

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Samuel J. Collins, Director

In the Matter of)	Docket Nos. 50-245
)	50-336
NORTHEAST UTILITIES)	50-423
)	
(Millstone Nuclear Power Station,)	License Nos. DPR-21
Units 1, 2, and 3))	DPR-65
)	NPF-49
)	
)	(10 CFR 2.206)
)	

DIRECTOR'S DECISION PURSUANT TO 10 CFR 2.206

I. INTRODUCTION

On October 28, 1994, Mr. Anthony J. Ross (Petitioner) filed a Petition with the Executive Director for Operations pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). By letter dated December 15, 1994, the NRC informed the Petitioner that he had not provided a sufficient factual basis to warrant action under 10 CFR 2.206. The NRC stated that if the Petitioner wished the staff to take action under 10 CFR 2.206, he needed to provide more information describing the specific technical violations that he alleged the NRC had not adequately addressed. By letters dated January 15, February 8, and February 20, 1995, the Petitioner supplemented his Petition by submitting lists of alleged violations. In the Petition, the Petitioner requested that "accelerated enforcement action" be

taken against Northeast Utilities (NU) for violations at Millstone¹ involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner asserted that since August 1993, violations in these areas had increased significantly, that many of these violations had never been assigned a severity level by the NRC, and that when all of the violations are considered collectively, escalated enforcement action is warranted because of the repetitive nature of the violations.

On February 23, 1995, the NRC informed the Petitioner that the Petition had been referred to the Office of Nuclear Reactor Regulation, and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition.

NU responded to the NRC on May 12, 1995, regarding the issues raised in the Petition; the Petitioner submitted a response on July 11, 1995, regarding issues raised in the NU submittal.

On October 14, 1995, the Petitioner submitted a Petition requesting that the NRC take immediate enforcement action consisting of immediate suspension of the licenses to operate the three units at the Millstone Station, and immediate imposition of the maximum daily civil penalty allowed because of the numerous continuing and repetitive violations committed by the licensee since early 1989. The NRC informed the Petitioner by letter dated November 24, 1995, that because his October 14, 1995, Petition did not contain any new information but merely raised again the same issues as in his previous

¹Northeast Nuclear Energy Company (NNECO/licensee), an electric-power operating subsidiary of NU, holds licenses for the operation of Millstone Nuclear Power Station, Units 1, 2, and 3.

Petition, his October 14, 1995, Petition would be considered as an additional supplement to his January 15, 1995, Petition.²

II. DISCUSSION

The Petitioner requested that "accelerated enforcement action" be taken against NU for violations at Millstone involving procedure compliance, work control, and tagging control. As a basis for his request, the Petitioner alleged that since August 1993, violations in these areas had increased significantly, that many of these violations had never been assigned a severity level, and that when these violations are considered collectively with violations that had been assigned a severity level, escalated enforcement action is warranted because of the repetitive nature of the violations. In his October 14, 1995, supplement to the Petition, the Petitioner requested that the NRC suspend the licensee's licenses to operate all three Millstone units, and impose a daily civil penalty until the licensee can assure the public and NRC that there will be no more violations in certain areas.

In the Petition and its supplements, the Petitioner provided numerous examples of what he believed were violations in the areas of procedure compliance, work control, and tagging control. The NRC had been aware of the examples described by the Petitioner. These examples were taken from NRC inspection reports dating back to 1989 and from other NRC documents. The NRC

²The Petitioner also asserted in his October 14, 1995, Petition that, since many of the violations had been substantiated by the NRC inspectors and/or the licensee, but have not been identified as violations by the NRC, the Office of the Inspector General (OIG) should conduct a full investigation of the NRC's neglect. In its November 24, 1995, letter, the NRC informed the Petitioner that this assertion would be referred to the OIG. In addition, in this letter, the Petitioner's request for immediate action was denied. The Petitioner's assertion of neglect by the NRC was referred to the OIG.

considered whether enforcement action should be taken for these violations in accordance with the guidance provided in the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy) in effect at the time that the violations occurred.³ As provided in the Enforcement Policy, the basic enforcement sanctions available to the NRC include Notices of Violation (NOVs), civil penalties, and orders of various types, including Suspension Orders. As further provided in the Enforcement Policy, for those cases in which a strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty for each day that the violation continues.

In accordance with that guidance, some of the examples cited by the Petitioner were violations for which the NRC issued a NOV, but for the majority of the examples, no NOV was issued. In some instances in which no NOV was issued, the example was considered to be of only minor safety significance because it was not a violation that could reasonably be expected to have been prevented by the licensee's corrective actions for a previous violation, it was or will be, corrected within a reasonable time, and it was not willful, and therefore, was not cited in accordance with the above mentioned Enforcement Policy. With regard to other instances, the examples cited by the Petitioner did not constitute violations of NRC regulatory requirements, but instead were deviations from established procedures in non-safety-related areas, or simply constituted certain equipment problems or

³The Enforcement Policy in effect at the time that the violations occurred was set forth at 10 CFR Part 2, Appendix C. The Commission's present Enforcement Policy is described in NUREG-1600.

weaknesses in certain areas, which required further clarification or the attention of licensee management.

Nonetheless, the NRC shares the Petitioner's concern about the number and duration of these examples of failures in the areas of procedural compliance, work control, and tagging control. If the NRC were to reassess the examples provided by the Petitioner, it is possible that many could be classified as repetitive violations under the Enforcement Policy.⁴ However, the NRC has determined that these examples are indicative of a more significant problem; specifically, a programmatic breakdown in management at the Millstone facility.

The NRC has been aware of weaknesses in the licensees operations at Millstone, and has taken significant regulatory action as a result. Specifically, programmatic concerns in the areas of procedural compliance, work control, and tagging control, were among the programmatic weaknesses common to all three Millstone units, which were identified in the most recent systematic assessment of licensee performance (SALP) report of August 26, 1994. These weaknesses included continuing problems with procedure quality and implementation, the informality in several maintenance and engineering programs that contributed to instances of poor performance, and the failure to take proper corrective action at the site. Based on these identified weaknesses, the NRC continued its increased inspection and oversight activities at the facility.

⁴Section IV.B of the Enforcement Policy defines a repetitive violation as a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) during the period within the last two inspections, whichever is longer.

On November 4, 1995, the licensee shut down Millstone Unit 1 for a scheduled refueling outage. During an NRC inspection of licensed activities at Millstone Unit 1 in the fall of 1995, the NRC identified refueling practices and operations regarding the spent fuel pool cooling systems that were inconsistent with the updated Final Safety Analysis Report (UFSAR). The NRC sent a letter to the licensee on December 13, 1995, requiring that, before the restart of Millstone Unit 1, it inform the NRC, pursuant to Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), of the actions taken to ensure that in the future it would operate that facility according to the terms and conditions of the plant's operating license, the Commission's regulations, and the plant's UFSAR.

In January 1996, the NRC designated the units at Millstone as Category 2 plants. Plants in this category have weaknesses that warrant increased NRC attention until the licensee demonstrates a period of improved performance. In February and March 1996, the licensee shut down Millstone Units 2 and 3, respectively, due to design issues. In response to (1) a licensee root-cause analysis of inaccuracies in the Millstone Unit 1 UFSAR that identified the potential for similar configuration-management conditions at Millstone Units 2 and 3 and (2) design configuration issues identified at these units, the NRC issued letters to the licensee, pursuant to 10 CFR 50.54(f), on March 7 and April 4, 1996. These letters required that the licensee inform the NRC of the corrective actions taken regarding design configuration issues at Millstone Units 2 and 3 before the restart of each unit.⁵

⁵By letter dated April 16, 1997, the NRC clarified the information it needed pursuant to 10 CFR 50.54(f).

In June 1996, the NRC designated the units at Millstone as Category 3 plants due to additional inspection findings regarding design bases and design control, some of which were similar to the examples the Petitioner raised. Plants in this category have significant weaknesses that warrant maintaining them in a shutdown condition until the licensee can demonstrate to the NRC that it has both established and implemented adequate programs to ensure substantial improvement. Plants in this category require Commission authorization to resume operations.

On August 14, 1996, the NRC issued a Confirmatory Order directing the licensee to contract with a third party to implement an Independent Corrective Action Verification Program (ICAVP) to verify the adequacy of its efforts to establish adequate design bases and design controls. The ICAVP is intended to provide additional assurance, before each of the three Millstone units restart, that the licensee has identified and corrected existing problems in the design and configuration control processes.

The guidelines for approving the restart of a nuclear power plant after a shutdown resulting from a significant event, a complex hardware issue, or a serious management deficiency are found in NRC Inspection Manual Chapter (MC) 0350, "Staff Guidelines for Restart Approval." MC 0350 states that the staff should develop a plant-specific restart action plan for NRC oversight of each plant startup. The restart action plan is to include those issues listed in MC 0350 that the NRC restart panel has deemed applicable to the reasons for the shutdown. In the case of Millstone, the restart action plan will include those issues which the Petitioner has raised; specifically, procedure compliance, work control, and tagging control. Therefore, the NRC staff will thoroughly review these areas prior to the restart of each unit.

Following a determination that the relevant issues have been identified and corrected by the licensee, the NRC staff will make its recommendation for restart approval to the Commission regarding restart for each Millstone unit. Upon receipt of the staff's recommendation, the Commission will meet to assess the recommendation and vote on whether to approve the restart of the unit.

In addition, during eight NRC inspections conducted between October 1995 and August 1996, more than 60 apparent violations of NRC requirements were identified at Millstone, some of which were similar to the examples the Petitioner raised. These apparent violations were discussed with the licensee at a public pre-decisional enforcement conference held at the Millstone site on December 5, 1996. During the meeting, the licensee stated that management failed to provide clear direction and oversight, performance standards were low, management expectations were weak, and station priorities were inappropriate. Following its evaluation of the information presented at the enforcement conference, the NRC will determine whether further enforcement action is warranted for these apparent violations.

In sum, the issues raised by the Petitioner are indicative of a more fundamental problem of inadequate management oversight at the Millstone facility. The NRC has been aware of this programmatic problem and weaknesses in numerous areas of the licensee's program, including the areas of procedural compliance, work control, and tagging control, and has taken extensive regulatory action. In particular, as a result of action taken by the NRC, all three units at Millstone will remain shut down until the Commission approves restart of operations. Prior to such approval, the licensee is required to submit a response to the NRC's 10 CFR 50.54(f) letter dated April 16, 1997, identifying what actions the licensee has taken to ensure that in the future

it would operate that facility according to the terms and conditions of the plant's operating license, the Commission's regulations, and the plant's UFSAR. This response will encompass the areas identified by the Petitioner and will be thoroughly reviewed by the NRC. In addition, the NRC is currently reviewing the apparent violations which have been identified as a result of inspections conducted at the facility between October 1995 and August 1996, and, following its review, will take such enforcement action as it deems is warranted.

These actions go beyond those requested by the Petitioner. Therefore, to the extent that the Petitioner has requested that the NRC take action against the licensee for violations at Millstone involving procedural compliance, work control, and tagging control, the Petition has been granted. Given the action already taken by the NRC, the NRC has determined that the additional enforcement action requested by the Petitioner is not warranted at this time.

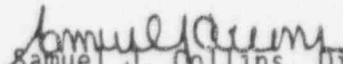
III. CONCLUSION

The staff has completed its review of the information submitted by the Petitioner in his Petition and its supplements. The staff has concluded that the actions taken by the NRC against NU are appropriate and encompass the Petitioner's examples of violations in the areas of procedure compliance, work control, and tagging control. To this extent, the Petitioner's requests for enforcement action against NU is granted, in part. In other respects, the Petition is denied. As provided for 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 29th day of April 1997.

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation