



NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel
SENIOR VICE PRESIDENT,
BUSINESS OPERATIONS

August 18, 2003

The Honorable Nils J. Diaz
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Diaz:

We have reviewed SECY-03-100, *Rulemaking Plan on Post-Fire Operator Manual Actions*, and believe it establishes an appropriate focus on the safety of these actions based on their demonstrated feasibility. However, this safety focus is not reflected in the language of Appendix R Section III.G.2 that, according to NRC staff, requires NRC approval of these actions through exemptions to the regulation. This gap between what is appropriate and what is required has been, and will continue to be, reflected in unnecessary inspection findings. We offer the following for consideration by the Commission:

1. Approve a direct final rule as a method for closing this gap as quickly as possible, since otherwise a final rule would not reach the Commission for more than two years.
2. Establish a moratorium on the inspection of manual actions compliance until the rulemaking is complete, similar to the moratorium established on the inspection of associated circuit issues while the resolution of that issue was in progress.

In addition to amplifying our basis for these recommendations, we enclose additional comments supporting the safety focus of SECY 03-100 and clarifying certain statements about the current state of compliance with the regulations.

Current Practice

The staff view that approval of operator manual actions is required is not consistent with prior plant practices and NRC inspection findings. As we indicated during a meeting on June 20, 2002, licensees understood the applicable regulatory guidance



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to allow this practice, and many cases of staff acceptance during inspections reinforced this understanding. At this meeting members of the NRC staff agreed that safety (feasibility) should be the focus rather than prior NRC approval.

Safety Focus for Manual Actions Rulemaking

The safety focus of SECY-03-100 can be summarized in this statement from page 5:

"The staff has concluded that amending Appendix R and associated guidance to allow the use of feasible operator manual actions is a safe and acceptable method for protecting safe shutdown capability from a fire (in lieu of fire barrier separation)."

We concur with the staff that demonstrated feasible manual actions provide a safe method for protecting safe shutdown capability. The current fire protection inspection procedure (71111.05) includes criteria for evaluating feasibility. However, because the regulation itself has not yet been revised, the procedure also directs that inspection reports identify these issues as Green findings even if the manual actions meet the criteria in the inspection procedure. This places both the licensees and the inspectors in the awkward position of identifying perfectly acceptable manual actions as a problem area simply because the regulation has not been revised to reflect the focus on safety, and creates a situation where public confidence can be eroded if there are widespread inspection findings with no underlying safety issues. It is essential that this gap be closed to rectify the situation as soon as possible. The normal rulemaking process will not do so quickly enough. We therefore recommend that the Commission approve a direct final rule as the most appropriate method for achieving this goal.

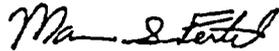
We also recommend a moratorium on inspections of manual actions until the rule is approved. In lieu of the staff's recommendation for an interim enforcement policy, we believe that the cleanest way to eliminate the gap between the safety focus and the regulation is to postpone inspections of manual actions while the rulemaking is in progress. During this moratorium the staff could gather information on licensee use of manual actions through a series of audits; this information could support the development of a regulatory guide. If the audits indicated significant safety issues the inspections could be resumed. If inspections prove necessary, then we would agree with the staff recommendation for enforcement discretion.

We believe that implementing these recommendations will eliminate the need for numerous exemption requests, help to maintain public confidence in the fire protection inspection process, and minimize expenditures of staff and licensee resources in resolving unnecessary inspection issues.

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We appreciate the Commission's consideration of our comments on SECY-03-100. Please call Chuck Dugger or Alex Marion with any questions about these recommendations, or contact Fred Emerson with questions about the comments in the enclosure.

Sincerely,



Marvin S. Fertel

Enclosure

c: The Honorable Edward McGaffigan, Jr., Commissioner, NRC
The Honorable Jeffrey S. Merrifield, Commissioner, NRC
Dr. William D. Travers, Executive Director for Operations, NRC
Samuel J. Collins, Deputy Executive Director for Reactor Programs, NRC
James E. Dyer, Director of the Office of Nuclear Reactor Regulation, NRC

Enclosure

Comments on SECY 03-100

These comments are intended to (1) support the current staff view regarding the safety of feasible manual actions, and (2) provide the industry perspectives regarding compliance and prior NRC acceptance.

1. SECY 03-100, page 2: "During recent inspections of licensee fire protection programs, concerns have arisen about licensee compliance with fire protection of redundant safe shutdown systems that are located in the same fire areas.....The staff is concerned that many of these licensees have implemented operator manual actions without NRC approval of an exemption to Appendix R for pre-1979 plants) or a deviation to their fire protection program commitments (post-1979 plants)."

Comment: As we noted in our letter of January 11, 2002, licensees have understood for many years the regulations and applicable regulatory guidance to allow the use of manual actions for this purpose. NRC has inspected, and accepted through inspection, licensee use of manual actions for redundant shutdown for many years, and it is only recently that this concern has arisen.

2. SECY 03-100, page 2: "It is the staff's understanding that most of the unapproved operator manual actions came about during the resolution of the Thermo-Lag fire barrier issue in the mid-1990s."

Comment: In many cases plants implemented manual actions for redundant safe shutdown in the mid-1980's, well before Thermo-Lag became an issue.

3. SECY 03-100, page 3: "The staff sought advice from the Office of General Counsel (OGC) as to whether Appendix R, Section III.G.2, permits licensees to rely on operator manual actions in lieu of fire barriers."

Comment: Based on previous NRC interpretations, and longstanding inspection practice, industry believes that manual operator actions are also acceptable and permitted under III.G.1.a. In those cases where an operator action satisfies III.G.1.a, no additional fire protection features (specified under III.G.2) would be required. We agree that licensees must be able to demonstrate that manual actions are feasible.

4. SECY 03-100, page 3: "Regardless of whether or not operator manual actions can be implemented by the licensee without NRC approval, the staff is more concerned about the technical feasibility of such actions."

Comment: Members of the NRC staff first espoused this view after a meeting with industry on June 20, 2002. At this meeting industry presented the regulatory basis for licensee use of manual actions for redundant shutdown, the extent to which these manual actions were used throughout the industry, and many examples of NRC acceptance during inspections prior to the first indications of NRC concern. Industry concurs with the staff focus on safety and feasibility rather than prior approval.

5. SECY 03-100, page 5: "Specifically, the staff recommends that Appendix R fire protection regulations and associated guidance be revised to permit the use of operator manual actions that meet certain acceptance criteria. The manual action acceptance criteria would be included in the rule language, with detailed guidance in a regulatory guide."

Comment: Industry supports the rulemaking recommendation, and further recommends that it be implemented as a direct final rule. Industry intends to propose guidance for determining feasibility that could be reflected in the accompanying regulatory guide.

6. SECY 03-100, page 6: "...licensees using unapproved manual operator actions would be in non-compliance until the...regulations and guidance are formally revised."

Comment: Licensees using these actions were deemed by inspectors to be in compliance until relatively recently.

7. SECY 03-100, page 6: The staff recently issued a fire protection inspection procedure 71111.05, dated March 6, 2003, to provide guidance for inspectors to consistently document inspection findings."

Comment: This inspection procedure guides inspectors to give the licensees Green findings even if the manual actions are deemed feasible. This is not consistent with a safety focus. This policy may result in Green findings at the many plants where feasible manual actions are used for redundant safe shutdown. This can create an erroneous public perception that there is a widespread safety issue with the use of manual actions, which is not the case. We recommend a moratorium on inspections until the rulemaking is complete.

8. SECY 03-100, Attached Rulemaking Plan, page 3: "The staff has concluded that pre-1979 licensees using unapproved operator manual actions must comply with the regulations either by physically modifying one redundant shutdown train to meet the prescribed fire barrier separation conditions or, if they wish to continue using operator manual actions, they must submit exemption requests for NRC review and approval."

Comment: Since the staff now agrees that feasible manual operator actions provide an acceptable degree of safety, it is most desirable to accept their use in a rule to eliminate the need for unnecessary modifications or exemption requests. We believe the recommendations in the cover letter offer the best way to achieve the staff and industry goals.

9. SECY 03-100, Attached Rulemaking Plan, page 8: "Acceptance criteria would be developed and codified on the use of operator manual actions as a means of protecting the safe shutdown train's functionality during fire in an area where redundant shutdown trains are located."

Comment: Neither the SECY document nor IP 71111.05 define the scope of operator manual actions addressed by the rulemaking. The scope of manual actions should be limited to manual control, local control, or manual operation of equipment to

achieve and maintain safe shutdown following a serious fire. Actions performed in the control room or at an auxiliary shutdown facility outside the control room are considered normal operator actions, not operator manual actions. Other actions not required to achieve safe shutdown may be identified for property loss control or personnel safety; these should not be considered in the scope of operator manual actions covered by this rulemaking.