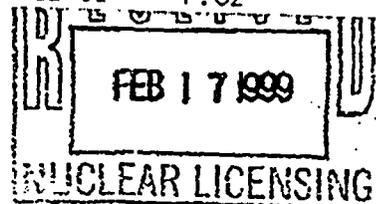




UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

FEB 05 1999



OFFICE OF THE
GENERAL COUNSEL

Mr. A. Edward Scherer
Manager of Nuclear Regulatory Affairs
Southern California Edison
P.O. Box 128
San Clemente, CA 20555-0001

RECEIVED

FEB 09 1999

A.E. SCHERER

Dear Mr. Scherer:

This is in response to your letter, dated October 6, 1998, requesting an opinion on the scope of 10 C.F.R. § 50.54(x). In the enclosure to your letter, you posit the following:

When an emergency exists at one unit of a multi-unit site, a licensee may use 10 C.F.R. § 50.54(x) to take reasonable action (either ad hoc or pre-planned) that departs from the license conditions, technical specifications, or regulations applicable to any unit at the site, when such action is immediately needed to protect the public health and safety and no action consistent with the license conditions, technical specifications, and regulations that can provide adequate or equivalent protection is immediately apparent. This action specifically includes taking a unit that is currently operating within its design and licensing basis to a condition that is beyond its design and licensing basis, when such action is immediately needed to protect the public health and safety and no action consistent with the license conditions, technical specifications, and regulations that can provide adequate or equivalent protection is immediately apparent.

Enclosure at 8. Although the enclosure to your letter describes a specific factual situation regarding which we express no view,¹ for the reasons discussed below, we believe that as a general matter, the type of situation you appear to envision is not prohibited by 10 C.F.R. § 50.54(x).

We would note that although the Commission's regulations, for example, 10 C.F.R. § 50.3, authorize the General Counsel to issue formal, written interpretations which are recognized as binding on the Commission, this authority is exercised sparingly and only in instances involving major policy or legal questions. Following issuance, these interpretations are codified in 10 C.F.R. Part 8; to date, only four such written interpretations have been issued. The views in this letter do not constitute a formal interpretation.

As indicated in your letter, 10 C.F.R. § 50.54(x) provides:

A licensee may take reasonable action that departs from a license condition or a

¹ The specific factual situation described in your letter and the enclosure to it is subject to separate consideration by the NRC staff.

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technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

Although not explicitly stated in the regulation itself, it is, nonetheless, clear that the Commission intended that the foregoing also embrace possible departures from its regulations in emergency situations, and that it not be limited to license conditions and technical specifications. See *Applicability of License; Conditions and Technical Specifications in an Emergency*, 48 Fed. Reg. 13966, 13969 (Apr. 1, 1983).

Neither the regulation nor the accompanying Statement of Considerations referred to above, however, address the circumstance raised in your letter and its enclosure, namely, the possibility of taking a unit at a multi-unit site that is currently operating within its design and licensing basis to a condition that is beyond its design and licensing basis in order to protect another unit, when such action is immediately needed to protect the public health and safety and no action consistent with the license conditions, technical specifications, and regulations that can provide adequate or equivalent protection is immediately apparent. On the other hand, the Commission was emphatic that the "whole purpose of the proposed amendments [to add section 50.54(x) was] to provide flexibility in situations that [could not] be anticipated." 48 Fed. Reg. at 13968. The Commission went on to specifically observe that "any attempt to define in more detail the precise circumstances under which a deviation would be permissible is bound to exclude a circumstance where deviation might be entirely appropriate." *Id.* Thus, as a broad proposition, we believe that although 10 C.F.R. § 50.54(x) does not expressly provide for the type of action you suggest, such action is not prohibited in appropriate circumstances.

This regulation was promulgated in its broadly worded form to acknowledge both the inability to define in advance all emergency circumstances under which departure from requirements imposed by Commission regulations or by the terms of a specific license or its associated technical specifications might be in the best interest of assuring public health and safety, and to prescribe the types of specific actions that should be taken. Notwithstanding that this regulation thus anticipated that these matters would likely be decided at the time of need, prudent regulatory action by both the NRC and licensees has encouraged the development of pre-planned measures to the extent that situations can be predicted in accident procedures and guidelines. The staff has, nonetheless, noted its expectation that, as a general matter, while actions may have been pre-planned, their implementation in the immediate aftermath of a specific accident would likely involve the invocation of 10 C.F.R. § 50.54(x). See Letter from Gary M. Holahan, Director, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation, NRC, to David Modeen, Nuclear Energy Institute, January 28, 1998. We also note that to the extent that such pre-planned measures may involve current changes to a facility or procedures described in the Final Safety Analysis Report for a given facility, as updated, it is incumbent on a licensee to follow the provisions of 10 C.F.R. § 50.59.

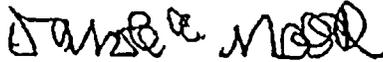
Based on the foregoing, we are of the view that the type of actions suggested by your letter and its enclosure, as described above, are not, as a general matter, prohibited, in appropriate

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circumstances, by 10 C.F.R. § 50.54(x). We trust that this letter resolves your question.

Sincerely,



Janice E. Moore
Deputy Assistant General Counsel
for Advanced Reactors, License Renewal
and Special Proceedings

cc: Samuel J. Collins, Director, Office Nuclear
Reactor Regulation
Ellis W. Merschoff, Regional Administrator, Region IV
James Lieberman, Director, Office of
Enforcement