

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
)		50-423
NORTHEAST UTILITIES)		
)		
)	License Nos.	DPR-21
)		DPR-65
(Millstone Nuclear Power Station,)		NPF-49
Units 1, 2, and 3))		
)		

DIRECTOR'S DECISION PURSUANT TO 10 CFR 2.206

I. INTRODUCTION

On February 2, 1998, Ms. Deborah Katz, Ms. Rosemary Bassilakis, and Mr. Paul Gunter filed a Petition, pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), on behalf of the Citizens Awareness Network (CAN) and the Nuclear Information and Resource Service (NIRS) (Petitioners).

The Petitioners requested that the NRC take the following immediate actions: (1) revoke Northeast Utilities' (NU's or the licensee's) license to operate Millstone Units 1, 2, and 3 as the result of ongoing intimidation and harassment of its workforce by NU management; (2) revoke NU's license to operate Millstone Units 1, 2, and 3 as the result of persistent licensee defiance of NRC regulations and directives to create a "questioning attitude" for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals by

NU; and (3) refer the Nuclear Oversight Focus 98 List and the reported NU management attempt to destroy the list to the Department of Justice for investigation of a potential coverup.

As bases for the Petitioners' assertions, the Petition states that an NU document (Nuclear Oversight Department's Focus 98 List, dated January 11, 1998) directs the Nuclear Oversight group to address areas needing improvement by focusing on the "inability to 'isolate' cynics from the group culture" and "pockets of negativism." The Petition further states that the list demonstrates the sustained and unrelenting policy of NU's senior management to undermine a safety-conscious workplace at Millstone, and that despite 2 years of increased regulatory scrutiny of the managerial mistreatment of its workers and the corporation's mismanagement of its employees' safety concerns program, a "chilled atmosphere" remains intact and entrenched.

As a basis for the Petitioners' request for a Department of Justice investigation, the Petition states that "[s]ince it has been reported that NU management employees attempted to destroy the list, NRC has a duty to refer this apparent deliberate attempt to evade the otherwise lawful exercise of authority by NRC to the Department of Justice for complete investigation. This alleged attempt to cover up wrong doing by NRC's licensee is a potential obstruction of justice that should be fully and fairly investigated."

On March 11, 1998, the NRC acknowledged receipt of the Petition and informed the Petitioners that the Petition had been assigned to the Office of Nuclear Reactor Regulation to prepare a response and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition. The Petitioners were also informed that their request for immediate action to revoke the operating license and refer the incident to the Department of Justice was denied because, due to the three Millstone units being shut down, protection of public health and safety did not warrant immediate action. The Petitioners were also informed that the NRC would consider the licensee's response to the staff's February 10, 1998, request

for information concerning the incident before the Commission allows restart of any Millstone unit. To this extent, the Petitioners' request for immediate action was partially granted.

II. DISCUSSION

The NRC staff has completed its evaluation of the Petitioners' requests. The following discussion is based on information provided by the licensee and information independently obtained by the NRC staff. The Petitioners' first two requests are similar in nature and are addressed in Section II.A. The third request is addressed in Section II.B.

A. Request To Revoke the Operating License for Millstone Units 1, 2, and 3

The Petitioners based this request on their assertion of ongoing intimidation and harassment of the workforce by NU management and persistent licensee defiance of NRC regulations and directives to create a "questioning attitude" for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals. As support for their assertions, the Petitioners referred to the wording in a document prepared by NU's Nuclear Oversight Department titled "Focus 98: Director/VP View of Nuclear Oversight (1/11/98)." The document listed seven "Positive Qualities of Nuclear Oversight" and seven "Areas Needing Improvement." Within "Areas Needing Improvement" was a category entitled "Current SCWE [safety-conscious work environment] and issues." One of the six areas listed in this category was "inability to 'isolate' cynics from group culture."

On January 29, 1998, the U.S. Nuclear Regulatory Commission (NRC) became aware of the Nuclear Oversight Department's Focus 98 document. The NRC was concerned that language contained in the document was not consistent with encouraging a questioning attitude necessary for fostering a safety-conscious work environment. As a result, the NRC required the licensee, in a February 10, 1998, letter, to describe in writing, under oath or affirmation (1) the circumstances surrounding the creation and distribution of the document and whether the events constitute a violation of 10 CFR 50.7; (2) how this document came into existence, in light

of NU's efforts to create a safety-conscious work environment, and NU's assessment of the document's effect on the willingness of employees to raise concerns with the Company; and (3) any remedial actions needed to prevent recurrence.

NU responded to the NRC's request in March 12, March 26, and April 24, 1998, letters. NU's March 12, 1998, response included reference to an NU-directed investigation into the circumstances surrounding the creation and distribution of the Focus 98 document. The March 12, 1998, response also contained a redacted copy of a survey conducted in February 1998 by consultants Nilsson and Associates to determine whether the events that the Petitioners complained about negatively impacted the Millstone workforce and had created any reluctance to raise safety issues at the Millstone facility. The investigation report was transmitted to the NRC by the March 26, 1998, letter. The April 24, 1998, letter provided additional information regarding the collection of the Focus 98 document. In its submittals, NU described two Nuclear Oversight Department meetings relevant to the development of the Focus 98 document, its use, and its distribution.

The first meeting was held on January 11, 1998, and involved the Vice President-Nuclear Oversight, his three Directors, the Executive Assistant to the Vice President, and a consultant to the Vice President. The meeting was held to prepare for an upcoming Nuclear Oversight management team-building session and explore the strengths and weaknesses of the Nuclear Oversight organization for discussion at that meeting. Each of the six participants brought to the meeting approximately three strengths and three weaknesses that each considered applicable to Nuclear Oversight, and it was from these inputs that the Focus 98 document list of "Positive Qualities of Nuclear Oversight" and "Areas Needing Improvement" was developed. The inputs from the meeting participants were recorded and grouped, and the licensee's consultant used this information to prepare the one-page Focus 98 document. Prior

to the January 21, 1998, team-building session, the Focus 98 document had been distributed to the January 11, 1998, meeting participants for review and had generated no comments. NU concluded from its investigation, including interviews with each of the meeting participants, that the participants did not intend for the wording to convey the notion that Nuclear Oversight management should seek to isolate individuals who have raised concerns in the past, nor did management intend to send the signal that it views people who raise concerns as “cynics” or bad influences on the organization. NU concluded that the phrases in the document “isolation of ‘cynics,’” “too much negative energy (personnel issues),” and “pockets of negativism” were poorly chosen words that were intended to convey the belief that the Nuclear Oversight organization recognizes that there are people who have ill feelings toward NU and who are seeking to impose their views on others who may disagree, and that this imposition was affecting the organization. NU pointed out in its submittal that the document was intended to generate discussion and did not represent policy or direction of Nuclear Oversight management.

The second meeting was held on January 21, 1998, and involved Nuclear Oversight management ranging from first-line supervisors to the Vice President-Nuclear Oversight. The purpose of the meeting was Nuclear Oversight team building and one topic on the agenda was a discussion of the organization’s strengths and weaknesses. The Focus 98 document was distributed when the organization’s strengths and weaknesses were to be discussed. NU states that soon after the Focus 98 document was distributed, several managers/supervisors objected to the included phrase “inability to ‘isolate’ cynics from group culture.” NU further states that the Vice President and Directors were initially surprised by the reaction, and ultimately agreed that the words had been poorly chosen and were not reflective of management’s position.

On the basis of its investigation, NU concluded that the circumstances of the creation of

the Focus 98 document indicated that no one in management intended to encourage any form of discrimination against anyone engaging in protected activity. NU also responded that no action took place because of the document's existence and, thus, no person who had engaged in protected activity suffered any adverse employment action.

The NRC staff reviewed NU's responses to the NRC's February 10, 1998, letter, including the investigation report, and separately interviewed eight people involved in the preparation, use, and distribution of the Focus 98 document. The staff determined that the Focus 98 document had been developed as material for establishing talking points for a then-upcoming January 21, 1998, management team-building session. The staff also determined that points listed in the Focus 98 document under "Areas Needing Improvement" were intended by those participating in the January 11, 1998, meeting to convey potential organizational weaknesses as points for discussion, and not to represent current or future management policy.

The staff also found that the Focus 98 document had been developed informally, with no formal review and approval process, for use as a handout at an upcoming Nuclear Oversight Department team-building session.

The NRC staff's reviews, including interviews with NU staff involved in the incident, confirmed that the general purpose of the Nuclear Oversight management team meeting on January 21, 1998, was to improve Nuclear Oversight organizational interactions. Furthermore, the NRC staff found that the Focus 98 document was intended to facilitate the discussion of one of many topic areas to be covered at the all-day meeting. The NRC staff's inquiries confirmed that Nuclear Oversight management was surprised by the immediate reaction and concern of the January 21, 1998, meeting participants regarding certain language in the Focus 98 document, and that following a discussion of the wording, management recognized the unintended implication of the words. After reviewing the available information, the NRC staff concludes that the wording at issue used in the Focus 98 document was no more than poorly

selected terminology intended to convey a perceived Nuclear Oversight organizational weakness.

In its March 12, 1998, response, NU stated that once it became apparent that non-supervisory employees in the Nuclear Oversight Department, who had not attended either the January 11 or January 21, 1998, meetings, knew about the troubling language in the Focus 98 document, NU took several actions to mitigate and assess the potential consequences to ensure that the release of the Focus 98 document and surrounding circumstances did not cause a chilling effect on the organization. On January 29, 1998, the Vice President-Nuclear Oversight held an all-hands meeting with members of his organization at which he apologized for the language in the document and assured the organization that he and the Directors were not trying to discourage anyone from voicing concerns. That same day, the President and Chief Executive Officer of Millstone and the Vice President-Nuclear Oversight met with the Millstone leadership team and described the circumstances surrounding the document. On January 30, 1998, NU issued a site-wide communication discussing the two meetings in detail. NU also assessed the effect of the document on the workforce through investigations and surveys. NU directed the consulting firm Nilsson and Associates to conduct an in-depth assessment of the document's effect on Nuclear Oversight Department employees and on employees who interact with the Nuclear Oversight Department. The assessment found that none of the 56 people interviewed indicated that the document has made them reluctant to raise concerns.

The Petitioners also refer generally, as a basis for their request, to ongoing NU intimidation and harassment of its workforce and persistent licensee defiance of NRC regulations and directives to create a safety-conscious work environment. NU performance in these areas has been extensively assessed. An NRC Order issued on October 24, 1996, required NU to take specific actions to resolve problems in its processes for handling employee

safety concerns at the Millstone station. As required by the Order, NU developed and implemented a comprehensive plan for reviewing and dispositioning safety issues raised by its employees, and for ensuring that employees who raise safety concerns can raise them without fear of retaliation. NU's plan included elements to (1) improve the operation of its Employee Concerns Program organization; (2) enhance management and employee training related to establishing and maintaining a safety-conscious work environment; (3) form an Employee Concerns Oversight Panel; and (4) identify and respond to organizational safety-conscious work environment challenges. NU began implementing the plan in February 1997, and substantially completed implementation by January 1998. As required by the Order, NU also submitted for NRC approval a proposed independent third-party oversight program organization to oversee implementation of its comprehensive plan. Little Harbor Consultants Inc. (LHC) was approved by the NRC as the third-party oversight organization and has been performing that function since April 1997.

LHC's assessments of NU's programs to improve the safety-conscious work environment at Millstone station have noted significant improvements in the past year. Based on information gained from interviews with NU staff, program reviews, and assessment of licensee responses to emerging personnel issues, LHC concluded at an April 7, 1998, meeting with NRC and NU that programs have improved and are at an acceptable level. As reported in an LHC quarterly report for the first 3 months of 1998, transmitted to the NRC on April 22, 1998, LHC's interviews with 298 NU employees, conducted in February 1998, showed an improved work environment. LHC concluded from the results of these interviews that at Millstone improvements have been made regarding the willingness of the workforce to raise concerns, the confidence of the workforce that safety concerns will be handled properly, the existence of a questioning attitude, and the lack of any chilling effect.

The NRC has monitored and assessed LHC's oversight activities and independently

assessed NU's actions to upgrade its Employee Concerns Program and improve the safety-conscious work environment at the Millstone station. The NRC's April 21, 1998, letter to John Beck, President, LHC, documents the NRC staff's evaluation of LHC's oversight of NU's programs for handling employee concerns. The staff found that LHC's oversight activities have been thorough and complete and that LHC has effectively carried out its oversight activities. The NRC's April 20, 1998, letter to NU forwarded the results of the NRC staff's evaluation of the Employee Concerns Program and safety-conscious work environment at the Millstone station. The NRC staff's assessment of these NU programs found that they were improved and functioning effectively.

Based on the above, the Petitioners' request that the NRC revoke Millstone's operating licenses for workforce intimidation and actions to prevent the establishment of a "questioning attitude" with regard to employees voicing safety concerns is denied.

B. Request for Investigation of NU Attempt To Destroy Focus 98 Document

The Petitioners also request that the NRC refer the Focus 98 document and NU's attempt to destroy the document to the Department of Justice for investigation of a potential coverup. The Petitioners base this request on reports that NU management attempted to destroy the document. The Petitioners consider the NRC to have a duty to refer this apparently deliberate attempt to evade the otherwise lawful exercise of authority by the NRC to the Department of Justice for a complete investigation.

In its March 12, 1998, letter to the NRC, NU states that participants at the January 21, 1998, management team meeting agreed that the words in the document were poorly chosen and, at the suggestion of a consultant who was facilitating the meeting, the participants agreed that the Focus 98 document should not be distributed further because of the deficient wording. NU states that most meeting participants dropped off their copy of the document with the consultant when the meeting was over at the end of the day, and others left it on tables in the

room before they left. NU stated that no one attempted to ensure that all the Focus 98 documents were returned, counted the returned documents to determine if some had not been turned in, or ordered the participants to turn in the documents.

The NRC staff reviewed NU's responses to the NRC's February 10, 1998, letter, including NU's investigation report, and conducted separate interviews of individuals involved with the distribution and collection of the Focus 98 document. Information from interviews conducted by the staff confirmed that meeting participants generally concluded that certain wording in the Focus 98 document was inappropriate and susceptible to misinterpretation. Also, the staff's information was consistent with NU's report that there was general agreement by meeting participants to leave the document at the meeting. The staff concludes that NU's actions to address the Focus 98 document were not inappropriate. Therefore, the Petitioners' request to refer the Focus 98 document and its recall and destruction to the Department of Justice is denied.

III. CONCLUSION

The NRC staff has determined, for the reasons provided in the above discussion, that the incident involving preparation and distribution of the Focus 98 document does not represent action by NU to discriminate against persons in the Nuclear Oversight Department. Although wording in the document may have been inappropriate, the process for preparation of the document, the informal nature of the document, and the use of the document as discussion points on organizational strengths and weaknesses, all indicate that the language in question in the document involved a matter of poor word choice. The NRC staff also has determined that efforts to collect the Focus 98 document after its distribution at the end of the January 21, 1998, Nuclear Oversight Department team-building session were not inappropriate, and that NU, given the nature and use of the document, had no regulatory obligation to provide it to the NRC or inform the NRC of its existence. As discussed previously, the NRC was concerned that a

document prepared for use at an NU organizational function could contain such inappropriate language, even if unintended. The NRC was further concerned that the document could have a “chilling effect” on the NU workforce. The NRC’s February 10, 1998, letter to NU required NU to respond to these NRC concerns. Based on the NRC staff’s review of NU’s response and the NRC’s own independent assessment of the event, the NRC staff is satisfied with the actions taken by the licensee to assess the chilling effect of the incident and to prevent recurrence. Accordingly, the Petitioners’ requests for revocation of NU’s license to operate Millstone Units 1, 2, and 3 for reasons associated with development of the Focus 98 document are denied. The Petitioners’ request that the NRC refer the matter of the document’s collection and destruction to the Department of Justice for investigation is also denied.

As provided for in 10 CFR 2.206(c), a copy of this Director’s 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 1st day of June, 1998.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by:

Samuel J. Collins, Director

Office of Nuclear Reactor Regulation