

September 29, 2004

EA-04-109

Mr. M. Nazar  
Senior Vice President and  
Chief Nuclear Officer  
Nuclear Generation Group  
American Electric Power Company  
500 Circle Drive  
Buchanan, MI 49107

SUBJECT: NOTICE OF VIOLATION  
[INSPECTION REPORT 0500315/2004007(DRS); 0500316/2004007(DRS)]

Dear Mr. Nazar:

This refers to information provided to the U.S. Nuclear Regulatory Commission (NRC) by the American Electric Power Company (AEP) on March 24, 2004, concerning the permanent physical condition of a licensed Senior Reactor Operator (SRO) at the D.C. Cook Nuclear Plant. During a February 2004 review of medical information for licensed operators at the D.C. Cook Nuclear Plant, the new Medical Review Officer for Licensed Operators (MRO) determined that the NRC had not been informed of a cardiac condition experienced by an SRO during December 1996. The failure to provide the NRC with complete and accurate information concerning an SRO's permanent medical condition is an apparent violation of 10 CFR 50.9. A copy of the inspection report concerning this issue was provided to you on July 2, 2004.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or providing a written response before we made our enforcement decision. You responded to the apparent violation in a letter dated August 2, 2004.

Based on the information developed during the inspection and the information you provided in your correspondence on March 24 and August 2, 2004, and during a telephone conversation on August 25, 2004, between Roger D. Lanksbury, Chief, Operator Licensing Branch, and Helen Etheridge of your staff, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. In summary, the NRC issued an SRO license to the individual on February 1, 1994. On December 28, 1999, AEP submitted information to the NRC to renew the SRO license prior to its expiration on January 31, 2000. Included in the submission for renewal of the SRO license was a December 28, 1999, Form NRC - 396, "Certification of Medical Examination by Facility Licensee." Information on that Form NRC - 396 indicated that your prior MRO recommended only one condition be added to the SRO's license to require the SRO to wear corrective lenses when performing licensed duties. No other medical restriction was recommended by either AEP or the MRO in the December 28, 1999, renewal application. Based on the information

submitted by AEP on December 28, 1999, the NRC renewed the SRO license on February 1, 2000, with the requirement that the SRO wear corrective lenses when performing licensed duties. The NRC placed no other medical restrictions on the SRO license based on the information submitted by AEP in the application for renewal.

The MRO who provided the certification discussed above, retired during September 2001 and a new MRO was appointed. During February 2004, your new MRO reviewed medical records for licensed operators at the D.C. Cook Nuclear Plant. Included in the new MRO's review were documents indicating that your prior MRO had been informed on January 15, 1997, that the SRO had experienced a myocardial infarction during December 1996. On February 23, 2004, the new MRO notified AEP that the SRO should no longer be allowed to continue to work as a solo operator and the NRC should be notified. That notification was provided to the NRC by AEP on March 24, 2004.

Licensed operators are entrusted with the safe operations of a nuclear reactor and must be capable of performing their assigned duties under normal, abnormal and emergency operating conditions of the plant. The physical condition and the general health of an operator is a significant concern of the NRC so that any sudden incapacitation of an operator due to an existing medical condition does not pose undue risk to the facility. Therefore, the NRC places restrictions for certain medical conditions on an operator's license to ensure that other licensed personnel are on duty and can immediately compensate for an operator who may be suddenly incapacitated because of an existing medical condition. By not informing the NRC of an operator's physical condition, such restrictions cannot be put in place and additional personnel may not be available to replace an operator who is suddenly incapacitated from an existing medical condition.

Furthermore, the information about the SRO's cardiac condition had been known to AEP's MRO since January 15, 1997, and the failure to provide accurate and complete information to the NRC regarding the pre-existing medical condition of a licensed SRO within 30 days, as required by 10 CFR 50.74(c), is a regulatory concern. Moreover, had the medical information been complete and accurate at the time the license renewal was sought by AEP on December 28, 1999, the NRC would have taken a different regulatory position by applying the appropriate restriction to the SRO license. Therefore, the information submitted to the NRC on December 28, 1999, was material to the licensing of an SRO on February 1, 2000, and the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a civil penalty in the base amount of \$55,000 would be considered for a Severity Level III violation at the time the violation occurred. Because your facility has not been the subject of escalated enforcement actions evaluated in accordance with the civil penalty assessment process described in Section VI.C.2 of the Enforcement Policy within the last two years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for the *Corrective Action* factor. Corrective actions included: preventing activation of the SRO license until the medical status of the operator was resolved; discussing the requirements of ANSI 3.4-1983 with the current MRO and personnel in

Operations Training and Regulatory Affairs; requiring all completed physical examination forms and recommendations from physicians be submitted to Regulatory Affairs for inclusion in license applications; and including an overview of the requirements for reporting changes in medical conditions in the operator requalification training program. Other corrective actions included: performing a 100% self-assessment review of licensed operator medical records; revising the procedure to require that all recent physical examination records be submitted to the NRC when requesting an initial or renewal reactor operator or SRO license; and planning by September 30, 2004, to revise the procedure for biennial self-assessment of medical records to discuss the requirements of ANSI 3.4-1983 with the designated MRO.

Therefore, to encourage prompt comprehensive correction of violations and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in a letter from AEP dated August 2, 2004. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response (should you choose to respond) will be made available electronically for public inspection in the NRC Public Document Room or 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. The NRC also includes significant enforcement actions on its Web site at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

*/RA/*

James L. Caldwell,  
Regional Administrator

Docket Nos. 50-315; 50-316  
License Nos. DPR-58; DPR-74

Enclosure: Notice of Violation

M. Nazar

-4-

cc w/encl: J. Jensen, Site Vice President  
 M. Finissi, Plant Manager  
 G. White, Michigan Public Service Commission  
 Michigan Department of Environmental Quality  
 Emergency Management Division  
 MI Department of State Police  
 D. Lochbaum, Union of Concerned Scientists

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NAME	Weil		Congel		Caniano for Pederson		Hiland for Reynolds		Clayton		Caldwell	
DATE	09/20/04		09/20/04		9/23/04		9/23/04		9/24/04		9/28/04	

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<sup>1</sup> Renee Pedersen, OE, provided HQ concurrence on September 20, 2004.

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## NOTICE OF VIOLATION

American Electric Power Company  
D.C. Cook Nuclear Plant

Docket Nos. 50-315; 50-316  
License Nos. DPR-58; DPR-74  
EA-04-109

During an NRC inspection that was completed on June 4, 2004, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.9 requires that information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

10 CFR 55.23 requires, in part, that to certify the medical fitness of the applicant, an authorized representative of the facility licensee shall complete and sign Form NRC - 396, "Certification of Medical Examination by Facility Licensee."

Form NRC - 396, when signed by an authorized representative of the facility licensee, certifies that a physician conducted a medical examination of the applicant (as required in 10 CFR 55.21), and that the guidance contained in American National Standards Institute/American Nuclear Society (ANSI/ANS) - 3.4 -1983, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants" was followed in conducting the examination and making the determination of medical qualification.

ANSI/ANS 3.4-1983, Section 5.3.2(1), provides, in part, that certain cardiovascular conditions, including myocardial infarction, preclude solo operation of a nuclear power plant.

10 CFR 55.25 requires, in part, that if, during the term of the license, the licensee develops a permanent physical condition that causes the licensee to fail to meet the requirements of 10 CFR 55.21, the facility licensee shall notify the Commission within 30 days of learning the diagnosis of the condition, in accordance with 10 CFR 50.74(c). 10 CFR 50.74(c) provides, in part, that each licensee shall notify the appropriate Regional Administrator within 30 days of the permanent disability or illness of a licensed operator or senior operator as described in 10 CFR 55.25.

Contrary to the above, on December 28, 1999, the licensee submitted to the NRC a Form NRC 396, an application for renewal of a Senior Reactor Operator (SRO) license, that was not complete and accurate in all material respects. Specifically, the Form NRC 396 certified that the applicant met the medical requirements of ANSI/ANS 3.4 -1983 and that the applicant's only restriction was to require corrective lenses be worn when performing licensed duties. During December 1996, the SRO developed a permanent physical condition which did not meet the minimum cardiovascular standards specified in ANSI/ANS -3.4 -1983, Section 5.3.2(1) and which precluded the SRO from "solo" operation of a nuclear power plant. This information was material to the NRC because the NRC relied on the information contained in the Form NRC 396 dated December 28, 1999, to determine whether the applicant met the

requirements of 10 CFR Part 55 to operate the controls of a nuclear power plant and to renew the SRO's license on February 1, 2000. In addition, the facility licensee was provided on January 15, 1997, with information about the SRO's December 1996 myocardial infarction, but did not notify NRC of the SRO's physical condition until March 24, 2004, a period in excess of 30 days after learning of the SRO's physical condition.

This is a Severity Level III violation (Supplement VII).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance will be achieved, is already adequately addressed on the docket in letter from the Licensee dated August 2, 2004. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-04-109," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and the Enforcement Officer, Region III, and a copy to the NRC Resident Inspector at the D.C. Cook Nuclear Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or 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 29<sup>th</sup> day of September 2004.