

GREENPEACE



**Union of
Concerned
Scientists**

Citizens and Scientists for Environmental Solutions

May 24, 2004

William D. Travers, Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

To: Dyer NRR
Ref. G20040350

cys: EDO
DEDMRS
DEDH
DEDM
AO
DEDR

OBC
Skay, NRR
Goldberg,
OGC

**SUBJECT: SUPPLEMENT TO MAY 14, 2004, PETITION PURSUANT TO 10 CFR 2.206 –
“COMMITMENT” TO SAFETY**

Dear Dr. Travers:

By letter dated May 14, 2004, Greenpeace, the Nuclear Information and Resource Service, and the Union of Concerned Scientists petitioned the NRC to issue orders for all commitments made by operating reactor licensees since January 1, 2000. Since we submitted the petition, we have been reminded about SECY-97-036 dated February 12, 1997. Scanned excerpts from that SECY paper are provided herein. Two parts of the SECY are of particular relevance to our petition:

1. As we noted in our petition, this SECY stated that 10 CFR 50.9 required licensees to submit complete and accurate information. This reinforces our position that failure to abide by a commitment expressed in writing to the NRC on the docket is, at minimum, a violation of 10 CFR 50.9.
2. The SECY stated that the NRC “staff should not normally rely upon such commitments for granting staff approvals.” We documented in our petition plenty of approved Notices of Enforcement Discretion (NOEDs) normally granted by the NRC staff based in large part on compensatory measures committed to by the licensees.

If the NRC staff truly believes that commitments are not enforceable, we fail to see why the staff routinely grants NOEDs for conditions that violate the approved Technical Specifications based on their reliance of “unenforceable” commitments for compensatory measures. Hence, the actions requested in our petition are necessary to correct this poor staff practice.

Sincerely,

David Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006
(202) 223-6133, x113

Washington Office: 1707 H Street NW Suite 600 • Washington DC 20006-3919 • 202-223-6133 • FAX: 202-223-6162
Cambridge Headquarters: Two Brattle Square • Cambridge MA 02238-9105 • 617-547-5552 • FAX: 617-864-9405
California Office: 2397 Shattuck Avenue Suite 203 • Berkeley CA 94704-1567 • 510-843-1872 • FAX: 510-843-3785

Template: EDO-001

ERIAS: EDO-01

February 12, 1997SECY-97-036

FOR: The Commissioners

FROM: Hugh L. Thompson, Jr.
Acting Executive Director for Operations

SUBJECT: MILLSTONE LESSONS LEARNED REPORT. PART 2: POLICY ISSUES

D. Commitments in SERs, Event Reports, and Responses to Generic Communications

① → The Millstone lessons learned task group noted from its evaluation of various staff reviews that the reviews had found that in some cases licensees have not fulfilled commitments recorded in documents other than the license, technical specifications, and FSAR, such as staff SERs, licensee event reports, responses to generic communications, and other communications with the agency. (Responses to notices of violations are discussed separately in Section III.E, below.) Such commitments are not binding on licensees, although the agency may issue an order to enforce implementation of a commitment. The agency has no requirements that govern commitments found outside of the operating license or FSAR, other than Section 50.9, which requires the information to be complete and accurate at the time it is given to the NRC. Therefore, the agency may be unaware of the status of some commitments because the NRC does not consistently follow up on or inspect commitments associated with plant-specific licensing actions and because licensees do not consistently inform the NRC of changes to existing commitments. Further, the large amount of paperwork associated with determining the history of specific commitments compounds the NRC's difficulty in verifying commitments. Currently, commitments are defined only in an industry guideline that the agency endorsed in January 1996,²⁸ and the agency is still in the process of evaluating the effectiveness of the guideline.

② → Previous guidance²⁹ to the staff noted that commitments made by the licensee, either in writing or orally, are not legally binding on the licensee and the staff should not normally rely upon such commitments for granting staff approvals. Further, commitments that the staff determined are necessary elements for supporting its approval of a licensing action should be documented by the licensee and clearly spelled out in the staff's safety evaluation report and ultimately reflected in the plant's FSAR. The guidance also indicated that, if the commitment was of such importance that it should not be changed without NRC approval, it should be incorporated into the technical specifications or made a condition of the license. At issue at Maine Yankee was the licensee not fulfilling certain conditions that the staff relied upon in approving the use of a computer code and spelled out only in the staff's safety evaluation report.

The previous guidance to the staff reminded reviewers not to rely on such commitments in approving licensing actions. Licensee commitments that were fundamental to the staff's decisions should be in documents appropriate to their importance. Commitments that should not be changed without prior NRC approval had to be in the license or technical specifications, and commitments that licensees should review before changing had to be in the FSAR. However, the agency did not perpetuate the guidance when the set of documents containing the guidance was revised and reissued in 1989, and the agency has not implemented Section 50.71(e) to add such commitments to FSARs.

As part of its response to the issues raised at Maine Yankee, the staff is currently developing new processes and guidance to explicitly identify, track, enforce, and verify implementation of commitments associated with licensing actions. The staff is pursuing an

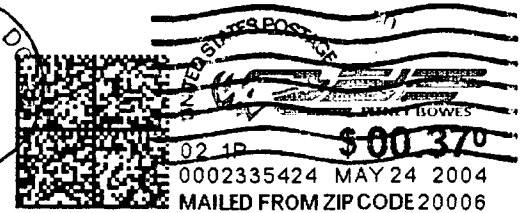
²⁸See footnote 5 on page 7.

²⁹NRR Office Letter No. 34, "Utility Commitments," from Harold R. Denton, Director of NRR, to all NRR employees, July 31, 1981; Revision 1, May 20, 1985.



Union of Concerned Scientists

1707 H Street NW · Suite 600 · Washington, DC 20006-3919



William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

20555/0001 