

# WINSTON & STRAWN

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-9703

200 PARK AVENUE  
NEW YORK, NY 10166-4193

NICHOLAS S. REYNOLDS  
(202) 371-5717

1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502

(202) 371-5700

FACSIMILE (202) 371-5950

6, RUE DU CIRQUE  
75008 PARIS, FRANCE

43, RUE DU RHONE  
1204 GENEVA, SWITZERLAND

February 19, 1997

James Lieberman, Director  
Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Niagara Mohawk Power Corporation  
Nine Mile Point Unit 1  
Docket No. 50-220  
EA 96-079

Dear Mr. Lieberman:

This letter is submitted on behalf of Niagara Mohawk Power Corporation as a follow-up to the January 6, 1997 meeting between the Company and the NRC Staff relating to Violation II.B of Enforcement Action 96-079. The points discussed in this letter summarize the licensee's views, and supplement Niagara Mohawk's July 16, 1996 response to the proposed imposition of this Severity Level IV Violation and the information provided during the January 6 meeting.

At the outset, it is important to repeat the point made by Mr. Sylvia in his opening comment at the January 6 meeting. Niagara Mohawk is not pursuing this issue with the NRC Staff in order to finesse or avoid a reporting obligation under NRC regulations. In fact, the management direction and the practice at Niagara Mohawk are to handle reporting obligations conservatively. ("We tell our people if there's any question whatsoever, to send in a report . . . ." (Transcript of January 6 meeting, at p. 6)).

Rather, as Messrs. Sylvia and Terry emphasized at the meeting, their purpose in pursuing this matter is to assure that they may provide straightforward, consistent guidance to those at Niagara Mohawk who make reportability decisions. Niagara Mohawk believes that it correctly determined the reportability of the relief panel design issue. The minimum design capability described in the FSAR -- the reference bound for the design -- for the buildings is 80 pounds per square foot ("psf"). The mention in the

9702260429 970219  
PDR ADOCK 05000220  
G PDR

IE1410

James Lieberman  
February 19, 1996  
Page 2

FSAR of "approximately 45 psf" is considered by Niagara Mohawk to describe an operational nominal value for purposes of relief panel design. As long as the design basis of 80 psf was not exceeded, Niagara Mohawk believes that the relief panels were functional (the function being to protect the superstructure of the building) and that the plant remained within its design basis. In Niagara Mohawk's view, the example in NUREG-1022 discussed at the January 6 meeting supports this interpretation, as does a practical reading of 10 C.F.R. § 50.2.

The FSAR for Nine Mile Point Unit 1 ("NMP-1") was prepared in 1967 in accordance with Atomic Energy Commission guidance available at the time, "A Guide for the Organization and Contents of Facility Description and Safety Analysis Reports" (Revised Draft, September 1, 1965). "Design bases" is defined in that guide, as follows:

[Design bases] is intended to represent that information which identifies the specific job to be done by a major component or system in terms of performance objectives together with specific values or range of values chosen for controlling parameters as reference bounds or limits for design. Such limits may be ... requirements derived from calculating effects of an abnormal situation believed to represent an upper limit to what the component or system might experience under credible circumstances (such as peak pressure loading of a containment). (Emphasis in original.)

Niagara Mohawk believes that its interpretation in this case is consistent with this definition. The "specific job" of the "major component or system" -- the buildings -- is to withstand a peak pressure loading of 80 psf, which is the limit for the design. This design basis would not be exceeded until a condition were to exist which caused that limit to be exceeded.

The location of the design number for the relief panel, "approximately 45 psf," in a FSAR section designated "Design Basis" should not alone determine whether that number is part of the "design bases" as defined in 10 C.F.R. § 50.2. Each design number in the NMP-1 FSAR must be examined irrespective of its location in the FSAR to determine whether it falls within the definition of "design basis" and whether deviations from it trigger reporting obligations under 10 C.F.R. § 50.72(b)(1)(ii)(B). Just as design numbers in the FSAR not located in the section titled "Design

James Lieberman  
February 19, 1996  
Page 3

Basis" may in fact be design basis information, conversely, design numbers in that section may not be design basis information.

Further, reportability should not be driven exclusively by whether a particular condition is found to be more or less conservative than called for in the design. If this were so, then there would be no need for NRC guidance such as NUREG-1022, and no place for analyses to determine whether intended functions will be met. Any time any condition were found which was less conservative than called for in the FSAR, a one-hour report to the NRC would be required. Surely no valid policy or regulatory good would be served by such a rigid and diluent rule, but licensees' operators would certainly be unnecessarily distracted from more important safety duties.

A balanced interpretation of the regulation requires that the reportable condition -- the plant being "in a condition that is outside the design basis of the plant" -- be examined in the context of the other enumerated conditions which must be reported under this section. The regulation contemplates reports on matters to which the NRC must respond quickly or which have immediate regulatory significance. Section 50.72(b)(1)(ii) requires one-hour reports for events or conditions during operation that result in the plant being seriously degraded or in an unanalyzed condition that significantly compromises plant safety, or a condition not covered by the plant's operating and emergency procedures. Subsection (i) requires one-hour reports for plant shutdowns required by Technical Specifications and departures from license conditions or Technical Specifications in an emergency when "immediately needed to protect the public health and safety . . ." (10 C.F.R. § 50.54(x)). The remaining subsections of Section 50.72(b)(1) require one-hour reports for an "actual threat" to plant safety, ECCS discharge in response to a valid signal, and major losses of emergency assessment capability. While described as "Non-emergency" in the title to Section 50.72(b), the events and conditions which trigger a one-hour report clearly have major potential or actual safety significance.

The safety significance to which events and conditions must rise to be reportable under Section 50.72(b)(1) is also reflected in the statements of considerations which accompanied promulgation of the rule in 1980 and subsequent amendments. Thus, Section 50.72 was originally promulgated to address "serious events that could result in an impact on the public health and safety." 45 Fed. Reg. 13,435 (Feb. 29, 1980). The purpose of the rule is to assure that such events are reported immediately "where immediate Commission action to protect the public health and safety may be

James Lieberman  
February 19, 1996  
Page 4

required . . . ." 48 Fed. Reg. at 39,039 (Aug. 29, 1983). Subsequently, Subsection 50.72(b)(1)(ii) was promulgated to focus on events "that significantly compromise plant safety." Id. at 39,041. "The intent of [Subsection 50.72(b)(1)(ii)] is to capture those events where the plant, including its principal safety barriers, was seriously degraded or in an unanalyzed condition." Id. at 39,042. More recently, in reporting on its position regarding further guidance on implementing this subsection, the NRC Staff stated:

Furthermore, the wording of the criteria and the guidance in the preamble to the final rule imply that the impact on plant safety should be at a fairly high level. Therefore, failures, specification problems, and loss of safety margins that apply to individual components (pieces/parts) are not reportable unless they affect this ability to satisfy plant safety functions . . . .

58 Fed. Reg. at 18,174 (Apr. 8, 1993).

The point here is not to minimize the importance of the underlying condition that gave rise to the Severity Level IV violation on reportability. Rather, it is to place in proper regulatory context the types of conditions which should compel the extraordinary one-hour report. Niagara Mohawk's view is that such reports should be compelled when conditions which "significantly compromise plant safety" exist. The condition at issue is not in that category. The relief panels would have fulfilled their specific function despite the condition known at the time. The buildings remained within their "design basis." In such a case, a one-hour report makes no sense.

Finally, it bears mention that Niagara Mohawk's interpretation of its reporting obligations in this regard does not adversely impact the ability of its operating personnel to make prompt decisions. As Mr. Sylvia mentioned, the direction and practice at Niagara Mohawk is to report if there is any doubt about reportability. This eliminates any delay in reporting which otherwise could be occasioned by the need to interpret the FSAR or make judgments. If this leads to unnecessary reporting, Niagara Mohawk sees no harm because reports can be withdrawn later.

On the other hand, there are important reasons why the NRC Staff should not interpret Section 50.72(b)(1)(ii) so rigidly that matters which are less serious need be reported within one

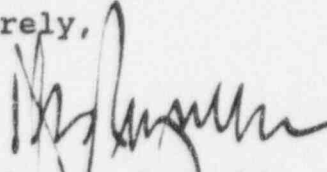


James Lieberman  
February 19, 1996  
Page 5

hour. Mr. Sylvia, himself a former Senior Reactor Operator, expressed concern that overreporting mandated by the Staff's interpretation of Section 50.72(b)(1)(ii)(B) would be a distraction in the control room, a burden on the shift supervisor running the plant, and would probably have an overall negative impact on safety (Tr. at p. 6). There is also the very real risk that a lower threshold would overload and distract the NRC Operations Center Staff. Section 50.72(b)(1)(ii) calls for one-hour reports to the NRC only where significant issues are involved.

Niagara Mohawk thanks you for taking the time to meet with us and for considering its views on this important issue. Based on the information provided, we ask that you withdraw this Level IV violation. We would be pleased to answer any further questions you may have.

Sincerely,



Nicholas S. Reynolds  
Counsel for Niagara Mohawk  
Power Corporation