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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Number 50-346

License Number NPF-3

Serial Number 2315

DOCKET NUMBER
PROPOSED RULE **PR** 2

(60FR34381) (3)

August 14, 1995

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: Comments on Revision of the NRC Enforcement Policy
(60FR34381, June 30, 1995)

Gentlemen:

Toledo Edison (TE), a subsidiary of Centerior Energy, is partial owner of and is responsible for operation of the Davis-Besse Nuclear Power Station (DBNPS). Toledo Edison has been authorized for power operation of the DBNPS since April 1977. As a 10 CFR Part 50 licensee, TE has a vested interest in any policies the Nuclear Regulatory Commission (NRC) may adopt which can affect the management and operation of a commercial nuclear power plant. Toledo Edison has reviewed the subject Federal Register notice and submits the following comments for consideration.

Subpart B of 10 CFR Part 2 describes procedures used by the NRC for issuing Orders, issuing Notices of Violations (NOVs), imposing Civil Penalties, and issuing Demands for Information. The applicable regulations for each of these enforcement actions allow licensees (or other persons against whom the actions are taken) to dispute or contest the enforcement actions. In each case, except for NOVs, the applicable regulations also provide a course of action to be taken by the NRC to resolve disputed or contested enforcement actions.

The revised NRC Enforcement Policy (as was the case with the previous version) similarly provides guidance for resolving disputed Orders, Demands for Information, and Civil Penalties, but does not provide guidance for resolution of contested NOVs that are not associated with Civil Penalties pursuant to 10 CFR 2.205.

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The only NRC guidance that TE could locate to handle contested NOV's is contained in the NRC Enforcement Manual. Toledo Edison believes that this guidance is vague. Based upon our past experience with contesting NOV's, we believe that this guidance is inadequate and resulted in the contested NOV's not being processed by the NRC in a methodical, consistent manner.

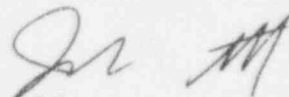
For example, TE recently contested two violations cited during an inspection of the Motor Operated Valve Testing Program on the basis that the regulations TE was cited for not meeting could not legally be imposed on the program by the NRC. Yet, based upon a review of the concurrences for the NRC's response to the contested violations, no review of the NRC's response involving the legality contention was conducted by the Office of General Counsel (OGC). Additionally, the level of independence of the review of the contested violations was inadequate. In other instances where TE has contested NOV's, varying levels of independent review have been encountered in the resolution of the issues.

To remedy this situation, TE recommends that the NRC Enforcement Policy be revised to include specific guidance on this issue. The NRC Enforcement Manual should be revised to provide more explicit procedural guidance for the NRC staff in resolving contested NOV's, and to specify the appropriate level of independent reviews and management involvement in these issues.

In addressing these issues, the NRC should also consider establishing clearer guidance on the appropriate level of independent review and management involvement for the issuance of NOV's pursuant to 10 CFR 2.201.

Should you have any questions or require additional information, please contact Mr. William T. O'Connor, Manager - Regulatory Affairs, at (419) 249-2366.

Very truly yours,


NKP/eld

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