

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Frank J. Miraglia, Acting Director

In the Matter of)	Docket No. 50-245
)	
NORTHEAST NUCLEAR ENERGY COMPANY)	License No. DPR-21
)	
(Millstone Nuclear Power Station,)	(10 CFR 2.206)
Unit 1))	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On January 2, 1995, Mr. Anthony J. Ross (Petitioner) filed a Petition with the Executive Director for Operations of the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). In the Petition, the Petitioner raised concerns regarding (1) employee harassment and intimidation by Northeast Utilities (NU); (2) the falsification of nuclear documents concerning the gas turbine battery; (3) failure to enter a Technical Specification Limiting Condition for Operation (LCO) after a failed surveillance; and (4) his belief that numerous violations have occurred in 1992 and 1993 regarding the gas turbine battery. Because of these problems, the Petitioner alleges that the gas turbine is still inoperable. In addition, the Petitioner asserts that these problems have not been handled appropriately by the NRC and NU, and that NU and the NRC are engaged in an apparent "cover-up" of problems with surveillances of the gas turbine battery.

The Petitioner requested that the NRC (1) assess a Severity Level II violation and a Severity Level III violation against his department manager and his first-line supervisor for their apparent violations of 10 CFR 50.7; (2) institute sanctions against the Petitioner's first-line supervisor, NU, and the Millstone Unit 1 organization for engaging in deliberate misconduct in violation of 10 CFR 50.5; and (3) remove the Petitioner's first-line supervisor from his position until a "satisfactory solution to the falsifying of nuclear documents" by this individual can be achieved.

On February, 23, 1995, I informed the Petitioner that the Petition had been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. I also stated that the Petitioner's allegations that the NRC has not been appropriately handling certain violations and is engaged in a "cover up" of the problems related to the gas turbine battery had been referred to the Office of the Inspector General (OIG). Therefore, this Director's Decision does not address that issue. On the basis of a review of the remaining issues raised by the Petitioner, as discussed below, I have concluded that no substantial health and safety issues have been raised that would require the initiation of additional formal enforcement action.

II. DISCUSSION

A. Background

The Petitioner alleges that during an annual surveillance of the gas turbine battery on September 20, 1994, he identified that some of the

intercell bolted connections of the gas turbine battery were greater than 65 micro-ohms, which was greater than the acceptance criteria specified in Procedure SP 779.5, "Gas Turbine Battery Annual Inspection." The Petitioner alleges that although he notified the Operations Department shift supervisor and his first-line supervisor, his first-line supervisor signed the surveillance as "yes," referring to the "acceptance criteria met," when clearly the requirements were not met as specified by Procedure SP 779.5. The Petitioner alleges further that, when the Operations Department was notified by him of the failed surveillance, the Millstone Unit 1 organization willfully failed to enter a four-day LCO as required by the Technical Specifications, in order to keep the unit on-line to produce revenues. In addition, the Petitioner asserts that about a week after this incident, he received copies of the 1992 and 1993 annual gas turbine battery surveillances that indicated a number of problems and violations which have not been handled appropriately by NU and the NRC, and that the gas turbine is still inoperable due to these problems. Finally, the Petitioner alleges that he has been subjected to harassment and intimidation by his first-line supervisor and department manager for raising these concerns.

B. Petitioner's Concern Regarding Falsification of Nuclear Documents

During an inspection held September 27 through November 15, 1994, as documented in Inspection Report (IR) 50-245/94-31; 50-336/94-30; 50-423/94-28 (IR 94-31), dated December 16, 1994, and an inspection held May 15 through June 23, 1995, as documented in IR 50-245/95-22; 50-336/95-22; 50-423/95-22 (IR 95-22), dated July 21, 1995, the NRC reviewed gas turbine battery maintenance and surveillance activities at Millstone Unit 1. The inspection

determined that on September 20, 1994, the date the Petitioner alleges the gas turbine battery failed the surveillance, the licensee for Millstone Unit 1 (Northeast Nuclear Energy Company - NNECO) performed the annual surveillance of the gas turbine battery as specified by Procedure SP 779.5. This annual preventive maintenance identified three intercell connection resistance readings that did not meet the surveillance acceptance criterion in that the resistance readings were greater than the accepted values. The electricians notified the shift supervisor and the maintenance foreman of the unsatisfactory readings and documented the results in the surveillance procedure.

The NRC reviewed the completed surveillance and noted that the "acceptance criteria met" block was checked "yes," indicating satisfactory surveillance results; however, the resistance readings for the three intercell connections were documented as unsatisfactory. The inspection therefore confirmed that the classification of this surveillance as acceptable was incorrect and, as a result, it bypassed NNECO's administrative control procedures for system operability¹, and procedural review and approval. However, on the basis of interviews and a review of the completed surveillance procedure, the NRC determined that the first-line supervisor documented the high resistance readings on the cover page of the surveillance, discussed the issue with the Electrical Engineering Department to determine if the high resistance readings affected operability of the battery and, on the basis of

¹ If the classification of the surveillance had been determined to be "unsatisfactory" ("acceptance criteria block" checked "no"), a determination of operability would be performed and the related Technical Specification LCO would be entered, if the gas turbine battery was inoperable.

the discussion with Engineering, determined that Engineering had previously reviewed the effect of the high resistance readings and had found the battery operable. Therefore, the first-line supervisor concluded that the battery was acceptable as is². Further, the inspection confirmed that the licensee's previous operability evaluation was acceptable and that the gas turbine battery was operable. As discussed below, the NRC took enforcement action regarding a number of procedural violations associated with the gas turbine battery surveillance. Therefore, based on the above, the NRC has concluded that the first-line supervisor did not willfully falsify documents.

C. Petitioner's Concern Regarding Failure to Enter Technical Specification LCO

The inspection determined that the classification of the resistance readings as "unsatisfactory" ("acceptance criteria block" checked "no") would have ensured that a determination of operability would have been performed by the licensee and the related Technical Specification LCO would have been entered if appropriate. However, since the first-line supervisor documented the high resistance readings, discussed the readings with Engineering, and on the basis of the discussion, determined that the battery was acceptable, the licensee did not willfully fail to enter the LCO in that the licensee determined that the previous operability determination was valid and, therefore, that the surveillance procedure criteria had been met.

In response to the NRC IR results, the Millstone Unit 1 Director issued a memorandum to Millstone Unit 1 personnel to reinforce the expectation that

² Although the first-line supervisor was technically correct that the gas turbine battery was operable, the determination of battery operability did not follow the licensee's administrative controls as discussed above.

if an acceptance criterion is not met, the "no" block must be checked. The Unit Director stated that he held managers and supervisors personally accountable for ensuring that their personnel understood the message in the memorandum. In addition, NNECO held several management team meetings to ensure a full appreciation of the type of performance characteristics that can lead to procedural violations and to reinforce the licensee's expectation concerning the "acceptance criterion met" block. NNECO also revised the acceptance criterion within Procedure SP 779.5 for the three connections that have the intercell connection cables with higher resistance because of the cable length. In addition, the official plant record was corrected for the annual battery surveillance that was incorrectly marked as meeting its acceptance criterion. In a subsequent inspection report, IR 50-245/95-31, 50-336/95-31, 50-423/95-31 (IR 95-31), dated September 19, 1995, the NRC reviewed the licensee's corrective actions in the above areas. The NRC staff found the licensee's corrective actions to be timely and thorough.

In summary, on the basis of the above information, the staff found that the Petitioner's first-line supervisor did incorrectly mark the acceptance criterion met block "yes;" however, he annotated the high resistance readings on the cover page of the surveillance and marked the block "yes" based on his determination that Engineering had previously reviewed the issue and determined the battery to be operable. Further, the staff found that since the licensee determined that this was previously reviewed by Engineering and found acceptable, the licensee erroneously did not follow its administrative control procedures for determining operability and entering of appropriate LCGs. Therefore, the NRC determined that (1) the Petitioner's first-line

supervisor did not willfully falsify nuclear documents or deliberately violate NRC regulations or the Millstone Unit 1 operating license; (2) neither he, Northeast Utilities, nor the Millstone Unit 1 organization violated the provisions of 10 CFR 50.5; (3) the requested removal of the first-line supervisor is not warranted based on these concerns; and (4) the licensee's corrective actions were acceptable. As discussed below, the NRC took enforcement action regarding a number of procedural violations associated with the gas turbine battery surveillance.

D. Additional Concerns Regarding Inoperability of the Emergency Gas Turbine

The Petitioner provides a number of examples of what he alleges demonstrate inadequate procedural compliance by the licensee regarding gas turbine battery surveillances which indicate that the gas turbine is inoperable due to battery problems.³ In IR 94-31, the NRC determined that during implementation of Procedure SP 779.5, there were a number of examples (including the examples the Petitioner provided) in which the Procedure SP 779.5 was not followed, nor was the job stopped and the procedure revised to correct the identified errors. For example, the procedure included a caution statement following step 6.19 that required the generation of a plant information report (PIR) and subsequent determination of operability if the battery acceptance criteria are not met. The PIR was not generated until this issue was questioned by the NRC. Step 6.17 of the procedure requires that if any resistance reading was greater than 65 micro-ohms, then the terminals and

³ The Petitioner asserted that these problems have not been handled by the NRC and NU, and that NU and the NRC are engaged in an apparent "cover-up" of problems. As explained above, the "cover-up" issue has been referred to the OIG.

straps must be cleaned. The licensee did not clean the terminal and strap connections. Step 6.22 requires that the readings taken during the surveillance be compared with previous battery surveillance readings to determine if there is any deterioration of the battery system. The licensee did not perform this review and evaluate the battery for deterioration until the NRC raised the issue. The NRC determined that these examples in which the procedure steps were not implemented constituted a violation of Technical Specification 6.8.1 and Procedure SP 779.5 and issued a Notice of Violation to the licensee (categorizing this as a Severity Level IV Violation, Violation 50-245/94-31-02). Further, the NRC noted in IR 94-31 that neither the recognition of the procedure errors during two prior implementations of this annual surveillance procedure (1992 and 1993)⁴, nor the biennial procedure review completed on December 8, 1993, resulted in revisions to preclude the problems encountered during the 1994 surveillance. As discussed above, in IR 95-31, the NRC reviewed the licensee's corrective actions for this violation and found them acceptable.

In IR 94-31, the NRC concluded that the previous operability evaluation of the gas turbine battery was acceptable and, therefore, that the gas turbine battery was operable at that time due to the previous evaluation. The violation cited in the Notice of Violation included the issues the Petitioner raised, specifically that NNECO failed to perform an operability determination and subsequently did not enter the Technical Specification LCO for the gas turbine. While the NRC staff did not take the actions the Petitioner

⁴ The NRC noted similar examples in which the procedure was not followed or corrected during the annual surveillance in 1992 and 1993.

requested, the staff did take enforcement action based on its findings. Therefore, since the NRC found the licensee's determination of operability acceptable and the NRC took enforcement action for the related violation described above, the NRC has concluded that additional enforcement action is not warranted.

E. Petitioner's Allegations Regarding Harassment and Intimidation

With regard to the Petitioner's assertion of harassment and intimidation, the Petitioner alleges that (1) on October 7, 1994, he was given a memorandum concerning absenteeism; (2) on October 27, 1994, he was unjustly chastised by his first line supervisor and department manager about absenteeism; and (3) on December 14, 1994, he was given a memorandum that threatened him. The Petitioner further alleges that he believes these actions by his supervision illustrate that NU management harasses, intimidates, and retaliates against individuals who raise safety concerns with outside agencies.

As indicated in a letter to the Petitioner dated November 28, 1995, from the NRC Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, the Petitioner has raised several complaints since 1993 with the NRC or the Department of Labor (DOL) concerning harassment, intimidation, or discrimination by individuals at NU because the Petitioner raised safety concerns to NU or the NRC. As explained in the letter, the NRC conducted investigations into some of the harassment and intimidation allegations that the Petitioner had raised. The NRC did not substantiate that the Petitioner suffered discrimination for raising safety concerns. Further,

of the complaints of harassment and intimidation that the Petitioner raised that were investigated by the DOL, none have been substantiated.

The staff has, in addition, reviewed the Petitioner's remaining allegations of harassment and intimidation, including those in the Petition, and has concluded that they do not present sufficient information warranting further investigatory effort. Accordingly, absent a finding of discrimination by the Secretary of Labor or an Administrative Law Judge on any pending complaints, or significant new evidence from the Petitioner that would support the allegations that NU has harassed, intimidated, or discriminated against him, the NRC staff plans no further followup of the harassment and intimidation complaints. Based on the above, no further action is warranted.

III. CONCLUSION

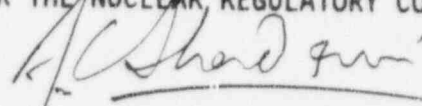
On the basis of the above assessment, I have concluded that some of the Petitioner's concerns were substantiated and resulted in appropriate enforcement action. Other concerns were not substantiated. Therefore, no additional enforcement action is being taken in this matter.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will

constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of October 1996.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in dark ink, appearing to read 'A. C. Thadani', is written over a horizontal line.

Ashok C. Thadani, Acting Director
Office of Nuclear Reactor Regulation