The Committee will hear a report by the Chairman of the Reliability and Probabilistic Risk Assessment Subcommittee regarding matters considered during the February 19–20, 1998 meeting.

1:45 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Wednesday, March 4, 1998

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Improvements to the Senior Management Meeting Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed improvements to the Senior Management Meeting process.

10:15 A.M.–10:30 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters.

10:30 A.M.–11:15 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business agenda for the planning, meeting, and organizational and personnel matters relating to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:15 A.M.–12:00 Noon: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:00 P.M.–5:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

5:00 P.M.–5:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Acting Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Dr. Medhat M. El-Zeftawy, Acting Chief of the Nuclear Reactors Branch (telephone 301/415–6889), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: February 13, 1998.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 98–4220 Filed 2–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, 50–423, 50–213]

Northeast Utilities; Millstone Nuclear Power Station, Units 1, 2, and 3, Haddam Neck Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision with regard to a Petition dated March 3, 1997, filed by Mr. Albert A. Cizek, hereinafter referred to as ''Petitioner.'' The Petition pertains to the Millstone Nuclear Power Station, Units 1, 2, and 3, and the Haddam Neck Plant.

The Petitioner requested that the NRC:

1. Within 30 calendar days of receiving a total of three license violations from the U.S. Nuclear Regulatory Commission [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

2. Within 30 calendar days of receiving a total of three violations of 10 CFR Part 50, including all applicable appendices, from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

3. Within 30 calendar days of receiving a total of three violations of the UFSAR [Updated Final Safety Analysis Report] from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

4. Within 30 calendar days of receiving any harassment, intimidation and discrimination (''HI&D'') finding by the U.S. Nuclear Regulatory Commission, the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

5. If, within [5] years of a license suspension based on paragraphs 1 through 4 above, the licensee receives a total of three license violations from the [NRC], irrespective of the violation level; receives a total of three violations of 10 CFR Part 50, including all applicable appendices, from the [NRC], irrespective of violation level;

receives a total of three violations of the UFSAR from the [NRC], irrespective of violation level; or receives any HI&D finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of that facility shall be permanently revoked within 90 calendar days.

6. In the event that the license of a facility is revoked pursuant to paragraph 5, no operation of that facility for the purpose of generating electric power shall be permitted during the pendency of any administrative or judicial processes or appeals related to such revocation.

7. In the event that the license of a facility is suspended or revoked under paragraphs [1] through [5], the [NRC] shall designate an appropriate licensee to maintain the facility in shutdown mode for the duration of the suspension or until such time as a new licensee is found to operate the facility. [Footnote omitted] NU [Northeast Utilities] shall be responsible for all expenses related to the operation of the facility during such shutdown. NU shall be required to post a bond in the amount of $500,000,000 ([5] hundred million) as reasonable assurance that it can fulfill this requirement.

The Petitioner further requested that these license conditions be imposed on the operating licenses of Millstone Units 1, 2, and 3 before Commission approval to restart any of those plants, and further requested that these license conditions be imposed on the operating license of Haddam Neck before any decommissioning of that plant.

The Director of the Office of Nuclear Reactor Regulation has denied the Petition. The reasons for this denial are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–98–01), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut, for Millstone Units 1, 2, and 3; and at the Russell Library, 123 Broad Street, Middletown, Connecticut, for the Haddam Neck Plant.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

DD–98–01

Director's Decision Pursuant To 10 CFR 2.206

I. Introduction

On March 3, 1997, Ernest C. Hadley, Esq., filed with the U.S. Nuclear Regulatory Commission (NRC or Commission) a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), on behalf of Mr. Albert A. Cizek, hereinafter, referred to as Petitioner. This submittal will hereinafter be referred to as the Petition. The Petition was filed with the Executive Director for Operations of the NRC. The Petition was referred to the Director of the Office of Nuclear Reactor Regulations for preparation of a response.

The Petitioner requested that the NRC impose the following license conditions on the operating licenses of Millstone Nuclear Power Station, Units 1, 2, and 3, and the Haddam Neck Plant held by Northeast Nuclear Energy Company (NNECO or Licensee):

1. Within 30 calendar days of receiving a total of three license violations from the U.S. Nuclear Regulatory Commission [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

2. Within 30 calendar days of receiving a total of three violations of 10 [CFR] Part 50, including all applicable appendices, from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

3. Within 30 calendar days of receiving a total of three violations of the UFSAR [Updated Final Safety Analysis Report] from the [NRC] during any [3-year] period, irrespective of the violation level, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

4. Within 30 calendar days of receiving any harassment, intimidation and discrimination (''HI&D'') finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of the facility shall be suspended for a period of not less than 90 days and not more than 180 days.

5. If, within [5] years of a license suspension based on paragraphs 1 through 4 above, the licensee receives a total of three license violations from the [NRC], irrespective of the violation level; receives a total of three violations of 10 [CFR] Part 50, including all applicable appendices, from the [NRC], irrespective of the violation level; receives a total of three violations of the UFSAR from the [NRC], irrespective of violation level; or receives any HI&D finding by the [NRC], the U.S. Department of Labor, or any [S]tate or [F]ederal court of competent jurisdiction, the operating license of that facility shall be permanently revoked within 90 calendar days.

6. In the event that the license of a facility is revoked pursuant to paragraph 5, no operation of that facility for the purpose of generating electric power shall be permitted during the pendency of any administrative or judicial processes or appeals related to such revocation.

7. In the event that the license of a facility is suspended or revoked under paragraphs [1] through [5], the [NRC] shall designate an appropriate licensee to maintain the facility in shutdown mode for the duration of the suspension or until such time as a new licensee is found to operate the facility. [Footnote omitted] NU [Northeast Utilities] shall be responsible for all expenses related to the operation of the facility during such shutdown. NU shall be required to post a bond in the amount of $500,000,000 ([5] hundred million) as reasonable assurance that it can fulfill this requirement.

The Petitioner further requested that these license conditions be imposed on the operating licenses of Millstone Units 1, 2, and 3 before Commission approval to restart any of those plants, and further requested that these license conditions be imposed on the operating license of Haddam Neck before any decommissioning of that plant.

Additionally, the Petitioner requested that public hearings on the Petition be scheduled in the immediate vicinity of the Millstone and Haddam Neck reactors for the presentation of further evidence in support of the Petition. The Petitioner specifically requested that these public hearings be held and that a decision on this Petition be issued before restart or decommissioning of any of these units.

The Petitioner sought the above license conditions on the basis of the following contentions:

1. NU has knowingly, willingly and recklessly operated Millstone Unit 1, Unit 2, Unit 3 at Waterford, [Connecticut], and its Connecticut Yankee Nuclear Power Plant [i.e., Haddam Neck Plant] at Haddam Neck, [Connecticut], in violation of their respective operating licenses, the regulations of the NRC, and their respective UFSARs for a prolonged period of time, which unnecessarily but significantly compromised public health and safety by eroding the required defense in depth philosophy.

2. NU has knowingly, willingly and intentionally harassed, intimidated and discriminated against its employees who raise safety concerns in violation of United States statutes and NRC regulations for a prolonged period of time, which unnecessarily but significantly compromised

public health and safety by eroding the required defense in depth philosophy.

3. In the absence of express license conditions, there is no reasonable assurance that NU will cease and desist from engaging in these activities in the future.

A letter acknowledging receipt of the Petition was sent to the Petitioner on April 8, 1997. In that letter, the NRC staff informed the Petitioner that the NRC staff had decided not to hold a public hearing as requested by the Petitioner. Instead, the NRC staff requested that the Petitioner promptly supply, in writing, any additional information relevant to the Petition. In letters of April 16 and July 19, 1997, the Petitioner reiterated his request for an informal public hearing. In a letter dated August 7, 1997, the NRC staff responded to the Petitioner's letters of April 16 and July 19, 1997, and provided its detailed basis for concluding that an informal public hearing as requested by the Petitioner was not warranted. The NRC staff also noted that the Petitioner had a public forum to raise his concerns through the regularly scheduled public meetings held in the vicinity of the Millstone site. The Petitioner did not provide the staff with any additional evidence in support of the Petition.

II. Discussion

The NRC staff has reviewed the Petition and has not found any information regarding either the Millstone or the Haddam Neck facilities of which it was not already aware prior to receipt of the Petition. As discussed below, these facilities have been the subject of close NRC scrutiny for several years.

Millstone Facility

With regard to the Millstone units, the NRC staff has been concerned for the last several years about the number and duration of violations at the Millstone site in the broad programmatic areas of design and licensing bases, testing, and radiological controls. Programmatic concerns in these areas, along with concerns in other areas, were major contributors to the decline in performance at the Millstone site. In the cover letter to the most recent systematic assessment of licensee performance (SALP) report of August 26, 1994, the NRC staff stated that it had noted several performance weaknesses, common to all three Millstone units. Among these were continuing problems with procedure quality and implementation, the informality in several maintenance and engineering programs (contributing to instances of poor performance), and the failure to resolve several longstanding problems at the site. In addition to these programmatic problems, the Licensee has had significant problems in dealing with employee concerns involving safety issues at the site.

On November 4, 1995, the Licensee shut down Millstone Unit 1 for a scheduled refueling outage. The NRC sent a letter to the Licensee on December 13, 1995, requiring the Licensee, before restarting Millstone Unit 1, to inform NRC, pursuant to Section 182a of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 50.54(f), of the actions taken to ensure that, in the future, the Licensee would operate that facility according to the terms and conditions of the unit's operating license, the Commission's regulations, and the unit's Final Safety Analysis Report (FSAR).

In January 1996, NRC designated the three Millstone units as Category 2 on the NRC's Watch List. Plants on the Watch List in this category have weaknesses that warrant increased NRC attention until the licensees demonstrate improved performance for an extended period of time.

On February 20, 1996, the Licensee shut down Millstone Unit 2 when it declared both trains of the high-pressure safety-injection (HPSI) system inoperable because of a design issue. There was a potential that the HPSI throttle valves could become plugged with debris when taking suction from the sump during the recirculation mode.

On March 30, 1996, the Licensee shut down Millstone Unit 3 after finding that containment isolation valves for the auxiliary feedwater turbine-driven pump were inoperable because the valves did not meet NRC requirements. In response to a Licensee root cause analysis of inaccuracies in the Millstone Unit 1 FSAR, identifying the potential for similar configuration control problems at Millstone Units 2 and 3 and the existing design configuration issues identified at these units, NRC sent 10 CFR 50.54(f) letters to the Licensee on March 7 and April 4, 1996. These letters required that the Licensee inform the NRC of the corrective actions taken regarding design configuration issues at Millstone Units 2 and 3 before the restart of each unit.

In June 1996, the NRC designated the three units at Millstone as Category 3 on the NRC's Watch List. Plants in this category have significant weaknesses that warrant maintaining them in a shutdown condition until the licensee can demonstrate to NRC that it has taken adequate corrective actions to ensure substantial improvement. This category also requires Commission approval before operations can be resumed.

On August 14, 1996, the NRC issued a confirmatory order directing the Licensee to contract with a third party to implement an independent corrective action verification program (ICAVP) to confirm the adequacy of its efforts to reestablish the design basis and configuration controls for each of the three Millstone units. The ICAVP is intended to provide additional assurance, before a unit restart, that the Licensee has identified and corrected existing problems in the design and configuration control processes for that unit.

On April 16, 1997, the NRC sent another 10 CFR 50.54(f) letter, which superseded the earlier 10 CFR 50.54(f) letters and consolidated its requests for information and periodic updates. The following information was requested: (1) significant items that needed to be accomplished before restart; (2) items that are to be deferred until after restart; (3) NU's process and rationale for deferring items; and (4) actions to be taken by NU to ensure that future operation will be conducted in accordance with the terms and conditions of the operating licenses, the Commission's regulations, and the FSARs. In a letter dated May 29, 1997, the Licensee submitted the initial information requested. Additional information and updates will be submitted in accordance with the time intervals specified in the 10 CFR 50.54(f) letter.

During eight NRC inspections conducted between October 1995 and August 1996, more than 60 apparent violations of NRC requirements were found at the Millstone site. These apparent violations were discussed at a public predecisional enforcement conference held at the Millstone site on December 5, 1996. During the meeting, the Licensee stated that management had failed to give clear direction and oversight, performance standards were low, management expectations were weak, and station priorities were inappropriate. A notice of violation and proposed imposition of civil penalties in the amount of $2,100,000 was issued to the Licensee on December 10, 1997. This is the largest civil penalty ever proposed by the NRC. In the enforcement action, the NRC staff identified violations relating to inadequate engineering, inadequate corrective actions, technical specifications violations, and quality assurance violations.

Additionally, the Licensee has had a chronic problem of not dealing effectively with employee concerns at

the Millstone site. On December 12, 1995, the NRC set up a review group to conduct an independent evaluation of the history of the Licensee's handling of employee concerns related to licensed activities at the Millstone facility. The review group determined that, in general, an unhealthy work environment, which did not tolerate dissenting views and did not welcome or promote questioning attitudes, has existed at the Millstone facility for the last several years. To address this problem, the NRC issued an order on October 24, 1996, directing NU to devise and implement a comprehensive plan for handling safety concerns raised by Millstone employees and to ensure an environment free from retaliation or discrimination. In addition, the order required NU to have an independent third party oversee its employee concerns program. The third-party is responsible for providing periodic reports to NU and NRC detailing its findings and recommendations. The third-party findings and the NU responses to them will be assessed by the NRC staff for any restart issues.

The conduct of NRC regulatory oversight at the Millstone site is based on the recognition that the Licensee bears primary responsibility to demonstrate that corrective actions have been effectively implemented. Thus, before the NRC staff can recommend that the Commission approve the restart of any Millstone unit, the Licensee must determine that a unit is in conformance with applicable NRC regulations, its license conditions, and its FSAR, and that applicable licensing commitments have been met. The Licensee's conformance with NRC regulations, license conditions, and licensing commitments is fundamental to NRC's confidence in the safety of licensed activities. In short, the Licensee has the primary responsibility for the safe operation of its facilities.

In a June 20, 1996, letter to NRC, the Licensee described its Configuration Management Plan (CMP), which is its principal program to provide reasonable assurance that weaknesses at the Millstone units have been effectively corrected. The CMP includes efforts to understand and correct the licensing and design-bases issues that led NRC to send the 10 CFR 50.54(f) letters and order actions to prevent recurrence of those issues. The Licensee stated that the objective of the CMP was to document and meet the licensing and design-bases requirements of each unit and to ensure that adequate programs and processes are in place to maintain control of these requirements. The Licensee's CMP must either correct each FSAR deficiency or evaluate it to ensure that the change to the facility does not involve any unreviewed safety question or change to the facility TSs. NU has documented a large number of deficiencies, which vary in scope and safety significance for each unit. These lists contain significant deficiencies that must be corrected before restart and others that the Licensee is planning to correct after restart. In its continuing reviews of the deficiency lists, the NRC staff will determine whether the Licensee has appropriately scheduled safety-significant items for completion before restart and whether those items that the Licensee will defer until after restart are appropriate for each unit. The results of these efforts will be documented in NRC inspection reports.

The NRC's regulatory oversight of the Licensee's corrective actions requires extensive planning and program integration. To focus more regulatory attention on all of the restart issues related to the Millstone units, NRC has established a Special Projects Office (SPO) within the Office of Nuclear Reactor Regulation to oversee these activities. The SPO has developed a comprehensive and multifaceted oversight program to verify the adequacy of NU's corrective actions, programs, and processes. The breadth and significance of the problems identified at the Millstone site require this program. The SPO has developed a Restart Assessment Plan (assessment plan) for each of the Millstone units, which includes (1) the appropriate aspects of NRC Inspection Manual, Manual Chapter (MC) 0350, ''Staff Guidelines for Restart Approval''; (2) oversight of NU's ICAVP; and (3) oversight of NU's corrective actions relating to employee concerns involving safety issues. The activities associated with the assessment plan are in addition to the normal inspection and licensing activities being carried out at the Millstone site.

MC 0350 establishes the guidelines for approving the restart of a nuclear power plant after a shutdown resulting from a significant event, a complex hardware problem, or serious management deficiencies. The primary objective of the guidelines in MC 0350 is to ensure that NRC's restart review efforts are appropriate for the individual circumstances, are reviewed and approved by the appropriate NRC management levels, and provide objective measures of restart readiness.

The assessment plan for each unit includes those issues listed in MC 0350 that the NRC staff has identified as relevant to the shutdown of the unit. Each assessment plan also includes additional issues determined to be applicable to the specific situation. The assessment plans include all actions the NRC expects NU to take before the NRC staff recommends to the Commission that a unit be permitted to restart. Accordingly, the staff will use the assessment plan for each Millstone unit to track and monitor all significant actions necessary to support a decision on restart approval of the unit.

The assessment plan for each Millstone unit includes the requirement to review the NU Operational Readiness Plan, the deficiency lists associated with the assessment plan, including restart and deferred items, the corrective action program, work planning and controls, the procedures upgrade program, the nuclear oversight function (quality assurance), outstanding enforcement items, and a Significant Issues List (SIL), which includes issues identified by both NU and NRC as issues requiring resolution before restart. NRC MC 93802, ''Operational Safety Team Inspection'' (OSTI), provides the framework for a team inspection to be performed during the later stages of the restart process. The inspection will be structured to focus on the pertinent issues at each of the Millstone units.

Within the SPO, a Millstone Restart Assessment Panel (RAP) has been formed in accordance with MC 0350. The RAP meets to assess the Licensee's performance and its progress in completing the designated restart activities. The RAP is composed of the Director, SPO (chairman); the Deputy Directors of Licensing, Inspections, and Independent Corrective Action Verification Program Oversight; the project managers for the three Millstone units; the Inspection Branch Chief; the senior resident inspectors for the three Millstone units; and the appointed Division of Reactor Safety representative. The RAP holds periodic meetings with the Licensee to discuss the Licensee's corrective actions and schedules of each Millstone unit. Notices of the meetings with the licensee are issued and the meetings are open to the public. Additionally, NRC holds frequent meetings with the public near the Millstone facility that include a summary of the latest meeting with the Licensee, updates on NRC activities, and questions and comments from the public.

The purpose of the ICAVP, as stated in the confirmatory order, is to confirm that the plant's physical and functional characteristics are in conformance with its licensing and design bases. The ICAVP audit required by NRC is expected to provide independent verification, beyond NU's quality

assurance and management oversight, that the Licensee has identified and satisfactorily resolved existing nonconformances with the design and licensing bases; documented and utilized the licensing and design bases to resolve nonconformances; and established programs, processes, and procedures for effective configuration management in the future. NU has started programs to identify and understand the root causes of the licensing and design-bases issues that led to NRC issuance of the 10 CFR 50.54(f) letters to NU and to implement corrective actions to ensure that NU maintains the design configuration and that each unit is in conformance with its licensing basis. NU has indicated that the scope of its corrective programs will include those systems that it has categorized as either Group 1 (safety-related and risk-significant) or Group 2 (safety-related or risk-significant). The ICAVP audit must provide insights into the effectiveness of NU's programs so that the results can be reasonably extrapolated to the structures, systems, and components that were not reviewed in the audit.

The NRC staff has developed a comprehensive and multifaceted oversight process to provide a high level of confidence that the Licensee has implemented required corrective actions and that all of the issues on the SILs have been resolved. The independent third-party evaluations required by NRC will be used to enhance NRC confidence that the Licensee's corrective action programs have been effectively implemented at each unit.

NRC activities (including oversight of the ICAVP) to ensure that effective corrective actions are being taken by the Licensee will provide additional assurance that the Licensee's corrective action programs have been effectively implemented. These activities will include in-process reviews of the ICAVP contractor's activities, reviews of the ICAVP results, and additional independent reviews of compliance with the design and licensing bases of selected systems. The State of Connecticut's Nuclear Energy Advisory Council has provided input to the NRC staff for selecting the systems that will be reviewed by the ICAVP contractor and has been invited to observe the NRC staff's ICAVP inspections.

When the restart review process has identified, corrected, and reviewed relevant issues regarding each Millstone unit, a restart authorization process will be initiated for that unit. Upon receipt of an NRC staff recommendation and a briefing on any ongoing investigations, the Commission will meet to assess the recommendation and vote on whether to allow the restart of the unit. The same process will be followed for the remaining units.

It is important to note that the Licensee and NRC are continuing to identify problems at the Millstone site, as documented in inspection reports issued after this Petition was filed. These findings indicate that the corrective actions required to restart the Millstone units have not yet been fully implemented. The NRC staff will not recommend that the Commission allow the restart of a Millstone unit until the NRC staff has determined, in accordance with the assessment plan, that the necessary corrective actions have been effectively implemented for the unit. Following any positive Commission vote for restart, the unit will remain on NRC's watchlist, in Category 2, and will continue to be subject to a high level of NRC oversight. The unit will remain as a Category 2 watchlist plant until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight.

Haddam Neck Facility

The Licensee shut down the Haddam Neck facility on July 22, 1996, as required by the facility's TSs, because of concerns that service water piping for the air recirculation fans in the containment may exceed design loads during certain accident scenarios. The Licensee determined that these concerns and other hardware and programmatic problems identified before and during the forced outage should be resolved before restarting the plant. Thus, the Licensee decided to begin Refueling Outage 19 on August 17, 1996. On October 9, 1996, the owners of the Haddam Neck Plant stated that a permanent shutdown of the plant was being considered by the Board of Trustees as a result of an economic analysis of operations, expenses, and the cost of replacement power. Subsequently, all fuel assemblies were removed from the reactor and placed in the spent fuel pool.

From November 21, 1995, to November 22, 1996, NRC conducted numerous inspections at the Haddam Neck Plant to review several facets of plant performance. These inspections included a special team inspection by NRC headquarters staff focused on engineering performance; a special augmented inspection team (AIT) inspection of a reactor vessel nitrogen intrusion event in late August and early September 1996, which lowered the reactor vessel water level; a special radiation protection inspection of a significant contamination event in November 1996; an emergency preparedness inspection to observe the Licensee's response during an emergency exercise held in August 1996; and several resident inspections. Numerous violations, as well as several significant regulatory concerns, were identified during these inspections. Most of the violations were discussed at a transcribed public predecisional enforcement conference at the Millstone training building in Waterford, Connecticut, on December 4, 1996. That conference was open to the public and focused on the broader programmatic deficiencies underlying the violations that contributed to the problems at Haddam Neck. A notice of violation and proposed imposition of civil penalties in the amount of $650,000 was issued on May 12, 1997, and was subsequently paid by the Licensee.

By letter dated December 5, 1996, the Licensee certified to the NRC, pursuant to 10 CFR 50.82(a)(1)(i) and 10 CFR 50.82(a)(1)(ii), that it had decided to permanently cease operations at the Haddam Neck Plant and had permanently removed the fuel from the reactor. The Licensee further noted that a post-shutdown decommissioning activities report (PSDAR) and a site-specific decommissioning cost estimate would be submitted in accordance with 10 CFR 50.82, ''Termination of License.'' Therefore, the NRC's restart process oversight described for the three Millstone units is not applicable to the Haddam Neck Plant. However, the NRC staff has taken pertinent actions at the Haddam Neck Plant.

A confirmatory action letter (CAL) was issued to the Licensee on March 4, 1997, concerning radiological-control problems at the Haddam Neck Plant to ensure that the limited activities at the site will be conducted in a safe manner and in accordance with regulatory requirements. The CAL confirms the Licensee's commitment to not perform any radiological work, except that required to maintain the plant in a safe configuration until the corrective actions identified in the CAL have been implemented.[1]

As with the Millstone site, it is important to note that the Licensee and NRC continue to identify problems at the Haddam Neck Plant, as documented in inspection reports issued after this

[1] In a November 17, 1997, letter, the NRC staff confirmed certain modifications of the Licensee's commitments on the conduct of radiological work at the Haddam Neck Plant. The modification allows the Licensee to remove an 8-foot section of piping associated with the reactor coolant system to allow vendors to determine the best method for eventual decontamination of the entire reactor coolant system.

Petition was filed. These findings indicate that the corrective actions required to be completed before conducting significant decommissioning activities have not yet been fully implemented. The NRC staff will continue to closely monitor the Licensee's activities until the staff has determined that the necessary corrective actions have been effectively implemented for the unit.

III. NRC Response to Requested Actions

The Petitioner requested that a mechanistic enforcement approach be used at the Millstone and Haddam Neck plants to preclude recurrence of the problems.

The NRC's enforcement policy, which has been revised many times since the March 9, 1982, policy was first issued, continues to recognize that the regulation of nuclear activities does not lend itself to a mechanistic treatment. The NRC staff's extensive experience shows that judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions.

The latest staff assessment of the NRC's enforcement policy was completed in 1997 (NUREG–1622 [2]). This assessment also contained a discussion of a suggestion from the public [3] recommending that the enforcement policy be modified to eliminate what was viewed as subjective enforcement based on performance issues. In particular, the commenter recommended that the NRC staff consistently impose a civil penalty every time a licensee fails to meet a requirement, regardless of a licensee's performance or ability to meet requirements in other areas. The NRC staff's assessment concluded, in part, that ''the staff does not believe that the enforcement policy should be reduced to a formula for rigid application. Few cases are entirely straightforward, and the NRC must always apply judgment in determining whether to give credit for the licensee's actions.'' The Petitioner requested that mechanistic enforcement-related license conditions be added to the Millstone and Haddam Neck licenses. As noted above, the NRC staff has long experience in the enforcement of its requirements. That experience shows that judgment and discretion based on the facts at hand are key elements in any enforcement decision. A fair and reasonable enforcement decision cannot be made without an understanding of the nature of the violations involved and the context in which the violations occurred. The Petitioner's approach calls for specific and severe sanctions based on unknown future events of unknown significance occurring in an unknown context. Such an approach is unreasonable and could very well be found as arbitrary and capricious and thus legally unsound. It is not an approach that the NRC staff would apply in any case and so it would not be applied in the case of the Millstone and Haddam Neck units as requested by the Petitioner.

As noted in the Discussion section above, the NRC staff is aware of the significant performance problems at the Licensee's facilities. These performance problems have led the NRC staff to increase its oversight activities at these facilities. The Millstone plants will not be allowed to restart until the NRC staff is satisfied that sufficient corrective action has taken place and until Commission approval is granted. After restart, the plants will continue to be subject to a high level of NRC oversight until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight. The decommissioning of the Haddam Neck Plant will not be allowed to proceed until the NRC staff determines that the applicable performance problems noted there have been corrected. The Licensee has also made significant management changes at each of these facilities. In the NRC staff's judgment, the scope of actions taken by the Licensee and the NRC regarding these facilities is extensive.

Furthermore, the NRC staff has had significant experience in overseeing licensees that have either been ordered to or have volunteered to shut down their facilities because of performance problems. For example, in NRC's Region I alone, the Pilgrim, Peach Bottom, Nine Mile Point, Calvert Cliffs, FitzPatrick, and Indian Point Unit 3 plants have been shut down while significant problems were corrected. Despite their significant problems, these plants have been able to perform corrective actions that have significantly improved the performance of these facilities. On the basis of the special circumstances involved with overseeing the restart of plants shut down for performance problems, the NRC staff developed MC 0350 (for more detail about this document, see Discussion section). Thus, the NRC staff has a considerable amount of experience overseeing facilities shut down because of significant enforcement problems; the NRC staff has seen numerous examples of licensees that have successfully improved their performance to a level acceptable for restart and continued operation; and, the NRC staff has a tested procedure in place to safely oversee the restart of such facilities.

Regarding the Haddam Neck Plant, the risks to the public from a permanently shutdown facility are significantly less than those from an operating power plant. Additionally, as noted in the preceding discussion, the NRC staff is closely observing the Licensee's actions until confidence in the Licensee is restored.

IV. Conclusion

In summary, a mechanistic enforcement approach will not be applied by the NRC staff in this matter. Such an approach is neither necessary nor appropriate to assure regulatory compliance and safe conduct of activities at the Millstone and Haddam Neck facilities. Extensive efforts have been and are being taken by the Licensee to assure that future operation of the Millstone units and decommissioning of the Haddam Neck Plant are accomplished safely. The NRC staff has in place an extensive oversight program to assure that the Licensee meets its objectives. The NRC staff also has extensive experience with other facilities in assessing major corrective action programs providing assurance that its oversight of the Licensee's corrective action efforts will be sound and will assure that the Commission receives a sound NRC staff recommendation before the Commission itself determines whether restart of the Millstone units is warranted. After restart, the plants will continue to be subject to a high level of NRC oversight until the NRC determines that the Licensee's performance warrants a normal level of NRC oversight. Accordingly, the Petitioner's request for specific enforcement-related license conditions at the Millstone and Haddam Neck facilities is denied.

As provided for in 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. This director's 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 11th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

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[2] As of the date of this Director's Decision, this NUREG has not been issued. It is expected to be issued shortly.

[3] September 9, 1997, letter from David A. Lochbaum of the Union of Concerned Scientists.