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GETTING OUT IN FRONT

PRESENTED BY
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AT THE
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HOLIDAY INN CROWNE PLAZA
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Introduction

Good afternoon, ladies and gentlemen. I am pleased to be here with you on the opening day of the 1995 NRC Regulatory Information Conference. This is not the first time that I have had the pleasure to speak to you after you have had a satisfying lunch. I hope that the remarks I make will not be too hard to swallow and not cause any more indigestion than they may have in the past.

I am pleased to see that this series of regulatory information conferences continues to engender so much serious interest. I believe that the NRC, industry and the public can, and indeed do, interact in a mutually beneficial and respectful manner. This is evidenced by the success of meetings such as these, the various public workshops that have been held, the cooperation on new regulatory initiatives such as Cost Beneficial Licensing Actions and the Maintenance Rule, and the implementation of improved electronic communication, among others.

One of the primary means for fostering improved cooperation is for the NRC to be totally open in our regulatory actions and to obtain early input, from both industry and the public, before getting locked into a hard and fast position. This is part of what I call "Getting Out in Front." We are, and have been, following this philosophy for quite some time; both in the

regulatory decision making process as well as in the actual regulatory positions that are being developed and promulgated. Furthermore, this approach is fully consistent with the directives recently announced by President Clinton and Vice President Gore on February 22 of this year; in particular, the two directives to "Get out of Washington - create grass roots partnerships," and "Negotiate, don't dictate."

With regard to openness, it is an essential element in ensuring our independence from external pressures by special interests and in maintaining the confidence of the public. There must be a high degree of openness in our regulatory processes and the means we use to come to definitive conclusions. NRC is a very open agency and the nuclear power industry is one of the most open of all U.S. industries, but there is room for improvement. There are some on the NRC staff who resist being as open as possible and there are some industry leaders who find it difficult to expose themselves and their organizations to attacks from partisan groups which they fear will be the consequence of an open policy. I, however, continue to hold the opinion that paradoxically, openness is a much more protective shield against unfounded attacks than concealment. The public needs to be constantly reassured that we and the industry we regulate are acting straightforwardly. Openness from the very beginning is the best way to earn and maintain essential credibility.

I would like to describe some of the instances where we have attempted to "get out in front." Where we have tried to either:

1. Gather input from the various interested parties prior to establishment of an NRC position; or

2. Develop requirements that would ensure that the public is provided both early information and the opportunity for substantial input and comment prior to NRC or licensee actions taking place.

LICENSE RENEWAL RULE

A prime example of the NRC getting out in front is how it approached the license renewal rule. The impetus for the rule was not because there were a large number of license renewal applications in hand, but, rather to provide a viable option for both industry decision-makers and public utility commissions. The concept was to allow them to be able to decide whether or not it would be economically and technically justified to renew plant operating licenses, and for this purpose it was necessary to establish clear and unequivocal technical requirements for license renewal. We thought we did this when we issued a final rule that went into effect in January, 1992. But it soon became apparent we had not.

In developing a regulatory guide and standard review plan; in interacting with lead plant licensees and the Nuclear Energy Institute (NEI); in convening a public workshop with industry and government representatives; and in holding numerous internal NRC management reviews, it became evident there was a significant need to make the renewal process clearer and easier to implement. Furthermore, it was generally concluded that greater advantage should be taken of existing licensee activities and programs, and that we should rely more on the benefits derived from implementation of the Maintenance Rule.

I assure you the Commission listens carefully, and when we see how we can improve, we do so. We have just approved a revision to the license renewal rule that we expect will resolve ambiguities in interpretation of the existing rule and establish a more efficient, stable, and predictable license renewal process. If you attended the breakout session this morning you know all about it. If not, you can read the full text on the NRC's electronic bulletin board system on Fedworld which can be accessed directly with a modem or through the Internet. With regard to getting out in front, I understand the rule appeared on Fedworld almost simultaneously with the Commission's final review of the notice of rulemaking. Possibly even before, but don't ask me how. I don't really want to know. I should add, as an aside, that the rule was published in the Federal Register yesterday in all its glory.

The basic principles and philosophy of license renewal, as espoused in the original rule, continue to be retained in the revised rule. There will be absolutely no relaxation of safety standards during the license extension period. The license renewal requirements are intended to supplement the existing regulatory oversight processes so as to provide sufficient assurance that adequate safety will be maintained during any period of extended operation. The rule establishes the safety criteria on which a determination can be made that if the plant continues to operate after the initial licensing period of 40 years, it will continue to operate safely. The focus of license renewal is on mitigation of the detrimental effects of aging on the ability of systems, structures, and components to perform important safety functions during any period of extended life.

The licensee's decision on whether or not a plant should attempt to obtain a license extension will be based on a number of factors including the physical condition of the plant, the ability to operate safely, and the economics of power production. Decisions about the appropriate energy mix and costs of electrical generation are weighed by state regulatory agencies, not the NRC. The economics issue is not something the NRC considers in the context of license renewal.

DECOMMISSIONING OF NUCLEAR POWER REACTORS

Another example of where we are trying to get out in front involves the requirements for decommissioning nuclear power reactors. A proposed rule has been crafted that is intended to clarify the applicability of certain regulations to permanently shutdown nuclear power reactors and to provide for public participation in the process. The new rule would codify practices that the Commission has already approved for use by licensees in ongoing decommissionings.

There appear to be three distinct phases of decommissioning that must be addressed. The first phase covers permanent cessation of power production operations, public notification, early plant modifications, and on-site rearrangement, packaging and removal of components and waste prior to entering SAFSTOR status. This phase includes the licensee's early component removal program, if any, during which plant structures, systems, and components may be removed and shipped off site, as allowed by §50.59 and other regulations. The duration of this phase is probably measured in months or, in some cases, a few years.

The second phase would be when the facility is in the SAFSTOR mode with little on-site or off-site activity other than monitoring of systems required to maintain SAFSTOR, e.g., Spent Fuel Pool cooling systems. This phase will probably last for years or even decades, and its duration will depend upon the availability of low level waste sites to accept waste materials from plant dismantlement at a feasible price. If the licensee chooses to proceed to final decontamination and license termination shortly after completion of the first phase, the second phase could be compressed, but would probably still be dependent on the availability of suitable radioactive waste sites.

The third and last phase would cover the period after the licensee commences the final steps to complete decommissioning and would involve complete dismantlement of the plant, and termination of the license. This would include cleanup of the site or permanent entombment of the plant and reassignment of the remainder of the site for other purposes. This phase is probably measured in months or years.

This final phase will require a license termination plan somewhat similar to that currently envisioned and described in 10 CFR §50.82. However, during this phase, we plan to include a provision for the opportunity for a public hearing on the termination plan. This hearing would be held under 10 CFR Part 2, Subpart L, a so-called Subpart L hearing. These additional requirements appear justified in view of the significant time

delay that may conceivably occur between the time that the licensee completes major component removal activities and enters a SAFSTOR phase and the time when final decommissioning activities resume. In addition, there is the likelihood, because of this time delay, that the licensee's staff will consist of many new operating and engineering individuals, if not an entirely new organization, and new engineering and decommissioning techniques may have become available.

As you may recall, I indicated that there would be public notification and participation during the first phase. This is another example of "getting out in front." During the first phase, we're proposing that the licensee be required to submit a preliminary report, called a post-shutdown decommissioning activities report, or PSDAR, that would describe the planned decommissioning activities, a schedule, estimated costs, and a discussion of the environmental impacts. We propose to make the PSDAR available for public comment and will hold a public meeting in the vicinity of the reactor facility site to discuss the licensee's plans. Major decommissioning activities would not commence until about 30 days after the public meeting. By this technique, we hope to ensure that the public will be fully informed and will be able to make its concerns known before rather than after decommissioning activities start.

We also propose to provide the opportunity for an informal Subpart L hearing on the termination plan during the final phase. This is appropriate for a permanently shutdown facility where the fuel has been removed from the site, since the facility would then be similar to a nuclear materials site that typically uses Subpart L hearings for license amendments. We are also considering requiring a full public meeting to be held when the license termination plan is received.

I expect that this proposed rule will be issued for public comment within the next few weeks and we will be looking forward to your comments.

Radiological Criteria for Decommissioning

Probably the foremost example of "getting out in front" is the enhanced participatory process the Commission has followed in developing a proposed rule on radiological criteria for decommissioning. We knew that developing such criteria would be a complex and controversial undertaking. Rather than proceeding as we have in the past, the Commission decided to obtain early public input well before a formal position is established and "locked in". The staff conducted a series of seven workshops throughout the country to obtain comments on scope, issues, and approaches that must be addressed in establishing radiological criteria for decommissioning. A dedicated electronic bulletin

board system was also created to disseminate information and obtain comments on the rulemaking. Finally, a series of eight public meetings were held in four cities during which comments were obtained on the proposed scope of the generic environmental impact statement supporting the rulemaking. An additional period of public participation was provided during an early stage of rule development when copies of a draft rule and summaries of comments were sent to the NRC agreement states, workshop participants, and other interested parties. The workshops and meetings proved to be of great value, to both the NRC, industry, and the public.

Without going into the details of the proposed rule, which would apply to most of the NRC licensed facilities, let me say that the requirements will be significantly affected by the lessons we learned during the public meetings. Many of the participants, including the NRC staff, altered their views through the course of the meetings. The enhanced participatory process with its workshops, public meetings, and other avenues for early public input is pointing out the real value that can be gained by "getting out in front" and addressing concerns before being locked into what might prove to be an untenable position. There is still dialogue on a few difficult issues, but I anticipate a more widely accepted and better informed outcome than we could have achieved by a conventional rulemaking.

Thermal Annealing of Reactor Pressure Vessels

Last October the NRC issued for comment a proposed rule on fracture toughness requirements for light water reactor pressure vessels. Part of the proposed rule provided requirements for the thermal annealing of a reactor pressure vessel to restore the reactor vessel which had been degraded by neutron irradiation. Without delving into the details of the thermal annealing rule, one of the major issues the Commission has considered with respect to the rule is the nature and timing of public participation related to the NRC's review and approval of the licensee's thermal annealing plan. This significant new activity has caused the Commission to spend a great deal of time trying to decide the best way to inform the public about a new issue. This can be done with either informal hearings or public meetings or by formal hearings under the Atomic Energy Act.

There are several circumstances where there could be the opportunity for a formal hearing under the Atomic Energy Act during the NRC review and approval process. A formal hearing might occur when NRC approval is needed either:

- For the thermal annealing plan prior to implementation;

- If the annealing necessitates a license amendment or there is a violation of a technical specification; or

- If the licensee cannot meet new reactor vessel performance criteria.

The Commission has some question regarding whether the Atomic Energy Act requires a hearing. Therefore, the Commission is considering four different alternatives and has requested public comment. The alternatives are:

1. No opportunity for hearing is required under the Act since a determination of approval will be given by the Director NRR, and hearings are not routinely offered in this type of situation.

2. Discretionary opportunity for hearing since the Act does not require a hearing, but there would be a case-by-case determination by the Commission of whether or not there would be a hearing.

Under these first two alternatives, neither implementation of the annealing plan nor resumption of operation, once approved by the NRC, would be contingent upon completion of any hearing.

3. A hearing is required under the Act for NRC approval of both the thermal annealing plan and the resumption of operation. The annealing plan could not commence until the hearing is concluded unless the NRC makes "a no significant hazards determination."

4. Modify the proposed rule to require the suspension of a license prior to thermal annealing. With the license suspended, the licensee could anneal its reactor vessel without prior NRC approval. After the annealing is completed, the licensee would have to demonstrate to the NRC that the annealing removed the reactor vessel embrittlement so that operating the plant would be acceptable. There would be no opportunity for a hearing under this alternative.

We are now in the process of reviewing and evaluating the comments on the thermal annealing rule. Whether or not there is a requirement for a formal hearing, we anticipate there will be informal hearings or public meetings to permit discussions of both the thermal annealing plan and the technical issues involved. These meetings will be announced in the Federal Register and held near the reactor site, as is expected to be done under the nuclear power reactor decommissioning rule.

Conclusion

I have mentioned only a few of the more significant issues where the NRC has tried to get out in front. We are actually taking this approach in many activities and find that it serves to defuse problems before they mature. By being totally open with industry and the public and by ensuring that everyone is informed we hope to achieve quicker resolution of significant issues.

One of my favorite quotations, that reminds me of reasons for early openness, comes from the 17th century writings of Jonathan Swift in the **Examiner** "Falsehood flies , and Truth comes limping after it; so that when men come to be indeceived, it is too late, the jest is over, and the tale has had its effect: like a man that has thought of a good repartee when the discourse is changed, or the company parted: or , like a physician who hath found out an infallible medicine after the patient is dead."

I am very pleased to have had this opportunity to be with you this afternoon and to discuss with you one aspect of regulation that I think is extremely important. As I said before, I believe that this series of conferences provides a very worthwhile and necessary function and I know that they will be continued in the future. Not only do these meetings bring you up to date on the current nuclear regulatory issues but they also provide a valuable forum for the exchange of ideas and the opportunity for each of you to get to know us better.

Thank you for your attention. Now I would be happy to respond to any comments or questions you may have.