

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

### Entergy Operations Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its December 12, 1997, application for proposed amendment to Facility Operating License No. DPR-51 for Arkansas Nuclear One, Unit No. 1, located in Pope County, Arkansas.

The proposed amendment would have established an alternate repair criteria for the segment of steam generator tubes that are located within the upper tube sheet.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 11, 1998 (63 FR 6984). However, by letter dated December 15, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 12, 1997, and the licensee's letter dated December 15, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 17th day of December, 1998.

For the Nuclear Regulatory Commission.

**Nicholas D. Hilton,**

*Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-34121 Filed 12-23-98; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-361 and 50-362]

### San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern

California Edison Company (the licensee) to withdraw its July 29, 1996, application for proposed amendments to Facility Operating License Nos. NPF-10 and NPF-15 for the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS), located in San Diego County, California.

The proposed amendment would have revised Technical Specification (TS) 3.7, "Plant Systems," and TS 4.3, "Fuel Storage," to permit an increase in the licensed storage capacity of the spent fuel pools.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 11, 1998 (63 FR 6992). However, by letter dated December 7, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 29, 1996, and the licensee's letter dated December 7, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 16th day of December 1998.

For The Nuclear Regulatory Commission.

**James W. Clifford,**

*Senior Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 98-34123 Filed 12-23-98; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

### Policy and Procedure for Enforcement Actions; Fuel Cycle Facilities Civil Penalties and Notices of Enforcement Discretion

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Amendment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions" (NUREG-1600) to increase the base civil penalties for fuel cycle facilities authorized to possess certain quantities of special nuclear material and to authorize issuance of Notices of

Enforcement Discretion to Gaseous Diffusion Plants.

**EFFECTIVE DATE:** This action is effective December 24, 1998. Comments are due on or before January 25, 1999.

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

#### SUPPLEMENTARY INFORMATION:

The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On May 13, 1998 (63 FR 26630), the Enforcement Policy was revised and was re-published as NUREG-1600, Rev. 1. The Policy primarily addresses violations by licensees and certain non-licensed persons, including certificate holders, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X: Enforcement Action Against Non-licensees.

#### Fuel Cycle Facility Base Penalties

Base civil penalties are established for fuel facility licensees commensurate with the relative safety and safeguards risks among the different types of licensees. The base civil penalties, as currently defined in Table 1A of the General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) (NUREG-1600, Rev. 1), are, in part: \$11,000 for uranium conversion facilities which handle only source material; \$27,500 for all fuel fabricators regardless of the specific safety and safeguards risks involved with the possession and processing of different enrichments of SNM; and \$110,000 for the Gaseous Diffusion Plants due to their greater nuclear material inventories and greater potential consequences to the public and workers. The civil penalty structure generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration.

Generally, the safety risk is greater at the Category I and II facilities than at Category III facilities<sup>1</sup> because the enrichment levels normally handled at the Category I and II facilities require only minor changes in form and composition to achieve an inadvertent criticality. Thus, workers at Category I and II facilities are potentially exposed to a greater risk from radiological

<sup>1</sup> The category of a facility refers to the quantity and enrichment of special nuclear material that a licensee is authorized to possess. See 10 CFR 70.4.

hazards than workers at Category III facilities. The safeguards risk is also considered to be significantly higher because of concerns about diversion or theft of formula quantities of strategic special nuclear material. Such potential diversion or theft represents a significant national security risk and hazard to the public. Therefore, the Commission believes that it is appropriate to reflect the relatively more significant safety and safeguards risks with operating a Category I or II facility in the civil penalty structure. The Commission is increasing the base civil penalty for facilities authorized to possess Category I or II quantities of SNM from \$27,500 to \$55,000 by adding a new category to Table 1A of the Enforcement Policy. As is the current policy, the amount for safeguards violations will be the same as for other violations at these facilities. There are two Category I facilities that would be affected by this change: BWX Technologies, Inc. and Nuclear Fuel Services, Inc. There are no Category II fuel facilities in operation at this time.

**Notices of Enforcement Discretion at Gaseous Diffusion Plants (GDPs)**

Section VII.C. of the Enforcement Policy authorizes the staff to exercise discretion and not enforce an applicable Technical Specification (TS) Limiting Condition of Operation or other license condition for an operating reactor facility when it would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and is to be exercised only if the staff is satisfied that the action is consistent with protecting the public health and safety.

The Commission believes that this enforcement option is also warranted for GDPs because GDPs, unlike other fuel cycle facilities, have Technical Safety Requirements (TSRs) with Limiting Conditions for Operation (LCOs) that impose time limits for performing required actions under specified conditions. A Notice of Enforcement Discretion would be used in cases where compliance with a certificate condition would unnecessarily call for a

total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. This regulatory flexibility is needed because a plant-wide shutdown is not necessarily the best response to a plant condition. Further, the NRC has been informed by the certificate holder that restart from a total plant shutdown may not be practical, as GDPs are designed to operate 24 hours a day, 7 days a week, and have never been shut down. Although portions can be shut down for maintenance or other reasons, the operators have indicated that if an entire plant were shut down, it probably could not be restarted. Hence, the decision to place either GDP in plant-wide shutdown condition would be made only after determining that there is inadequate safety, safeguards, or security, and considering the total impact of the shutdown on public health and safety, and security, and the environment. Therefore, the Commission is adding language to its Enforcement Policy that would expressly permit exercise of enforcement discretion and issuance of NOEDs for GDPs.

In practice, a NOED could be issued for the period of time required for staff to process, and make effective, an expedited certificate amendment, but not to exceed 120 days, or when a noncompliance is nonrecurring and a certificate amendment would not be practical because the plant would be returned to compliance with the existing certificate condition in so short a period of time that an amendment could not be processed and issued before compliance is restored. Use of the NOED would be at the staff's option for infrequent, unanticipated cases where there are adequate safety, safeguards, and security, and involving: (1) An unwarranted plant transient or condition; or (2) an omission or performance of testing, inspection, or system realignment that is inappropriate for the specific plant condition. A NOED would not be used for noncompliances with statutes or regulations, or for situations where the

certificate holder cannot demonstrate adequate safety, safeguards or security.

**Paperwork Reduction Act**

This final policy statement amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150-0136.

The public reporting burden for this information collection is estimated to average 60 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0136), Office of Management and Budget, Washington, DC 20503.

**Public Protection Notification**

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended by revising Table 1A of Section VI and Section VII.C. to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

\* \* \* \* \*

**VI. Enforcement Actions**

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TABLE 1A.—BASE CIVIL PENALTIES

|  |           |
|--|-----------|
| a. Power reactors and gaseous diffusion plants .....   | \$110,000 |
| b. Fuel fabricators authorized to possess Category I or II quantities of SNM .....   | 55,000    |
| c. Fuel fabricators authorized to possess Category III quantities of SNM, industrial processors, <sup>1</sup> and independent spent fuel and monitored retrievable storage installations ..... | 27,500    |
| d. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users .....                               | 11,000    |

TABLE 1A.—BASE CIVIL PENALTIES—Continued

|   |       |
|---|-------|
| e. Research reactors, academic, medical, or other small material users <sup>2</sup> ..... | 5,500 |
|---|-------|

<sup>1</sup> Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

<sup>2</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

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**VII. Exercise of Discretion**

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*C. Exercise of Discretion for an Operating Facility or a Gaseous Diffusion Plant*

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

In these circumstances, the NRC staff may choose not to enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation or Office of Nuclear Materials Safety and Safeguards, as appropriate, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6) or a certificate amendment under 10 CFR 76.45. The

person exercising enforcement discretion will document the decision.

For an operating reactor, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

For GDPs, the exercise of enforcement discretion would be used where compliance with a certificate condition would involve an unnecessary plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. Such regulatory flexibility is needed because a total plant shutdown is not necessarily the best response to a plant condition. GDPs are designed to operate continuously and have never been shut down. Although portions can be shut down for maintenance, the staff has been informed by the certificate holder that restart from a total plant shutdown may not be practical and the staff agrees that the design of a GDP does not make restart practical. Hence, the decision to place either GDP in plant-wide shutdown condition would be made only after determining that there is inadequate safety, safeguards, or security and considering the total impact of the shutdown on safety, the environment, safeguards, and security. A NOED would not be used for

noncompliances with other than certificate requirements, or for situations where the certificate holder cannot demonstrate adequate safety, safeguards, or security.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees and certificate holders should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license or certificate amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

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Dated at Rockville, Maryland, this 18th day of December, 1998.

For the Nuclear Regulatory Commission.  
**John C. Hoyle,**

*Secretary of the Commission.*  
[FR Doc. 98-34118 Filed 12-23-98; 8:45 am]  
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**UNITED STATES NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-263]

**Northern States Power Company; (Monticello Nuclear Generating Plant); Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-22, issued to Northern States Power Company (NSP, or the licensee), for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.