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Union of Concerned Scientists

Rules and Directives
Branch
USNRC

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Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: COMMENTS ON ASSESSMENT OF INDUSTRY
CONSOLIDATION ON NRC OVERSIGHT**

Good Day:

On behalf of the Union of Concerned Scientists, I respectfully submit the attached comments regarding the potential impact on NRC oversight from nuclear industry consolidation. Comments on this subject were solicited by the agency in a *Federal Register* notice (66 FR 34293).

Sincerely,

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Nuclear Safety Engineer
Washington Office

Template = ADM-013

F-RIDS = ADM-03
Add = H. Berkow (HNB)



The *Federal Register* notice soliciting public comment on this subject suggested that a public workshop might be held in October/November 2001. If such a public workshop is conducted, and held in the Washington, DC area rather than Florida or some other boondoggle locale as at least one recent NRC meetings has been curiously held, UCS would be interested in participating.

One of only four NRC strategic objectives is allegedly "improving public confidence." Thus, it is amazing to UCS that NONE of the 25 issues covered by the staff in its report addressed how industry consolidation might just impede NRC in satisfying this so-called objective. There's ample evidence suggesting that industry consolidation might affect public confidence. For example, the recent revision to 10 CFR 50.72/50.73 reduced the amount of information supplied by plant owners to the NRC about safety problems. Also, the NRC recently revised the scope of information provided on its daily plant status reports to exclude projected restart dates for shut down plants. And there's talk about building new reactors based on results from experimental reactors built overseas although precious little of that information is publicly available in the United States. Additionally, plants like the South Texas Project are claiming that justification for license amendments is proprietary since unregulated nuclear power plants are now in economic competition with each other. Thus, industry consolidation has, and will likely continue to have, impact on the public's access to information about nuclear plant safety. UCS strongly suggests that public confidence be added as Category 9 with public availability of information listed as Issue 9.a. Issue 9.b might be the ol' formal vs. informal hearings matter.

Comments on specific portions of the staff's report entitled "Industry Consolidation: Preliminary Impact Assessments," referenced by the *Federal Register* notice:

1. Issue 1.a covered possible cost-cutting initiatives. Human performance problems caused by worker fatigue is conspicuously missing from this discussion. Plant owners are trimming staffing levels to save money, with the direct result that surviving employees are working longer and longer hours. Fatigue is well known to reduce human performance capability, thus increasing the risk of worker mistakes. The Office of Nuclear Reactor Regulation is slowly¹ processing proposed rulemaking seeking adoption and enforcement of consistent working hour limits as protection against fatigue-related errors. The discussion for Issue 1.a should at least refer to this NRR task and the Recommended Followup section should explicitly identify completion of the ongoing rulemaking.
2. Issue 1.d covered low-level radioactive waste management. The staff's discussion missed one aspect of consolidation that is the subject of frequent public dialogue; namely, nuclear plant sites becoming storage sites for low-level wastes generated by medical and other non-power sources. Electricity deregulation pressures plant owners to find ways to increase revenues. Getting paid to store low-level waste at a nuclear plant site is a way to increase revenue. The staff's discussion noted that "nuclear power plants generally are not licensed to accept wastes from off-site" but pointed out that the NRC recently authorized the Watts Bar nuclear plant to do just that. Allowing nuclear plant sites to become *de facto* low-level waste dumps simply to boost profits for plant owners is unlikely to win the NRC many points towards its "improve public confidence" score. The discussion for Issue 1.d should be expanded to address storing non-power low-level waste at power plant sites.

¹ The "slowly" adjective is applied because the agency can approve a license renewal application in under 25 months but cannot resolve safety concerns like worker fatigue in the same interval.



3. Issue 1.e covered emergency preparedness. The staff's discussion reported "Outcomes of industry consolidation have included centralization of staffs, functions, and facilities remote from individual site locations." Consolidation and centralization seems to make it much easier to stockpile potassium iodide (KI), the consistently recommended, low-cost public health protective measure in event of an accident. Industry consolidation seems like an excellent opportunity for the NRC to move from procrastination to protection regarding KI.
4. Issue 1.f addressed reliable off-site power. The preliminary impact assessment section reported the "Institute for Nuclear Power Operations has developed the Equipment Performance and Information Exchange (EPIX) system, which should enable information needed to update PRAs to be easier to obtain." During public meetings last year on risk-based performance indicators, UCS asked the NRC, with INPO and NEI present, if the EPIX database would be available to the public. The NRC's answer was no. INPO and NEI quickly commented that they'd have to restrict NRC's access to EPIX so as to prevent requests of the NRC by the public under the Freedom of Information Act (FOIA) from obtaining this "secret" information. The NRC should either (a) not rely on non-public information in making public health decisions, or (b) not expect the public to have confidence in agency decisions based on secret information.
5. Issue 2.a covered the license transfer process. The staff's discussion stated "that the staff has had considerable experience with the license transfer process and has not seen any evidence to validate this concern [about plant owners planning to sell no longer placing a high priority on safety.]" This conclusion seems contradicted by the ongoing investigation by NRC Region I into the bizarre closure of literally thousands of licensing commitments by the former owner of the Millstone nuclear plant in Connecticut. That investigation is still open, but the allegations may indeed constitute sufficient evidence to validate the concern. If substantiated, the allegations will provide sufficient evidence to validate the practice. UCS suggests that the Recommended Followup be revised to indicate that the Region I investigation into events at Millstone prior to the sale to Dominion be monitored and further staff actions taken as appropriate.
6. Issue 2.b covered new license applications. The staff's discussion reported that a Future Licensing Organization within NRR had been established, although inadequately funded in the FY02 budget. In essence, the staff is conceding that it staffed the Future Licensing Organization with resources robbed from maintaining safety at existing reactors. The staff stated "Renewed interest in new license applications is attributable, at least in part, to industry consolidation." Thus, consolidation has already tangibly impacted NRC oversight.
7. Issue 3.a covered the reactor oversight process. By letter dated August 13, 1999, UCS submitted a petition for rulemaking to the NRC seeking to make the submission of performance indicator (PI) data, a vital element of the reactor oversight process, mandatory. As explained in detail in our submittal, our concern is that an owner like Exelon, which currently operates 18 nuclear reactors, might someday develop PI data for one reactor that requires it to be shut down under the Action Matrix. Since PI data submittal is currently voluntary, that owner could simply opt not to submit NRC the PI data. Rather than making it abundantly obvious to the agency which reactor was in distress, the owner could opt not to submit NRC the PI data for its entire fleet. The NRC lacks the inspection resources to replace PI data submittals for 18 reactors. Therefore, the reactor oversight process—and more importantly, public safety—is dependent on plant owners voluntarily giving the NRC information that will shut down reactors with unacceptable performance. The NRC should complete



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the rulemaking initiated by UCS and take this discretion away from plant owners.² The public deserves that much protection from the NRC.

8. Issue 3.c covered the NRC Enforcement Program. Since the agency lacks an adequate Enforcement Program, it cannot be impacted in a negative manner by industry consolidation (or anything else for that matter).
9. Issue 7.c covered insurance, or Price-Anderson. Price-Anderson was developed when nuclear plants were owned and operated by regulated utility companies. The \$88 million assessment per reactor (doled out at up to \$10 million for up to 10 years with an \$88 million cap) could be handled by utility companies because they could pass it along to their ratepayers. But electricity deregulation fundamentally altered that arrangement. Nuclear power plants, in many states, must now compete economically with other generators. If the cost of electricity from nuclear plants gets too high, plant owners will find no customers. The \$88 million assessment can no longer simply be tacked onto the electric bill with guaranteed payments. In addition, it is optimistic to think that a reactor accident that causes greater than \$200 million in offsite damages would not affect the operation of other nuclear plants in the US (ie. the other plants providing the retrospective pool). After ValuJet parked one of its planes deep in the Everglades in May 1996, all ValuJet planes were grounded for nearly a year. Likewise, if a nuclear plant had a bad accident, all other nuclear plants owned by that company, and perhaps other nuclear plants of similar design as well, might be shut down for a long time. Entergy, the new owner of Indian Point, has said it has sufficient capital to cover an outage lasting 5 to 6 months. Longer outages could bankrupt nuclear plant owners, leaving them unable to pay the \$88 million assessments. The staff's discussion parallels the concerns outlined above. Therefore, it seems that the staff's recommendation that "consideration should be given to developing a rulemaking to establish an annual requirement to demonstrate the licensee's ability to pay on-site retrospective insurance premiums" is understated. There's a huge, whopping hole in the liability protection foundation on which aging reactors are allowed to operate. The ramifications of a serious accident before that hole is plugged are staggering. In addition, the Price-Anderson legislation is up for renewal in the next Congress. **This is a serious matter than warrants immediate staff action, but merely consideration.**

² As mentioned in an earlier footnote, the NRC can approve a 20-year extension to an operating license in 25 months or less, but cannot resolve rulemaking on safety issues in the same interval.