred him to G. Brastad for the first half.

We explained our dedication process to him by walking through 4 examples, he borrowed the spares evaluation files for the four examples. He was given a copy of PPM 1.3.39. He seemed to understand the examples and what had been done. He is coming from an experience base at Sequoyah which used commercial equipment in safety related application without control.

He requested an example or two of substitutions involving commercial grade equipment. Curren has the action to identify these by the last week of August. Stanley will not be here next week.

AUGUST 26, 1987

NRC Reviewer: Mr. Stanley, Mr. Wagner

Supply System Staff: KR Wise, M. Curren, S. Peck

Mr. Stanley requested a meeting this morning to discuss dedication of commercial grade equipment to safety-related use. Earlier he had examined 4 parts evaluation files which dedicated equipment. He had formed the impression that we had been doing wholesale dedication because of the package numbers of the packages he had reviewed. The numbers were up in the 700's and he had assumed that all 700 were commercial grade dedications. They are not but include quality class one evaluations as well. This was explained and understood. Of the 4 packages he had no problem with 3 and only a minor concern with the 4th, which was explained. He seemed to leave the area with general acceptance of the rigor of our process but with an underlying uneasiness that dedication was being overused.

Mr. Stanley had a portion of DCP 25-0072-0A which installed a commercial grade switch for MS-RMS-ADS12A,B. He asked for our documentation on the dedication of this device. Later in the day he was provided with a copy of the preprocurement file, the memo defining the required vendor certification, the PR, the PO, and the vendors certification. He was fully satisfied and no issues appear to remain in this area.

In the morning meeting component reliability was raised as an issue. This issue was addressed later in the day by Gordon Brastac.

EXHIBIT C

DESIGN CHANGE PACKAGE

RESERVED

1. REASON FOR DCP

As presently designed the ADS system will not respond to all events or transients.
THIS DCP resolves this problem by incorporating option 2 of the Owners Group, TMI Issue II.K.3.18 which eliminates drywell pressure from the ADS permissive logic

2. PMR/FCR NO.

85-0073 / FCR 85-036

3. SUBJECT

ADS SYS. MODIFICATION.

4. LOCATION

CR EL. 501

5. SYSTEM NO.

1

NO.

ADS

TITLE

6. QUALITY CLASS

I

2. DESCRIPTION OF WORK

See sheet 44.

☒ Field work required

☐ Drawing change only

☐ Review DCP:

3. WORK ON THIS DCP SHOULD BE COORDINATED WITH

4. THIS DCP DEPENDS ON PRIOR INSTALLATION OF DCP

10. DESIGN CHANGE PACKAGE INDEX AND PAGE NUMBERING SEQUENCE

DCP Approval Form: Page 001
10CFR50.59 Safety Evaluation: Page 002
DCS Input Sheets: 003 Through: 007
Design Verification Record: 008 Through: 013
Special Review Reconciliation: — Through: —
FSAR Change Proposal: 014 Through: 021
Calculation Cover Sheets: — Through: —

Engineering Material Req.: 022 Through: —
MEL Input Data Sheets: 023 Through: 042
Installation/Test Req'mts: 043 Through: 44
DCP Plates: 045 Through: 159, 172
New Drawings: — Each
New Documents: — Each
Other: Wire List 160 Through: 171

11. SPECIAL REVIEWS 12. DCP APPROVALS

REVIEWER NAME / SIGNATURE / DATE	CHECK ONE	THIS DCP IS APPROVED FOR IMPLEMENTATION AT WNP-2	SIGNATURE / DATE
EQUIPMENT QUALIFICATION R.L. Abbott 2-12-84	X	ENGINEER	D.P. Baker 2/14/85
EMERGENCY PREPAREDNESS N/R		VERIFIER	Walt Holle 2-13-85
LARA N/R		MECHANICAL SYSTEMS	
INDUSTRIAL SAFETY/FIRE PROTECTION N/R		ELECTRICAL / I & C SYSTEMS	FEB 20 1985
SECURITY N/R		NUCLEAR SYSTEMS & ANALYSIS	
DIAPY FACTORS R.D. Kern 2/1/85	V	GENERATION ENGINEERING	FEB 20 1985
WIRE/TERMINAL N/R		OTHER	MEL COORDINATOR R.P. Baker 2/20/85
OPER R.D. Kern	V	OTHER	

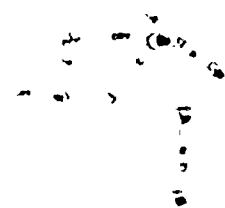


EXHIBIT D

