



Entergy Nuclear Northeast
Entergy Nuclear Operations, Inc
440 Hamilton Avenue
P. O. Box 5029
White Plains, NY 10601-5029
Tel 914 272 3500

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January 15, 2003
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ENO Ltr. 2.03 007

Secretary
U. S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

SUBJECT: Comments on Petition for Rulemaking by
Lawrence T. Christian, et. al., Docket No. PRM-50-79

References: Federal Register, Vol. 67, Friday, November 1, 2002, pp 66588 – 66592

Dear Sir:

Entergy Nuclear Operations, Inc (ENO), as operator of the Pilgrim Nuclear Power Station, the James A. FitzPatrick Nuclear Plant, the Vermont Yankee Nuclear Power Station and the Indian Point Units 2 and 3 Nuclear Power Plants, takes this opportunity to comment on petition for rulemaking submitted by Lawrence T. Christian, et. al. published for public comment in the November 1, 2002 Federal Register (Reference). ENO urges the NRC to reject the petitioner's request for rulemaking in its entirety in as much as the proposed rules are already adequately addressed in existing NRC and FEMA guidance.

The Petitioner argues for the need for additional regulation to ensure the protection of the health and safety of children in day care facilities and nursery schools located within "evacuation zones" of nuclear power reactors. The concepts, methodologies, exercise and evaluation practices that are directed at protection of the health and safety of persons (including children attending day care centers and nursery schools) living, working, and attending school, within the Emergency Planning Zones (EPZs) of NRC licensed nuclear power reactors are addressed in many documents including, but not limited to, the following:

- NUREG-0654 / FEMA REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan Preparedness in Support of Nuclear Power Plants
- FEMA REP-6, "Exercise Evaluation and Simulation Facility Evacuation Event Models" parts I and II
- FEMA REP-10, "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants"

Template = SECY-067

SECY-02

- FEMA REP-14, "Radiological Emergency Preparedness Exercise Manual"
- NUREG-1442 / FEMA REP-17, "Emergency Response Resources Guide for Nuclear Power Plant Emergencies"
- FEMA Guidance Memorandum GM-21, "Acceptance Criteria for Evacuation Plans"
- FEMA Guidance Memorandum GM-24, "Radiological Emergency Preparedness for Handicapped Persons"
- FEMA Guidance Memorandum GM EV-2, "Protective Actions for School Children" and subsequent revisions contained in FEMA REP-14

These documents, which have been incorporated into the plans and evaluation bases for all nuclear power plants, address the petitioners concerns regarding protection of the health and safety of children attending day care centers and nursery schools within nuclear power plant EPZs.

Several of the petitioner's requests are more appropriately addressed by state or local government agencies that have regulatory authority over such institutions because the requests are more broadly based than response to radiological emergencies. Hazards and events such as floods, tornadoes, transportation accidents, and other man-made activities might require actions to protect the health and safety of the subjects of petitioner's request, yet they are not the responsibility of the NRC. These are within the jurisdiction of state and local government.

The remainder of this letter responds to the details of Petitioner's request for rulemaking.

Petitioner's Requests should be reviewed by FEMA

The President directed FEMA, in December 1979, to lead state and local emergency planning and preparedness activities with respect to jurisdictions in proximity to nuclear reactors. Within this framework, FEMA entered into a memorandum of understanding with the NRC to provide acceptance criteria for and determinations as to whether state and local emergency plans are adequate and implementable to ensure public health and safety. FEMA has responsibilities under Executive Order 12148 to establish Federal policies and to coordinate civil emergency planning within emergency preparedness programs. FEMA is, therefore, the lead authority concerning the direction, recommendations and determinations with regard to the emergency planning efforts in the public sector including day care centers and nursery schools – the subjects of Petitioner's request for rulemaking. Therefore, no further rule making actions should be taken in this matter without the affirmative assessment of FEMA

NUREG-0654 / FEMA REP-1 Addresses the concerns of Petitioner

NUREG-0654 / FEMA REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," a product of the joint FEMA and NRC Steering Committee, provides acceptance criteria for NRC licensees and state and local government radiological emergency plans. This document addresses notification methods and procedures, protective response, and training requirements for the off-site components from a holistic perspective, children in day care centers and nursery schools being elements of the general public.

Specifically, guidance is provided with regard to notification methods including the need for "instructions with regard to specific protective actions to be taken by occupants of affected

areas" to be "prepared and included as part of the State and local plans" (section E.7). This specifically addresses items 1, 2, 5, 7, 9, and 11 contained within Petitioner's request for rulemaking. Section E. 5 of NUREG-0654 addresses the requirement for state and local governments to establish a system and ensure appropriate notification to the public via the Emergency Broadcast System (EBS) now superceded by the Emergency Alert System (EAS). States have recently revised their notification protocols to reflect the EAS program now in effect. FEMA has the responsibility under existing regulation to review EAS messages to ensure that they adequately address the needs for protective actions for all sectors of the public including day care centers and nursery schools. Additional regulation using the language proposed by the Petitioner would be redundant, duplicative, and unduly burdensome.

Section G.1 of NUREG 0654 addresses public education and information dissemination regarding how they will be notified and what their actions should be in the event of an emergency. Existing requirements include annual dissemination of the pertinent information. The means for such dissemination are not specified, however, the guidelines include suggestions for information dissemination including but not limited to publishing in telephone directories, postings, and publications of information in brochures or calendars. FEMA reviews the adequacy of such information dissemination when it analyzes the Annual Letter of Certification that must be provided by states with nuclear reactors. This specifically addresses concerns contained in items 1, 2, 9, 11, 12, and 13 contained within Petitioner's request for rulemaking. Additional regulation using the language proposed by the Petitioner would be redundant, duplicative, confusing, burdensome and would not provide additional benefit to or protection of public health and safety.

Section J.10.d and g of NUREG 0654 addresses the need for protective response by ensuring that there is a means for "protecting those persons whose mobility may be impaired due to such factors as institutional or other confinement and for establishing means of relocation." These requirements are applicable to day care centers and nursery schools even though the guidance does not mention them explicitly. The application of these requirements to day care centers and nursery schools is consistent with arguments for ensuring protective measures are in place for other school age children. The means by which these are accomplished are via advanced planning, establishment of implementing procedures, coordination and contact with specific facilities and designation of transportation resources as required. Existing guidance documents and requirements address the concerns raised by Petitioner in items 3, 4, 5, 12, and 14. Additional regulation would be duplicative and unnecessary.

Section N of NUREG-0654 addresses exercise and drill requirements. These include the preparation of scenarios that are varied from year to year such that all major elements of the plans and preparedness organizations are tested within a five-year period. The guidance calls for periodic drills and exercises of major portions of emergency response capabilities to develop and maintain key skills. Training is addressed such that each organization shall provide for the initial and annual retraining of personnel with emergency response roles. These would include day care centers and nursery schools provided such were licensed. These existing guidance and requirements address the concerns raised by Petitioner in items 7 and 11. Additional regulation is, therefore, unnecessary. Furthermore, any such regulation might infringe on the authority of states for the licensing and control of day care centers and nursery schools and may not be appropriate where these providers are not subject to state regulation.

FEMA Guidance Memorandum EV-2 Addresses Petitioner's Concerns

FEMA through Guidance Memorandum EV-2, "Protective Actions for School Children" provides additional relevant information and is additionally responsive to the concerns contained in the Petitioner's request for rulemaking. The FEMA guidance is intended for state and local government officials and administrators of public and private schools, including licensed and government supported pre-schools and day care centers. The guidance includes direction for developing emergency response plans and preparedness for protecting the health and safety of students. This material supplements the information, guidance, and requirements contained within NUREG 0654. Included are guidance and additional detail beyond that in NUREG 0654 for planning standards, evaluation criteria, protective response acceptance criteria, and requirements for drills and exercises. EV-2 states that organizations with assigned responsibilities for protecting students are required to demonstrate through exercises their ability to implement emergency procedures contained in their emergency response plans. Specific functions, which should be demonstrated, are described and specific questions that form the evaluation basis are provided. These guidelines are clearly responsive to Petitioner's concerns contained in items 6, 7, and 11.

Potassium Iodide Addressed by Existing NRC Actions

Actions taken by NRC regarding the distribution of potassium iodide as a prophylactic for radioactive iodines are in progress. These actions address the concern raised by Petitioner in item 10.

Other Considerations

Many aspects of the Petitioner's concerns are addressed outside of existing emergency planning criteria. For example, state and local government licensing and inspection of such facilities may include aspects of emergency preparation and response as conditions of licenses. Such requirements would be focused on local needs and capabilities.

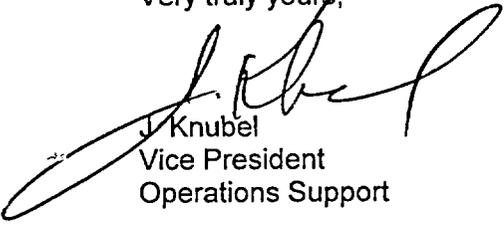
The requirements and use of child safety seats is a matter for state and local control, not that of the NRC. This is especially the case since such devices are used in the normal course of transport, not only in situations involving nuclear reactor emergency response.

Conclusion

Petitioner's request for creation of new rules to establish a standard of adequate protection for day care centers and nursery schools located within the Emergency Planning Zones of nuclear reactors should be denied on the basis of the extent and adequacy of existing state and federal regulations, and existing guidance documentation. The Petitioner has failed to show why existing guidance is not adequate.

There are no new commitments made in this letter. If you have any questions, please contact Ms. Charlene Faison at 914-272-3378.

Very truly yours,



J. Knubel
Vice President
Operations Support

cc: Next page.

cc.

Regional Administrator, Region I
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Mr. P. Milano Senior Project Manager
Project Directorate I-1
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Mail Stop. O-8-C2
Washington, DC 20555-0001

Resident Inspector's Office
Indian Point 3 Nuclear Power Plant
U. S. Nuclear Regulatory Commission
P. O. Box 337
Buchanan, NY 10511

Mr. John L. Minns
Project Manager
License Project Directorate IV-1
Division of Licensing Project Management
U. S. Nuclear Regulatory Commission
Mail Stop 7-D-1
Washington, DC 20555-0001

Senior Resident Inspector
Indian Point 2 Nuclear Power Plant
U. S. Nuclear Regulatory Commission
P. O. Box 38
Buchanan, NY 10511

Mr. Guy Vissing, Project Manager
Project Directorate I
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Mail Stop OWFN 8C2
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Resident Inspector's Office
James A. FitzPatrick Nuclear Power Plant
U. S. Nuclear Regulatory Commission
P. O. Box 136
Lycoming, NY 13093

Mr. Travis Tate, Project Manager
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Mail Stop O-8B-1
Washington, DC 20555-0001

Senior Resident Inspector
U. S. Nuclear Regulatory Commission
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Mail Stop 66
Plymouth, MA 02360

Mr. R. M. Pulsifer, Project Manager
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Mail Stop O-8B-1
Washington, DC 20555-0001

USNRC Resident Inspector
Vermont Yankee Nuclear Power Station
320 Governor Hunt Road
P. O. Box 157
Vernon, VT 05354

Christine Salembier
Commissioner
Department of Public Service
120 State Street
Montpelier, VT 05602