



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

March 16, 2009

EA-09-005

Mr. Keith J. Polson
Vice President Nine Mile Point
Constellation Energy
Nine Mile Point Nuclear Station, LLC
P.O. Box 63
Lycoming, NY 13093

SUBJECT: NOTICE OF VIOLATION - NRC Investigation Report No. 1-2008-018

Dear Mr. Polson:

This letter refers to an investigation initiated on January 18, 2008, at the Nine Mile Point (NMP) Nuclear Station, Unit 1, by the NRC Office of Investigations (OI). The purpose of the investigation was to determine whether a Reactor Operator (RO) and a Chief Reactor Operator (CRO) failed to notify the Control Room Supervisor (CRS) of an "over power" event and manipulated reactor power without CRS approval or direction, contrary to Technical Specification (TS) required procedures. The investigation was initiated after you and the Plant Manager brought the issues to the attention of the NRC resident office on January 18, 2008.

As a result of the investigation, the NRC confirmed that, contrary to TS required procedures, the RO deliberately manipulated the controls to increase power without the approval or direction of a senior reactor operator (SRO); the CRO and RO manipulated the controls to decrease power without the approval or direction of an SRO when power exceeded the megawatt-thermal license limit; and, the CRO deliberately failed to immediately report the over power and down power events to Operations management. The RO's actions caused Constellation Energy to be in violation of NRC requirements, specifically NMP Operations Administrative Procedure, S-ODP-OPS-0001, Revision 06, "Conduct of Operations," which requires planned reactivity and power changes to be performed with Shift Manager (SM) permission and supervised by an SRO. In addition, the CRO's actions caused Constellation Energy to be in violation of Constellation Nuclear Generation Fleet Administrative Procedure, CNG-OP-3.01-1000, "Reactivity Management," Revision 00100, which requires control room operators to notify Operations management and Reactor Engineering as soon as possible after any unexpected situation occurs with respect to core reactivity.

The NRC further determined that the RO engaged in deliberate misconduct by failing to obtain permission prior to changing power, as required. Evidence from the OI report showed that although the RO believed he had been given permission to raise power by the CRS, his testimony contradicted your root cause report on the event, which found that the CRS was not actually in the control room at that time of the event. In response to OI questions, the RO did not dispute the root cause information. OI considered your root cause report, the testimony of the RO, and the RO's awareness of the procedural requirements, and concluded that the RO

deliberately disregarded procedure requirements when he increased reactor power. The NRC also determined that the CRO engaged in deliberate misconduct by failing to notify Operations management and Reactor Engineering as soon as possible after having taken a conservative action when an unexpected situation occurred with respect to core reactivity. Evidence from the OI investigation showed that the CRO did not report the event until the following shift. The CRO admitted to OI that by waiting until the next shift to notify Operations management of the event, he did not follow procedures. Based on his admission, OI concluded that the CRO deliberately failed to follow the procedural requirement to immediately notify Operations management.

Because you are responsible for the actions of your employees, and because the violation involved willful aspects, the violation was evaluated under the NRC's traditional enforcement process as set forth in Section IV.A.4 of the NRC Enforcement Policy. The NRC concluded that the violation, absent willfulness, would be considered a minor violation because it did not impact the safe operation of the reactor, in that, the over power condition was minimal (100.03 percent for approximately one hour). However, the NRC considers the violation to have been more significant than minor, because it involved willfulness, and therefore, the NRC has classified the violation at Severity Level (SL) IV, in accordance with the Enforcement Policy. The current NRC Enforcement Policy is included on the NRC's website at <http://www.nrc.gov>; select About NRC, Regulation, Enforcement, then, Enforcement Policy. The violation is cited in the enclosed Notice of Violation (NOV). You are required to respond to this letter and should follow the instructions specified in the enclosed NOV when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/ Original Signed By:

David C. Lew, Director
Division of Reactor Projects

Docket No. 50-220
License No. DPR-63

Enclosure: Notice of Violation

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 David C. Lew, Director
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SUNSI Review Complete: SLH (Reviewer's Initials)

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After declaring this document "An Official Agency Record" it will be released to the Public

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OFFICE	RI/DRP		RI/DRP		RI/ORA		RI/OI		RI/ORA	
NAME	JHawkins/JRH*		GDentel/GTD*		KFarrar*		EWilson PR for*		DHolody*	
DATE	02/18/09		02/18/09		02/19 /09		02/20 /09		02/23 /09	
OFFICE	HQ/OE**		RI/DRS		RI/DRP					
NAME			SHansell/SLH*		DLew/dcl*					
DATE			03/06 /09		03/16/09					

*See prior concurrence

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** HQ/OE quick review completed 3/4/09 and coordinated by G. Gulla; F. Guenther for N. Salgado of NRR (2/23/09); M. Barkman of OGC (3/3/09); N. Hilton of OE (3/3/09).

DISTRIBUTION:

D. Holody, ORA
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OEMAIL
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S. Hansell, DRS

NOTICE OF VIOLATION

Constellation Energy
Nine Mile Point Nuclear Station

Docket No. 50-220
License No. DPR-63
EA-09-005

During an NRC investigation initiated on January 18, 2008, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Technical Specification 6.4.1(a) requires that written procedures and administrative policies shall be established, implemented and maintained that meet or exceed the requirements and recommendations of Sections 5.1 and 5.3 of ANSI N18.7-1972 and cover the described activities in Regulatory Guide 1.33, Appendix A, November 3, 1972 (Safety Guide 33). Safety Guide 33, Appendix A, Part A.2, requires procedures for authorities and responsibilities for safe operation and shutdown.

Nine Mile Point Operations Administrative Procedure S-ODP-OPS-0001, Revision 06, "Conduct of Operations," states in section 3.1.6.a, that planned reactivity and power changes are only performed with Shift Manager (SM) permission and shall be supervised by a Senior Reactor Operator (SRO).

Constellation Nuclear Generation Fleet Administrative Procedure CNG-OP-3.01-1000, "Reactivity Management," Revision 00100, states in Attachment 4, Section 1.d, that control room operators shall take conservative action when any unexpected situation occurs with respect to core reactivity and shall notify Operations management and Reactor Engineering as soon as possible.

Contrary to the above, on January 5, 2008: (1) a Reactor Operator (RO) increased power without SM permission or supervision by an SRO, and, after power exceeded the megawatt-thermal license limit, a CRO and the RO decreased power without SM permission or supervision by an SRO; and, (2) the CRO and the RO failed to notify Operations management and Reactor Engineering as soon as possible after the unexpected situation occurred with respect to core reactivity. Specifically, control room management was not notified until the following day that the over-power and down-power events had occurred.

This is a Severity Level IV Violation (Supplement I).

Pursuant to the provisions of 10 CFR 2.201, Constellation is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-09-005," and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be

issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 16th day of March 2009.