



Commonwealth Edison

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February 15, 1985

Mr. James G. Keppler
Regional Administrator
United States Nuclear Regulatory
Commission
Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Re: Docket Nos. 50-254, 50-265, Quad Cities
Nuclear Station -- Response To Nuclear Regu-
latory Commission's ("NRC") Letter, Notice Of
Violation and Proposed Imposition Of Civil
Penalty, dated December 12, 1984, pursuant to
10 C.F.R. § 2.205.

Dear Mr. Keppler:

By this letter, in accordance with 10 C.F.R. § 2.205, Commonwealth Edison Company ("Edison") herewith provides its answer and protest to the NRC's letter and Notice of Violation of December 12, 1984, which proposes the imposition of a \$50,000.00 civil penalty. Edison's answer to the NRC's letter and Notice of Violation, pursuant to 10 C.F.R. § 2.201, will be provided separately, and should be read with and is incorporated into this letter.

The letter and Notice of Violation proposes the penalty for Edison's alleged noncompliance with the requirements of 10 C.F.R. § 50.54(k) and Station Procedure QAP-300-2, Conduct of Shift Operations, Section 9(b), in the Quad Cities Control Room on October 25, 1984. The penalty is categorized as a Severity Level III Violation (Supplement I) in accordance with the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 C.F.R. Part 2, Appendix C, as revised 49 F.R. 8583 (March 8, 1984).

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As more specifically set forth below, Edison denies the noncompliance and believes the Notice of Violation to be in error as it does not follow the General Statement of Policy and Procedure for NRC Enforcement Actions criteria. Edison also believes the proposed penalty in this case to be inconsistent with the remedial purposes of the NRC's civil penalty authority. Further, Edison believes the NRC's proposed enforcement action in this case is not in accordance with its previous handling of other incidents involving the alleged failure of an operator to remain at his designated control panel. Finally, in addition to protesting the imposition of the proposed civil penalty, Edison requests the penalty's remission or mitigation.

Denial Of Noncompliance

As stated in Edison's response pursuant to 10 C.F.R. § 2.201 under the heading "Denial of Violation," incorporated herein by reference, the evidence to date simply does not support the NRC's allegation that a violation of the NRC regulations occurred. In the alternative, there is no support for the NRC's allegation that, if a violation did indeed occur, it amounted to a Severity Level III violation.

The Staff, as proponent of the penalty imposition, bears the burden of establishing Edison's violation of a specific regulation or license technical specification "by a preponderance of the reliable, probative and substantial evidence." Radiation Technology, Inc., ALAB-567, 10 N.R.C. 533 (1979); see also Atlantic Research Corporation, ALAB-594, 11 N.R.C. 841 (1980); 10 C.F.R. 2.732. Until such time as an adequate showing is made, Edison contests the allegation of noncompliance and stresses its belief that no penalty is warranted.

Errors In Notice Of Violation: Failure To Use Appropriate Enforcement Criteria

Misclassification Of Noncompliance. The specific act from which the NRC's Notice of Violation arises is as follows. The Unit 1 operator moved from directly in front of his control panels over to assist the Unit 2 operator. He remained close to the Unit 2 panels for approximately 15 minutes, during which time he returned to the Unit 1 reactor panels on several occa-

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sions, either to respond to an annunciator or to monitor his Unit 1 panels.

The finding, categorization, and the amount of the proposed civil penalty for the noncompliance is based on a misconception of the potential consequences of the alleged incident. In order for this particular incident to be classified as a Severity Level III violation, the "system designed to prevent or mitigate a serious safety event must have been unable to perform its intended function." (10 C.F.R., Part 2, Appendix C, Supplement 1, paragraph C.2.) Alternatively, there must have been a "serious dereliction of duty on the part of personnel involved in licensed activities." (10 C.F.R., Part 2, Appendix C, Supplement 1, paragraph C.3, emphasis added.) As noted in the "Denial of Violation" contained in Edison's 10 C.F.R. § 2.201 letter, any system malfunction which could lead to or which is itself considered a "serious safety event" is indicated on reactor control panels by an alarm consisting of both an annunciator and a visual signal.

In this instance, even assuming the truth of the Notice of Violation allegations and that the Unit 1 operator was not at all times directly in front of the control panels of his reactor, no serious safety consequences could have resulted. Nowhere in the Notice of Violation is there any proof or allegation that the Unit 1 operator would not have been able to receive and respond to an annunciated alarm. Indeed, the contrary is in fact the case. The evidence demonstrates that the Unit 1 operator not only was able to monitor the controls of his unit during the few minutes in question, but that he also returned to his station in response to a Unit 1 annunciator. This is not by any means a case of an "absent" operator, but rather one of an operator at all times capable of monitoring and responding to the demands of his unit. Thus, the potential consequences of the alleged incident could not have affected "a system designed to prevent or mitigate a serious safety event."

In addition, there clearly was not a dereliction, much less a serious dereliction, of duty on the part of the Unit 1 operator. The operator believed he could monitor his reactor and respond to any abnormal conditions, and the evidence demonstrates he was able to do so. Moreover, the operator's conduct was consistent with prior practice in the control room and with the Station's operating procedures.

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In short, there is no basis for concluding that the alleged incident should be classified as a Severity Level III, Supplement 1, C.2 Violation. Therefore, the \$50,000.00 penalty should not be imposed.

Failure To Use Proper Standards In
Determining The Penalty Assessment

The letter and Notice of Violation state that the alleged violation has been categorized as a Severity Level III violation in accordance with the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 C.F.R. Part 2, Appendix C. Severity Level III violations are therein stated to be "cause for significant concern". However, guidance as to determining the severity level of an alleged violation is lacking. The examples provided are stated to be "neither exhaustive nor controlling." The tables provided are said to take "into account the gravity of the violation as a primary consideration". The NRC "reviews each proposed civil penalty case on its own merits". Based upon the allegations in the Notice of Violation and the circumstances surrounding its issuance, it is apparent that the NRC has failed to give proper consideration and weight to the facts and merits of this case.

The "gravity of the violation" is considered to be the "primary consideration" in determining the severity level of any alleged violation. Given the characterization of the subject incident as a Severity Level III violation, however, this consideration has obviously been neglected. It is manifestly clear that the Unit 1 operator at all times was fully cognizant of his responsibilities and able to fulfill those duties adequately. No adverse events could have occurred under the conditions described in the Notice of Violation. Moreover, no event did occur which in any way affected public health, safety, the environment or the security of the plant. Certainly, an adequate consideration of this circumstance greatly diminishes the gravity of the alleged noncompliance.

Under these circumstances, it appears that in categorizing the alleged violation as one of Severity Level III, the NRC was not guided by its own criteria, directives and principles. All the facts and circumstances were obviously not examined. Consequently, Edison submits that the \$50,000.00 penalty is unwarranted.

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The Proposed Civil Penalty Is
Not Remedial

Edison believes that the imposition of a penalty in this case would serve no remedial purpose. Appendix C of 10 C.F.R. Part 2 states that the purpose of the NRC enforcement program, to protect the public's and employees' health and safety, is to be met by the achievement of several distinct goals.

The NRC, in Appendix C of 10 C.F.R., Part 2, states that it wishes to ensure compliance with its regulations and license conditions, obtain prompt correction of noncompliance, and deter any future noncompliance. Edison believes that the imposition of a penalty in this case would serve none of these stated purposes. First, as stated more fully in Edison's 10 C.F.R. § 2.201 letter, employee directives were issued prior to the Notice of Violation so as to insure that the operators would, in the future, comply with the NRC's newly announced interpretation of 10 C.F.R. § 50.54(k). Second, the Notice of Violation itself, without a civil penalty, is sufficient to put both Edison and the industry as a whole on notice that the NRC considers the Unit 1 operator's alleged conduct improper. Therefore, the proposed penalty in this case will not serve any of the stated purposes.

Another stated purpose of the NRC's enforcement program is to encourage improvement in the licensee's and the industry's performance, particularly the prompt identification and reporting of potential safety problems. Again, Edison urges that the imposition of a civil penalty in this instance will not serve the stated purpose. As to Edison itself, the Company has already taken the necessary steps to insure conduct consistent with the NRC's interpretation of 10 C.F.R. § 50.54(k). (See Edison's 10 C.F.R. § 2.201 accompanying letter under the heading, "Preventive Measures".) As to the industry as a whole, Edison believes that the Notice of Violation alone satisfies the stated goal of encouraging industry-wide improvement. Having been notified of the NRC's disapproval of the conduct of the Unit 1 operator, other similarly-situated licensees are now bound to prevent like occurrences at their facilities in the future. Given that none of the stated goals of the NRC enforcement program will be met by the imposition of a civil penalty upon Edison, we strongly urge that the proposed penalty be withdrawn.

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Inconsistent Application Of
Penalty Imposition Criteria

Finally, based on a review of other NRC enforcement actions, Edison believes the imposition of a civil penalty in this case would be inconsistent with prior NRC determinations in other cases involving similar facts.

For example, on August 24, 1982, at the Virginia Electric and Power Company's Surry Station, an operator assigned to the radiation monitoring and waste treatment panels was determined by the NRC to be absent from his post while assisting the Unit 1 operator. In the Surry case, the NRC recognized that the operator in question did not leave his post for some personal or unofficial reason, but rather to assist a fellow operator. Indeed, it appears that the Surry procedures required that the operator render assistance. However, as a result of his action the operator failed to respond to an annunciator at the panel for which he was assigned responsibility. Nonetheless, the NRC did not impose a civil penalty. In the present case, the Quad Cities Station Procedures permitted the Unit 1 operator's actions. Moreover, in contrast to Surry, the Quad Cities operator was in a position to respond to alarms at his Unit and in fact did so. Thus, when compared to Surry, Edison's case presents even greater justification for not imposing a civil penalty.

Also, on November 24, 1981, the NRC determined that an operator at the University of Wisconsin reactor had left his post for twelve seconds. The NRC initially concluded that this action constituted a violation of 10 C.F.R. § 50.54(k), categorized the violation as a Severity Level III and proposed the imposition of a civil penalty. However, the NRC eventually withdrew the proposed civil penalty. The NRC found the incident to be of "limited safety significance" and found that the licensee had taken prompt corrective action, including revisions of procedures and retraining of personnel. As noted earlier, and in Edison's 10 C.F.R. § 2.201 response the Quad Cities incident was not safety significant and prompt and effective actions were taken in response to the NRC's concerns. A consistent application of the NRC's enforcement criteria thus warrants the withdrawal of the proposed civil penalty in this case.

An example of the NRC's imposition of a civil penalty for a violation of 10 C.F.R. § 50.54(k) which provides instruc-

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tive guidelines in Edison's case occurred at the Florida Power and Light Company's Turkey Point Station. On January 29, 1981, the assigned Unit 3 operator left his station to get a cup of coffee. This departure necessitated his entering a completely different room behind the Unit 4 instrument panels. In this instance, a \$40,000 civil penalty was imposed.

Edison submits that its case is clearly distinguishable from the Turkey Point case. First and foremost, the Quad Cities Unit 1 operator was at all times able to perform his duties and responsibilities regarding his unit. Indeed, he responded to an annunciator during the incident and went back to his panel on at least one occasion to monitor the controls of his reactor. Secondly, this is not the case of an operator departing to get a cup of coffee. It is rather one of an operator assisting another operator in the same room.

As can be seen from this discussion, the NRC has previously been consistent in only imposing penalties where an operator left the area immediately in front of his controls, where such conduct was not permitted by operating procedures and presented significant safety concerns. Neither of these circumstances are present in this case. Consequently, consistent application of the NRC's enforcement criteria mandates the withdrawal of the proposed penalty.

Mitigating Factors

In addition to the foregoing, Edison offers the following factors for your consideration in remission or mitigation of any civil penalties you nevertheless determine to assess:

1. As mentioned earlier, the alleged noncompliance did not and could not adversely affect public health or safety, the environment or the common defense or security. Rather, the Unit 1 operator acted professionally under the circumstances and was not at any time unable to perform his duties or fulfill his responsibilities.

2. Judging from its letter, the NRC is apparently refusing to mitigate or remit the proposed civil penalty in response to Edison's "prompt and effective corrective action" due to its belief that "corrective actions for previous violations in [the area of adherence to operating procedures] should

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have precluded [the Quad Cities] incident." Edison believes this position to be unjustified for two reasons. First, as previously mentioned, the operator's conduct in this case does not reflect a failure to adhere to operating procedures. Indeed, the operator's conduct was wholly consistent with the Station's procedures. At worst, the incident can only be described as a failure of the procedures to comply with the NRC's newly announced interpretation of 10 C.F.R. § 50.54(k). Even if the NRC were to maintain that this failure constitutes a noncompliance with NRC regulations, there have been no similar noncompliances at Quad Cities. The NRC's enforcement criteria permit a reduction by as much as 100% of the base civil penalty for prior good performance in the general area of concern. Thus, under the criteria, total remission of the proposed penalty is appropriate.

The second problem with the NRC's position arises from its assertion that Edison's corrective actions for previous violations should have precluded the Quad Cities incident. The only recent violations at Quad Cities which can even arguably be deemed in some way related to this case are: (1) 83-11-01, failure to insert control rods properly (Severity Level III) and (2) 83-11-02, failure to maintain secondary containment (Severity Level IV). Edison simply does not understand how its corrective actions in response to these two events could possibly have addressed the concern of the NRC in this case. Thus, the NRC's basis for refusing to mitigate the proposed civil penalty in this case is not supportable.

Under the enforcement policy, mitigation of up to 50% of the proposed penalty is appropriate if a licensee takes prompt and effective corrective action. Since the NRC agrees that Edison's response to the NRC's concerns which gave rise to this Notice of Violation was prompt and effective, Edison submits that the proposed penalty should be mitigated.

3. There is no evidence of Edison's bad faith or willfulness in connection with the alleged noncompliance. Although this factor is not a defense to the allegation itself, it is appropriately recognized in mitigation of civil penalties. (Atlantic Research Corporation, ALAB-567, 10 N.R.C. 533 (1979).)

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By filing these responses to 10 C.F.R. § 2.201 and 10 C.F.R. § 2.205, Edison does not intend to waive any argument it may later wish to assert but which is not mentioned in these letters.

Very truly yours,

A handwritten signature in cursive script that reads "Cordell Reed".

Cordell Reed
Vice President