

December 15, 2003

Mr. Roy A. Anderson
President & Chief Nuclear Officer
PSEG Nuclear, LLC - X04
Post Office Box 236
Hancocks Bridge, NJ 08038

SUBJECT: SALEM NUCLEAR GENERATING STATION, UNIT NOS. 1 AND 2, CARBON DIOXIDE FIRE SUPPRESSION SYSTEM REQUIREMENTS

Dear Mr. Anderson:

By letter dated June 30, 2003, PSEG Nuclear, LLC (PSEG) requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) approve changes to "licensing basis commitments" relating to the carbon dioxide (CO₂) fire suppression system at the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2. The requested action is related to corrective actions associated with a non-conforming condition identified at Salem in April 2002. At that time, PSEG had discovered that the CO₂ fire suppression system was not able to maintain the required concentration of CO₂, as required by Salem's licensing basis, in the 4160-Volt and 460-Volt Switchgear Rooms, and the Lower Electrical Penetration Areas.

In the June 30, 2003, letter, PSEG stated that the CO₂ fire suppression system is operable, though non-conforming, and is capable of maintaining a sufficient concentration of CO₂ to suppress fires in the affected areas, allowing for sufficient time for the on-site fire department to respond and take appropriate actions. Thus, PSEG concluded that the proposed changes to the Salem licensing basis do not affect the licensee's ability to safely shutdown and maintain shutdown conditions of either unit in the event of a fire in these areas.

We further understand that PSEG requested the NRC staff's prior approval based on its interpretation of National Fire Protection Association (NFPA) Code, NFPA No. 12, "Carbon Dioxide Extinguishing Systems," 1968 Edition. NFPA No. 12 allows the "authority having jurisdiction" (AHJ) to determine the acceptability of CO₂ fire suppression installations based on NFPA or other appropriate standards. For commercial nuclear power plants, the NRC is the appropriate AHJ.

Although we agree that NFPA No. 12 requires PSEG to obtain NRC prior approval in this specific case, we do not agree that a "commitment change" is the appropriate regulatory process to seek the NRC staff's approval. Because PSEG is changing its licensing basis relative to Salem's approved fire protection plan (AFPP), the NRC staff has concluded that the proposed licensing basis change, as described in the June 30, 2003, letter, should be submitted as a license amendment under Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.90.

The issue of how the *Perry* decision¹ has been applied by the NRC staff, and whether or not license amendments are required for certain NRC staff approvals, has been a frequent topic of discussion between the NRC and the industry. On January 23, 2003, the NRC provided clarification on this topic in a letter to the Nuclear Energy Institute. The letter stated that:

A license amendment issued on a plant-specific basis is necessary where there is a change in the activity previously authorized or where staff judgment and discretion must be applied to determine whether the underlying requirements would be met, in the absence of objective, prescribed criteria for fulfilling those requirements.

Therefore, based on the guidance provided by the January 23, 2003, letter, the NRC staff has determined that PSEG would need to obtain prior approval under the license amendment process. This conclusion is based on:

- the need for the NRC staff to apply judgement in its decision,
- the need for both public awareness and involvement in the NRC's review of changes to the licensing basis, and
- the need to assure enforceability of the resultant staff action.

The NRC staff recognizes that the standard fire protection license condition, provided by Generic Letter 86-10 and adopted by most licensees, does not specify the process for obtaining Commission approval, when necessary. Generally, licensing basis changes associated with an AFPP that require prior NRC approval will need to be submitted as license amendments. The amendments should take the form of a change to the standard fire protection license condition by documenting the date of the staff's safety evaluation (SE) (for example):

PSEG Nuclear LLC shall implement and maintain in effect all provisions of the approved fire protection program as described in the Updated Final Safety Analysis Report, and as approved in the NRC Safety Evaluation Report dated November 20, 1979, and in its supplements, [and Safety Evaluation dated (insert date of SE),] subject to the following provision:

This process will allow appropriate public awareness and involvement, as well as provide documentation of the NRC staff's review of the licensing basis change.

¹ In the matter of Cleveland Electric Illuminating Company, et. al. (Perry Nuclear Power Plant, Unit 1) 44 NRC 315 (December 6, 1996). This decision concerned an approval, as required by 10 CFR Part 50, Appendix H, of a change in a capsule withdrawal surveillance schedule (consistent with the applicable American Society of Testing and Materials standard), and whether this approval (not involving the TS or license condition) was a license amendment.

R. Anderson

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If you have any additional questions relating this issue, please contact me at (301) 415-1324.

Sincerely,

/RA/

Robert J. Fretz, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-272 and 50-311

cc: See next page

R. Anderson

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