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10/21/03 [Signature]*

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**To:** <nrcprep@nrc.gov>, Dudley/ Richard <RFD@nrc.gov>  
**Date:** Wed, Nov 26, 2003 6:07 PM  
**Subject:** Request for Extension of Public Comment Period

Hello,

With regard to Federal Register Notice, November 26, 2003, (Volume 68, Number 228) pages 66501-66503, Notice of Opportunity for Public Comment, Draft Criteria for Determining Feasibility of Manual Actions To Achieve Post-Fire Safe Shutdown, NIRS submits the following request for an extension by 30 days of the public comment period.

*11/26/03  
68 FR 66501  
①*

Thanks,  
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*F-RFDS = ADM-03  
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November 26, 2003

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**REQUEST FOR A 30-DAY EXTENSION TO PUBLIC COMMENT PERIOD  
REGARDING POST-FIRE OPERATOR MANUAL ACTIONS IN LIEU OF  
NON-COMPLIANCE WITH 10 CFR 50 APPENDIX R SUBPART III.G.2**

To Whom It May Concern:

On behalf of Nuclear Information and Resource Service (NIRS), I am requesting that the Nuclear Regulatory Commission grant an extension to the public comment period as noticed in the Federal Register, November 26, 2003 (Volume 68, Number 228) Page 66501-66503 with regard to "Draft Criteria for Determining Feasibility of Manual Actions To Achieve Post-Fire Safe Shutdown."

NIRS requests that the public comment period be extended for an additional 30 days allowing the public a total of 60 days to comment on the draft interim criteria to be used by the agency for the issuance of Notices Of Enforcement Discretion to nuclear power station operators who are in non-compliance with Code of Federal Regulation Chapter 10 Part 50 (10 CFR 50) Appendix R Subpart III.G.2 governing the protection of instrumentation, power and control electrical cables used for the safe shutdown of nuclear power stations in the event of fire. Subpart III.G.2 is a prescriptive requirement for protecting instrumentation, control and power cable trays and conduits used in systems to shut down the reactor in the event of fire. The regulation requires licensees to protect this shutdown equipment by 1) separation of redundant cable trays by 20 feet with no intervening combustibles; 2) an operable three-hour rated fire barrier and; 3) an operable one-hour rated fire barrier used in conjunction with sprinkler and smoke detector systems.

The agency is unreasonably curtailing the public opportunity for meaningful comment on an issue vital to the protection of health, safety and the environment. First, the announced public comment period extends through two of the public's most celebrated holidays, beginning on the eve of Thanksgiving and ending on the day following Christmas. The

agency's poor choice of timing works against providing affected public communities living near non-compliant nuclear power reactors with sufficient time to adequately review and formulate meaningful comments.

Additionally, it is unreasonable for the NRC to curtail meaningful public comment on the important subject of fire protection of nuclear power station safe shutdown equipment given that the subject of non-compliance with Subpart III.G.2 extends back to June 24, 1992 with the issuance of NRC Bulletin No. 92-01: Failure of Thermo-Lag 330 Fire Barriers To Maintain Cabling in Wide Cable Trays and Small Conduits Free from Fire Damage" when Thermo-Lag 330 fire barrier systems were declared "inoperable" by NRC at 79 nuclear power stations nationwide.

For at least eight years NRC deferred enforcement of Subpart III.G.2 by allowing non-compliant reactor operators to compensate for inoperable Thermo-Lag 330 fire barriers through the use of 24-hour roving fire watches throughout the nuclear power stations. Fire watches, company personnel originally stationed for temporary enhanced vigilance to the risk of a fire during welding operations for example, became an inappropriate long-term substitute in the absence of NRC enforcement action requiring the upgrade or replace of inoperable fire barriers over electrical systems used to shut down the reactor in the event of fire. Many licensees have now substituted unreviewed, unapproved and unvalidated operator manual actions for these same inoperable fire barriers and dropped the fire watches. Now, NRC proposes to expedite a public comment period for further enforcement discretions for these same and other inoperable fire protection systems. NIRS asserts that in this context it is unreasonable for NRC to open a mere 30-day public comment period over the holidays to review the draft criteria for these enforcement discretions.

Subsequent NRC Triennial Fire Inspections at nuclear power stations beginning in 2000 began turning up widespread industry failure to comply with Appendix R III.G.2 stemming largely from the non-compliant operator manual actions used in lieu of upgrading or replacing Thermo-Lag 330 fire barriers [in some cases per NRC Confirmatory Action Orders] and/or failure to meet the 20-foot separation between redundant cable trays with no intervening combustibles. As a consequence, NRC has had knowledge of continued non-compliance through the use of unreviewed and unvalidated operator manual actions for at least three years. NIRS asserts that given the longevity of NRC's knowledge of non-compliant operator manual actions it is unreasonable to expedite the public's opportunity to submit informed and meaningful comments.

It is the further understanding of NIRS that the draft interim criteria in the Federal Register notice which the public is being asked to comment on are to be considered by NRC as the draft language for a subsequent proposed rulemaking which the agency is seeking to expedite through the implementation of a direct final rule. According to statements made by NRC staff from the Policy and Rulemaking program before the NRC Advisory Committee on Reactor Safeguards Subcommittee on Fire Protection, a direct final rule is when "Essentially, you publish a proposed rule and a final rule at the same

time.”<sup>1</sup> If there are no significant adverse comments, then the final rule becomes effective. NIRS asserts that it is unreasonable for the agency to issue this draft criteria for public comment with the expectation that a 30-day period is sufficient to receive meaningful public comment on criteria that will not only be used to issue Notices of Enforcement Discretion for long standing fire protection violations but subsequently be used as the pilot language to codify those same non-compliances as voluntary industry manual actions effectively replacing prescriptive requirements of Subpart III.G.2 for rated and operable fire barriers, sprinkler and smoke detector and adequate separation of redundant cable trays with no intervening combustibles.

Finally, the transcript of the NRC public meeting of November 12, 2003 regarding the draft criteria further demonstrates the unreasonableness of the agency’s efforts to inappropriately expedite the public comment period in a rush to judgment to provide enforcement discretion to violations of prescriptive fire protection regulations. On page 26 of the official transcript of the meeting, Mr. Richard Dudley announced “we’re going to accept written comments up until November 28<sup>th</sup>.”<sup>2</sup> Mr. Dudley’s announcement of the public comment cut off date was questioned by Paul Gunter of NIRS. “When was the original Federal Register Notice?” to which Mr. Dudley replied “The Federal Register Notice is going to go out like tomorrow. It has not been published.”<sup>3</sup> Mr. Gunter responded “I think that this is almost unprecedented in terms of the rush that’s being put on the closing of the comment period and I think that its astonishing that an issue that’s as long-standing and as controversial is being rushed out the door so quickly and we strenuously request that the public comment period be extended to a minimum of 30 days, if not 60 days.”<sup>4</sup> Mr. Dudley conferred with NRC management and announced that the comment period would be extended to 30 days. Mr. Dudley further stated, “We’re not exactly sure, but the date will be roughly 30 days from today’s date.”<sup>5</sup> The transcript shows that Mr. Gunter responded, “Let me be clear. Its 30 days from the appearance in the Federal Register that we are looking at.”<sup>6</sup> Mr. Gunter was simply noting that the public comment period of a notice in the Federal Register is marked from the date of its appearance in the publication. Mr. Dudley responded, “Okay. That will delay it another week and a half or so, but okay.”<sup>7</sup> Given the outstanding period of time with which licensees have been in violation of 10 CFR 50 Appendix R Subpart III.G.2 and the agency’s longstanding knowledge of those violations, NIRS asserts that the agency’s concern about adding “another week and half or so” to the public comment period is evidence of an effort by the regulator to stampede over public due process and unreasonably curtail the public opportunity to meaningful comment on the proposed draft

<sup>1</sup> “Advisory Committee on Reactor Safeguards Fire Protection Subcommittee,” U.S. Nuclear Regulatory Commission, Official Transcript, September 09, 2003, <<http://www.nrc.gov/reading-rm/doc-collections/acrs/tr/subcommittee/2003/fp090903.pdf>> Operator Actions., p. 350, line 18-19.

<sup>2</sup> “Interim Feasibility Criteria for Fire Protection Manual Actions: Public Meeting,” U.S. Nuclear Regulatory Commission, Official Transcript of Proceedings, ADAMS Accession Number ML033240537, November 12, 2003, p. 26, lines 10-11.

<sup>3</sup> Ibid, p.27, lines 13-17.

<sup>4</sup> Ibid, p.28, lines 2-9.

<sup>5</sup> Ibid, p. 132, lines 22-24.

<sup>6</sup> Ibid, p. 133, lines 1-3.

<sup>7</sup> Ibid, p. 133, lines 8-9.

criteria to be used for enforcement discretion of a significant health and safety issue.

NIRS therefore respectfully requests that the agency extend the public comment period by an additional 30 days to a total of 60 days.

Thank you,

Paul Gunter, Director  
Reactor Watchdog Project  
NIRS