



ENCLOSURE

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

April 6, 1999

EA 98-325

Mr. Bruce Kenyon
NORTHEAST NUCLEAR ENERGY COMPANY
Post Office Box 128
Waterford, Connecticut 06385

SUBJECT: NOTICE OF VIOLATION
(Office of Investigations Reports 1-96-002, 1-96-007, and 1-97-007)

Dear Mr. Kenyon

This refers to the subject investigations conducted by the NRC Office of Investigations (OI) at Northeast Nuclear Energy Company's (Northeast or Licensee) Millstone Station and to the Report of Review conducted by the Millstone Independent Review Team which was recently appointed and directed by the Commission to independently review and make recommendations on these OI cases. The referenced OI investigations were initiated in 1996 and 1997 to investigate allegations that various employees and supervisors at Millstone Station had been subject to retaliation for engaging in protected activities. Following the issuance of the OI reports and an "Event Inquiry" by the NRC Office of Inspector General, the Commission appointed a Millstone Independent Review Team (Independent Review Team) to conduct an independent review of, and make recommendations on, the OI investigations. The Independent Review Team completed its assessment work and provided its report and recommendations to the Commission on March 12, 1999.

The Commission has concluded that discrimination occurred based on the results of the investigations in OI Case No. 1-96-002 involving two supervisors demoted as a result of a 1993 reorganization and in OI Case No. 1-97-007 involving a supervisor who was terminated in 1995. A Notice of Violation (Notice) for the violations associated with these investigations is provided in Enclosure 1. The specific violations contained in this Notice are discussed below. As to OI Case No. 1-96-007 involving three employees terminated as a result of a 1996 workforce reduction program, the NRC has determined that insufficient evidence was found to conclude that discrimination occurred.

OI Case No. 1-96-002

With regard to OI Case No. 1-96-002, the Independent Review Team found that protected activities were contributing factors in the demotion and removal from supervisory activities of a Supervisor in the Performance Engineering group and a Supervisor in the Engineering Mechanics group in a reorganization of Millstone's nuclear engineering functions in November 1993. A summary of the NRC's conclusions in OI Case No. 1-96-002 is provided in Enclosure 2.

1. Supervisor in the Performance Engineering group – The Supervisor in the Performance

Engineering group engaged in protected activities with regard to CU-29 check valve operability issues and his active support of another Millstone employee who had raised safety concerns about spent fuel off-loading practices at Millstone. The investigatory record produced in OI Case No. 1-96-002 and the Independent Review Team's detailed review led the Commission to the conclusion that the Performance Engineering group Supervisor's protected activities were a contributing factor in his demotion and that the demotion was, thus, discrimination which is prohibited by 10 CFR 50.7. This violation is item A. in the enclosed Notice.

2. Supervisor in the Engineering Mechanics group – The Supervisor in the Engineering Mechanics group engaged in protected activities with regard to the safety-related motor-operated valve program, turbine-building secondary closed cooling water (TBSCCW) heat exchanger issues, and reactor coolant pump maintenance problems at Millstone. The investigatory record produced in OI Case No. 1-96-002 and the Independent Review Team's detailed review led the Commission to the conclusion that the Engineering Mechanics group Supervisor's protected activities were a contributing factor in removing from his responsibility the motor operated valve program and the TBSCCW heat exchanger issue, and in his demotion and thus, the removal of responsibilities and the demotion were discrimination which is prohibited by 10 CFR 50.7. This violation is described as item B. in the enclosed Notice.

OI Case No. 1-97-007

With regard to OI Case No. 1-97-007, the Independent Review Team found that protected activity was a contributing factor in the dismissal of a Supervisor, Electrical Engineering, in the Engineering Services Department at Millstone Unit 2 in August 1995. A summary of the NRC's conclusions in OI Case No. 1-97-007 is provided in Enclosure 3.¹

The Supervisor, Electrical Engineering, in the Engineering Services Department engaged in protected activities when he reported to higher-level management and the Millstone Nuclear Safety Concerns Program that his immediate superior – the Manager of Nuclear Design Engineering – had threatened him and another employee with dismissal if work on an Engineered Safeguards Actuation System modification to which his electrical engineering group had been assigned was not completed before the scheduled conclusion of a Millstone Unit 2 refueling outage. The investigatory record produced in OI Case No. 1-97-007 and the Independent Review Team's detailed review lead the Commission to the conclusion that the Electrical Engineering Supervisor's protected activity was a contributing factor in his dismissal and that the dismissal was, thus, discrimination which is prohibited by 10 CFR 50.7. This violation is item C. in the enclosed Notice.

The three violations described in the enclosed Notice involved actions by plant management. Violation A. involves actions by a former Millstone Vice President for Nuclear Engineering

¹ Northeast was previously informed in a letter from W.D. Lanning, NRC, to Mr. M.L. Bowling, dated August 26, 1998, that NRC staff had concluded that there was not sufficient evidence to conclude that discrimination had occurred in this case. The Commission has reopened this case and, after reevaluation, has concluded, as noted above, that discrimination occurred.

Services. Violation B. involves actions by the former Millstone Vice President for Nuclear Engineering Services and two former Directors of the Engineering Department. Violation C. involves actions by a former Director of Nuclear Engineering and a former Manager of Nuclear Design Engineering. The Commission considers such violations to be of very significant regulatory concern. Retaliatory personnel actions are very serious matters and will not be tolerated by the NRC. Accordingly, the three violations have each been evaluated as a Severity Level II violation in accordance with Supplement VII, B.4 of the General Statement of Policy and Procedures for NRC Enforcement Actions, NUREG-1600, Rev.1, 63 FR 26630, 26652 (May 13, 1998).

Under the NRC's Enforcement Policy, a civil penalty is normally considered for Severity Level II violations. However, the NRC recognizes that subsequent to the actions that are the subject of these violations, the NRC issued an Order Requiring Independent Third Party Oversight of Northeast Nuclear Energy Company's Implementation of Resolution of Millstone Station Employees' Safety Concerns (October 24, 1996). The Order mandated independent oversight and substantial corrective action with regard to employee concerns, past discrimination and a safety conscious work environment at the Millstone site. In response to that Order, the licensee retained an independent consultant approved by the NRC to review and assess the Millstone Station employee safety concerns problems and to oversee the licensee's resolution of those problems. In January 1999, the Commission held a public meeting to assess the results of the Licensee's work under the October 1996 Order. Following that meeting, the Commission determined that the Licensee had made progress in addressing the problems that prompted the Order sufficient to warrant closing of the Order. In recognition of the fact that the Licensee has taken substantial actions to address and correct the general and widespread employee concerns and discrimination problems that existed at the time of the violations discussed herein, the Commission has authorized the staff to exercise discretion pursuant to the Special Circumstances provisions of Section VII.B.6 of the Enforcement Policy and to refrain from issuing a civil penalty in this case. But for those broad corrective actions, a substantial civil penalty would have been issued.

Nevertheless, given the high level of the management involved in these violations, the Commission has directed the issuance of the above described Notice of Violation for the three violations of 10 CFR 50.7. The issuance of the Notice is intended to make clear that there must not be a repetition of discrimination on the part of Northeast and its managers. In that regard, your efforts to maintain a safety-conscious work environment must continue. The need for such action is reinforced by the relatively recent discrimination matter in 1997 that was the subject of the March 9, 1999 civil penalty action (EA 97-46).

Although the NRC has information on your general corrective actions with regard to your overall employee concerns and discrimination problems, it does not have information on specific corrective actions taken or planned with regard to the specific violations discussed herein. Consequently, you are required to respond to this letter and the enclosed Notice within 30 days of the date of this letter. You should follow the instructions specified in the enclosed Notice in preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this notice, the NRC will determine whether further NRC action is necessary to ensure compliance with NRC regulatory requirements.

A copy of the Independent Review Team's report with Attachment 5, and a March 31, 1999,

memorandum of clarification from the Review Team is provided in Enclosure 4.

In accordance with 10 CFR 2.790, a copy of this letter and your response will be placed in the NRC Public Document Room.

Sincerely,



Hubert J. Miller
Regional Administrator

Docket Nos. 50-245; 50-336; 50-423
License Nos. DPR-21; DPR-65; NPF-49

Enclosures: (1) Notice of Violation
(2) SUMMARY - OI CASE NO. 1-96-002
(3) SUMMARY - OI CASE NO. 1-97-007
(4) Independent Review Team report with Attachment 5 and clarification memorandum

cc: w/encl:

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