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July 30, 1986
ANPP-37636-EEVB/ACG/SGB/98.05

U. S. Nuclear Regulatory Commission
Region V
1450 Maria Lane, Suite 210
Walnut Creek, CA 94596-5368

Attention: Mr. D. F. Kirsch, Deputy Director
Division of Reactor Safety and Projects

Subject: Palo Verde Nuclear Generating Station (PVNGS)
Unit 1
Docket No. STN 50-528 (License No. NPF-41)
Request for Reconsideration of the Ruling on the
Response to Violation No. 50-528/85-26-04
dated October 4, 1985
File: 86-019-026; D.4.33.2

Reference: (a) Letter from D. F. Kirsch to E. E. Van Brunt, Jr., dated October 4, 1985. Subject: I&E Inspection Report.
(b) Letter from E. E. Van Brunt, Jr. to D. F. Kirsch (ANPP-33926EEVB/FJH) dated November 5, 1985. Subject: PVNGS Denial of Violation
(c) Letter from D. F. Kirsch to E. E. Van Brunt, Jr., dated May 5, 1986. Subject: NRC Response to PVNGS Denial of Violation.

Dear Sir:

Arizona Public Service (APS) requests reconsideration of the ruling in Reference (c) which rejected APS' denial of the Violation No. 50-528/85-26-04 (hereinafter "the Ruling"). Additionally, APS requests a conference to discuss this request, and to resolve all concerns related to the application of overtime controls at PVNGS. In the alternative, APS requests that this matter be submitted to the NRC Executive Director of Operations (EDO) or the Commission for final resolution.

This request for reconsideration stems from a conviction held by APS that the Ruling is not justified based upon the following assertions:

[1] The Ruling adopts an interpretation of Technical Specification 6.2.2.2 which is inconsistent with prior interpretations established by the Office of Nuclear Regulation (NRR), and Region V, of the NRC.

[2] The interpretation given by the Ruling constitutes a modification to the procedures required to operate PVNGS resulting from a new staff position, which cannot be made effective without compliance to the requirements of 10 CFR 50.109; and

[3] The use of a notice of violation to force a change in a licensee's administrative procedures is unreasonable and unfair regulatory practice.

IE-01

Background

Violation No. 50-528/85-26-04 was based upon an interpretation that the Technical Specification 6.2.2.2 (hereinafter "the Tech Spec") applied to "all unit staff who performed safety-related functions." [Inspection Report Nos. 50-529/85-26 and 50-529/85-27, dated September 25, 1985, Item 8, p. 11]

In APS' Denial of Violation, dated November 5, 1985, it was contended that such interpretation was inconsistent with:

- The evolution of the regulatory requirements relating to overtime work;
- The Commission's Overtime Policy Statement;
- The acceptance by NRR of APS' licensing commitment which explicitly identified the personnel who were to be subject to overtime controls; and
- NRC licensing actions in other dockets.

The Ruling, without discussion of APS' contentions, summarily concludes that a violation of the Tech Spec did occur. The only basis given for this conclusion is a subjective belief as to the intent of the Tech Spec:

> "The NRC believes that the intent of this specification is to limit the working hours of unit staff who perform safety-related functions, which include the type of work this engineer performed, namely taking measurements and calculating percent of valve travel during safety-related surveillance testing."

This request for reconsideration by APS' is supported by the following justifications[1] which are restatements in part of APS' initial denial, but are also supplemented by a more recent NRC Inspection Report (50-528/85-33 and 50-529/85-33), and the application of Backfitting Rule 10 CFR 50.109.

1 Additionally, the Ruling could be criticized (i) for not analyzing the contentions made by APS in its denial, and (ii) for its failure to consider objective evidence of the intent of the Tech Spec, and (iii) for its failure to adhere to rules of statutory construction. However, such arguments are not pursued in this request for reconsideration.

[1] The Ruling adopts an interpretation of Technical Specification 6.2.2.2 which is inconsistent with prior interpretations established by the Office of Nuclear Regulation (NRR), and Region V, of the NRC.

1.1 The Tech Spec and NUREG-0737

The portion of the Tech Spec which is relevant to the issue of its interpretation is paragraph a. of the Tech Spec, which states:

> "a. Administrative procedures shall be developed and implemented to limit the working hours of unit staff who perform safety-related functions; e.g., senior reactor operators, reactor operators, radiation protection technicians, auxiliary operators, and key maintenance personnel." [Emphasis suppplied.]

The underscored phrase is virtually identical with phraseology used in the Commission's Overtime Policy Statement and in NUREG-0737, Section I.A.1.3 (as revised by Generic Letter 82-12, dated June 15, 1982), to wit:

> "The controls shall apply to the plant staff who perform safety-related functions (e.g., senior reactor operators, reactor operators, auxiliary operators, health physicists, and key maintenance personnel." [Emphasis supplied.]

Because NUREG-0737 and the Tech Spec are almost identical in describing the personnel whose working hours are to be controlled and the ambiguities found in one are also found in the other, interpretations of the NUREG-0737 requirements are controlling in the interpretation of the Tech Spec.

1.2 NRR's Interpretation of NUREG-0737

During the course of preparing the PVNGS Safety Evaluation Report, NUREG-0857, NRR met with PVNGS personnel on September 15, 1981, to resolve a number of open items dealing with Chapter 13 of NUREG-0857. Among such open items was the matter of overtime controls.

Subsequent to the September 15, 1981 meeting, APS confirmed the oral commitments made at the meeting by submittal of a letter from E. E. Van Brunt, Jr., to R. L. Tedesco dated September 30, 1981. Item 13 of an Attachment to the letter established APS' licensing commitments related to overtime controls as follows:

> "13. The maximum work hours of personnel performing a safety-related function will be no more than 12 hours of continuous duty exclusive of travel time with at least 12 hours between work periods, no more than 72 hours in any 7-day period, and no more than 14 consecutive days of work without at least 2 consecutive days off. Only the Manager of Nuclear Operations shall have authority to waive these limits. The personnel effected [sic] by this requirement will be senior reactor operators, reactor operators, radiation protection technicians, auxiliary operators, I & C technicians and key maintenance personnel." [Emphasis supplied.]

This licensing commitment made by APS explicitly limited the application of the then current NUREG-0737 overtime controls solely to the personnel specified and was iterated again in Amendment 2 of Section I.A.1.3 of the PVNGS Lessons Learned Implementation Report (LLIR) filed in November, 1981.

This licensing commitment was subsequently accepted by NRR to be in accordance with the then existing provisions of NUREG-0737. Specifically, it is stated in Section 22.2 of NUREG-0857:

> "The licensee defined the quantitative limits on allowable overtime and the personnel affected. Since this definition is consistent with the provisions of NUREG-0737, Section I.A.1.3, the staff finds the proposed overtime controls acceptable." [Emphasis supplied.] See also Section 13.5.1.3 of NUREG-0857.

This acceptance by the NRR of APS' definition of the personnel to be affected by the overtime limits as "consistent" with NUREG-0737, provides a clear interpretation of NUREG-0737 and, therefore, the Tech Spec.

1.3 Region V's Interpretation of NUREG-0737

To assure adherence to its licensing commitment, PVNGS issued Station Manual Procedure No. 10AC-OZZ07, Overtime Limitations, effective July 25, 1984. This procedure and subsequent revisions defined and limited the personnel subject to overtime limitations in the following manner:

> "1.2 This control applies to unit staff who perform safety-related functions. The personnel effected (sic) by this requirement will be senior reactor operators, reactor operators, radwaste operators, radiation protection technicians, auxiliary operators, chemistry technicians, and maintenance personnel working on safety related equipment." [Emphasis supplied.]

NRC Region V inspectors conducted a routine, unannounced inspection on September 16-27, 1985, including, but not limited to, compliance with NUREG-0737 overtime limitations. (Inspection Report Nos. 50-528/85-33 and 50-529/85-33, dated October 17, 1985). As a result of their review of Procedure 10AC-OZZ07, the regional inspectors concluded:

> "I.A.1.3 Shift Manning
>
> This TMI item involves two different aspects: 1) Limiting Overtime, and Establishing a Minimum Shift Crew
>
> 1) (Open) Limit Overtime
>
> The licensee has met the intent of this TMI item by incorporating the guidance for overtime of Generic Letter 82-12 into Procedure 10AC-OZZ07, Overtime Limitations. These overtime limitations applied to plant personnel who performed safety-related activities, such as plant operators, radiation protection technicians, maintenance personnel, etc."

This acceptance by NRC Region V inspectors with respect to Procedure 10AC-OZZ07 and the interpretation of the NUREG-0737 (as revised by Generic Letter 82-12) is not consistent with the finding (Inspection Report Nos. 50-528/85-26 and 50-529/85-27) of the resident inspectors that the Tech Spec applied to "all unit staff who performed safety-related functions." It is also inconsistent with the interpretation of the Tech Spec in the Ruling.

[2] The interpretation given by the Ruling constitutes a modification to the procedures required to operate PVNGS resulting from a new staff position, which cannot be made effective without compliance to the requirements of 10 CFR 50.109; and

The use of a notice of violation is not a permissible means to effectuate a change in interpretation of a regulatory requirement. If the NRC staff believes that the Tech Spec should be modified to expand its applicability to include engineers who take measurements and calculate percent of valve travel during safety-related surveillance testing, 10 CFR 50.109 sets forth the requirements to accomplish that objective.

[3] The use of a notice of violation to force a change in a licensee's administrative procedures is unreasonable and unfair regulatory practice.

APS contends that it is unreasonable and unfair to issue a notice of violation based upon new interpretation of the Tech Spec where --

* APS interpretation of the Tech Spec had been set forth explicitly in its Station Manual Procedure No. 10AC-OZZ07; and

* Acceptance by NRR of APS' licensing commitment, and acceptance by Region V inspectors of the PVNGS overtime procedure demonstrate the reasonableness of APS' interpretation of the Tech Spec.

Under the circumstances (a) where a procedure was issued based on an interpretation which clearly was not unreasonable nor arbitrary, and (b) where overtime had been controlled in compliance with such procedure, the only fair and reasonable regulatory action would be to discuss a proposed revision to the procedure to include additional personnel or functions as appropriate.

The problem with using a notice of violation to achieve this goal is that the ambiguity of the Tech Spec is perpetuated and disparate regulation of a licensee is enhanced. Neither of these results can be considered reasonable; neither reflects good regulatory practice.

Conclusion

On the basis of the foregoing, APS maintains the conviction that a violation did not occur, and that the Ruling is not justified and should be reconsidered. However, since reconsideration may not resolve all of the NRC's concerns related to the control of overtime at PVNGS, we request a conference to discuss these matters. Hopefully, this process will obviate any referral of this matter to the EDO or the Commission.

Very truly yours,

E. E. Van Brunt, Jr.
Executive Vice President
Project Director

EEVB/ACG/SGB/dh

cc: J. G. Haynes
A. C. Gehr
E. A. Licitra
R. P. Zimmerman