

COMMISSION MEETING EXHIBITS

MEETING WITH NRC STAKEHOLDERS -
PROGRESS OF REGULATORY REFORM

THURSDAY, OCTOBER 18, 2001



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

October 18, 2001

Chairman Richard A. Meserve
Commissioner Nils J. Diaz
Commissioner Greta J. Dicus
Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: PROGRESS OF REGULATORY REFORM

Dear Chairman and Commissioners:

The Union of Concerned Scientists (UCS) is pleased to participate in today's stakeholder meeting. Past stakeholder meetings have provided us with a broader, fuller understanding of issues before the Commission. We look forward to another informative dialogue.

While the Nuclear Regulatory Commission (NRC) made tangible progress in several areas over the past year, efforts to enhance public participation in meetings were particularly noteworthy from our perspective. The fact that Ms. Patricia Norry, the NRC's Deputy Executive Director for Management Services, led these efforts demonstrated how seriously this initiative was viewed by the agency. These efforts, including the April 4th public workshop, have already produced tangible improvements and should serve as a strong foundation for additional improvements.

The public meeting held by the NRC in Pennsville, New Jersey on the evening of August 16, 2001, is a very good example showing both that progress has been made and that there is still work to be done. Mr. Norm Cohen of the UNPLUG Salem Campaign, requested the meeting because of concerns about the steam generators at the Salem nuclear plant following last year's incident at Indian Point Unit 2. Not too long ago, the NRC staff would have denied Mr. Cohen's request. Instead, the staff would have talked with Mr. Cohen informally following a public meeting between the staff and the plant owner or would have attempted to resolve his concerns via one or more letters. The NRC staff granted Mr. Cohen's request and sent its premiere facilitator, Mr. Chip Cameron, along with staff from the Office of Nuclear Reactor Regulation, the Office of Nuclear Regulatory Research, and the Region I office to engage Mr. Cohen and the public. That was the positive aspect of the meeting.

The negative aspect of the meeting was that the staff chose to deliver a "regulatory sermon." We label it like that because the staff's presentation was religious-like in explaining how the Atomic Energy Act begat Title 10 of the Code of Federal Regulations which begat the Standard Review Plan which begat the Regulatory Guides which begat the Operating License which begat plant procedures, or something like that.

When the sermon ended, an NRC staffer who has actually inspected steam generator tubes spoke. While his remarks directly addressed what Mr. Cohen and his organization wanted to hear about, his heavy reliance on jargon and acronyms made it difficult for the public to follow, especially without subtitles.

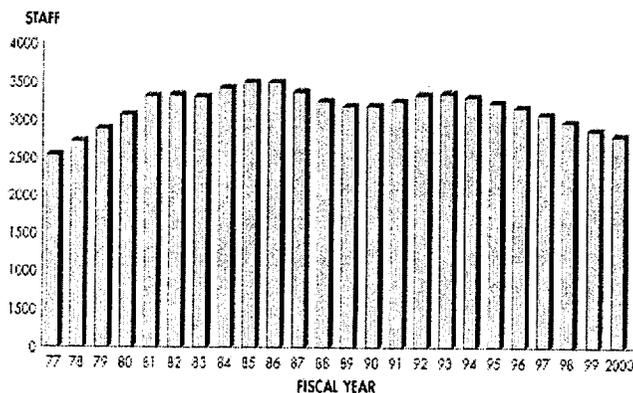
Thus, it was commendable that the NRC staff responded to Mr. Cohen's request by arranging a public meeting to be conducted in the evening in the vicinity of the plant. But the staff could have done a better job providing the information sought by Mr. Cohen. This missed opportunity is unfortunate because the NRC had demonstrated the capability of providing this exact information. During a two-day steam generator workshop conducted in Bethesda earlier this year, Mr. Brian Sheron talked about the lessons learned from Indian Point 2 and how they would shape future regulatory actions. Mr. Doug Coe spoke about the safety significance of the Indian Point 2 incident in specific and steam generator tube ruptures in general. Both gentlemen provided useful information in plain English. Neither made the trip to Pennsville. Nor was their material presented in Pennsville.

The lesson we drew from the August 16th meeting was that the NRC was moving in the right direction, but there were bumps in the road. We urge the NRC to stay the course despite the occasional problem along the way.

The best evidence we can cite that the destination warrants tolerating the bumps in the road is the series of public meetings conducted by Mr. Glenn Tracy, Ms. Vonna Ordaz, Mr. Ronald Albert, Mr. Terrance Reis, and Mr. Alan Madison regarding nuclear plant security. The fair and open manner in which these meetings have been conducted and the way that input received from all stakeholders has been thoroughly considered gives us trust and confidence in Mr. Tracy and his staff.

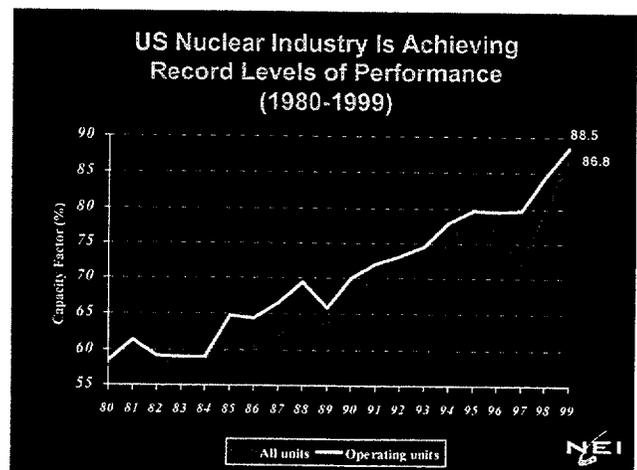
We consider the progress made in the public participation area as being directly related to today's topic: the progress of regulatory reform. Public acceptance of regulatory reform is very important. Otherwise, the public might think that the fact that the NRC's staffing level being in a general declining trend since 1984-1985 is linked to the fact that the average nuclear power plant capacity factor has been in a general rising trend since 1984-1985.

Figure 5. NRC Personnel Ceiling, FYs 1977-2000



Note (Table 2 and Figure 5): FYs 1977-1982 data reflect permanent full-time positions, at end-of-year strength. FY 1983-2000 reflect full-time equivalents (FTEs).

Source (Table 2 and Figure 5): Nuclear Regulatory Commission



Source: NEI

Our primary concern with the approach taken by the NRC in its regulatory reforms is the heavy dependence on risk-informed decision-making without first assuring the quality of the tools used to develop the risk information. The result, in our view, is decision-making in a partial vacuum. Examples that we have previously identified that continue to support our position:

1. Earlier this year, the NRC Region III staff granted enforcement discretion to the owner of the Fermi nuclear plant to continue operating after its repeated failures to follow regulations broke one of the emergency diesel generators. The Fermi risk assessment quantified the increased risk from operating without the disabled diesel generator. But because the risk assessment was only a full-power analysis, the owner was unable to quantify the risk from shutting down and restarting the reactor as required by the Technical Specifications. The NRC staff believed this unknown risk to be greater than the known risk from operating without the diesel generator being available. Because the risk assessments are so narrow in scope, one can always subjectively make the unknown risk larger or smaller than the known risk, whatever outcome you prefer. That's not risk-informed decision-making, it's just plain guessing.
2. The NRC's Technical Working Group issued a report dated October 2000 on the spent fuel storage risk at permanently closed plants (PCPs). The Technical Working Group omitted the sabotage risk altogether, despite repeated concerns expressed by numerous stakeholders. As a direct result, the spent fuel storage risk was characterized non-conservatively. That's not risk-informed decision-making, it's just plain wrong.
3. The NRC's Advisory Committee on Reactor Safeguards issued a report this past February on the steam generator tube integrity concerns initially raised in December 1991 by Dr. Joram Hopenfeld. The ACRS essentially validated most of Dr. Hopenfeld's concerns. The ACRS concluded more than once that the NRC staff lacked technically defensible positions. Yet the NRC staff has made literally dozens of decisions since December 1991 about steam generator tube inspection plans based on these technically indefensible positions. That's not risk-informed decision-making, it's just plain indefensible.

What concerns us more than the specifics of these examples is the NRC's mindset. The NRC's application of regulatory reform concentrates on the economic viability of the nuclear industry. We cite the public meeting conducted on Friday, October 5, 2001, between NRC and NEI senior management. Reducing unnecessary regulatory burden was on the agenda (big surprise, we know). Mr. Samuel J. Collins announced that the NRC would not request cost estimates for any burden reduction initiative. This is unfair. Before the NRC staff can impose a new requirement on the industry, 10 CFR 50.109 requires that it pass a cost-benefit standard. This protects the nuclear industry from the imposition of requirements that may increase safety levels, but at too high a price.

If the nuclear industry and the NRC staff believe that an existing requirement can be eliminated without reducing safety levels, they should be willing and able to perform a comparable cost-benefit analysis showing that the money spent complying with that requirement is unwarranted. Put another way, the nuclear industry wants to go from Point A to Point B, where Point A represents an existing regulation and Point B represents an eliminated or lessened regulation. 10 CFR 50.109 does not allow the NRC staff to go from Point B to Point A unless that safety gain is worth the cost. Fairness dictates that the NRC staff also not be allowed to go from Point A to Point B without comparable formal analysis. That the NRC staff would so aggressively pursue burden reduction efforts without such formal analyses tells us that the "maintain safety" and "improve public confidence" performance goals are merely catchy slogans.

Other signals to us that the NRC Office of Nuclear Reactor Regulation (NRR) has the wrong focus are the performance goals. One of the chief goals of NRR is completing the majority of license amendment requests within one year and all license amendment requests within two years. Likewise, the NRC has a huge emphasis on how fast it approves license renewal requests. Progress against those goals is widely relayed to the nuclear industry, to Congress, and to the Commission. But progress towards milestones in safety resolution efforts, such as the Steam Generator Action Plan, are not reported so widely. Consequently, it is obvious whether the scheduler goals or the safety resolution milestones are more likely to slip. That's why when the NRC says "maintain safety," we mentally add "on the back burner."

UCS continues to believe that the NRC should first establish quality standards for risk assessments and verify that all risk assessments met or exceed that minimum standard. Only then can existing regulations be safely considered for elimination or reduction. Fairness, as well as safety, dictates that no existing regulation be eliminated or reduced without a formal analysis comparable to that performed before a new requirement is imposed.

Sincerely,

A handwritten signature in cursive script that reads "David A. Lochbaum".

David Lochbaum
Nuclear Safety Engineer
Washington Office

SCHEDULING NOTES

Title: Meeting with NRC Stakeholders - Progress of Regulatory Reform

Scheduled: 9:00 a.m. - Thursday, October 18, 2001 (PUBLIC)

Duration: Approx. 3 hours

Participants: Panel

□ **PUBLIC INTEREST GROUPS**

- Union of Concerned Scientists (Mr. David Lochbaum, Nuclear Safety Engineer)
- Nuclear Control Institute (Dr. Edwin Lyman, Scientific Director)

□ **UTILITY REPRESENTATIVES**

- Constellation Nuclear (Mr. Robert Denton, President)
- Southern Nuclear (Mr. George Hairston, President and Chief Executive Officer)
- Detroit Edison (Mr. Douglas Gipson, Executive Vice President, Power Generation and Chief Nuclear Officer)

□ **FINANCIAL COMMUNITY**

- Lehman Brothers (Mr. James Asselstine, Managing Director, Fixed Income Research)

□ **INDUSTRY GROUPS**

- Nuclear Energy Institute (Mr. Joseph Colvin, President and Chief Executive Officer)
- Institute of Nuclear Power Operations (Mr. Fred Tollison, Executive Vice President)
- Electric Power Research Institute (Dr. Theodore Marston, Vice President and Chief Nuclear Officer)

□ **STATE**

- Connecticut (Dr. Edward Wilds, Jr., Director, Division of Radiation, Department of Environmental Protection)

□ **NRC REPRESENTATIVES**

- Deputy Executive Director for Operations (William Kane)
- Regional Administrator (Hubert Miller)
- Office of Nuclear Reactor Regulation (Samuel Collins)
- Office of Nuclear Regulatory Research (Ashok Thadani)

- CIO (Stuart Reiter), CFO (Jesse Funches), DEDM (Patricia Norry), and NMSS representatives (Available in the Meeting Room)