

MEMORANDUM

TO: R. P. Savio
FROM: J. N. Sorensen
DATE: November 30, 1998
SUBJECT: Commission Meeting with Stakeholders

Attached for your information are the participants list and copies of the viewgraphs and opening statements used by some of the participants in the Commission's meeting with stakeholders on November 13, 1998. Copies have been distributed to ACRS/ACNW committee members and technical staff.

Sorensen

Title: Meeting on NRC Response to Stakeholders' Concerns

Scheduled: 9:00 am. - Friday, November 13, 1998 (PUBLIC)

Duration: Approx. 3 hours (with reserved time from 1:30-3:00, if needed)

Participants: Panel

- Mr. Erle Nye, Chairman and Chief Executive
Texas Utilities Company
- Mr. Joe F. Colvin, President and Chief Executive Officer
Nuclear Energy Institute
- Mr. Corbin A. McNeill, Jr.
Chairman, President and CEO
PECO Energy Company
- Dr. James T. Rhodes, Chairman and CEO
Institute Nuclear Power Operators
- Mr. Harold B. Ray, Executive Vice President
Southern California Edison Company
- Dr. Forrest J. Remick
- Mr. David Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
- Dr. William D. Travers, EDO
- Mr. Sam Collins, Director, NRR
- Mr. James P. Riccio
Public Citizen's Critical Mass Energy Project
- Dr. Jill Lipoti, Assistant Director
Radiation Protection Office
Environmental Safety, Health, & Analytical Programs Division
State of New Jersey

NRC Stakeholder Meeting

Joe Colvin
NEI President & CEO

November 13, 1998

NEI

N E I
N U C L E A R E N E R G Y I N S T I T U T E

The Regulatory Objective

To achieve a safety-focused, results-oriented and accountable Nuclear Regulatory Commission whose regulations objectively define adequate protection of public health and safety and are administered effectively and efficiently for the benefit of its licensees and the public.

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Regulatory Attributes

- Safety-based regulatory processes focused on adequate protection of public health and safety
- Objective, clear, regulatory thresholds
- Accountable, responsible, and results-oriented regulator

3



Near Term Priorities

- New Regulatory Oversight Process
 - Assessment -- clear safety basis
 - Inspection levels based on performance
 - Enforcement -- safety-significant violations
- License Administration
 - Renewal
 - Transfer

4



Near Term Priorities (continued)

- Risk-informed/performance-based regulation
 - Risk-informed ISI, IST, T/S AOTs
 - Maintenance Rule (ITS, risk-significant)
 - Whole plant study
 - Foundation for risk-informed Part 50

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Near Term Priorities (continued)

- 50.59
 - Need for closure on threshold criteria
 - Address scope in 1999
- 50.54 (a) rulemakings
- Application of the Backfit Rule
- Used fuel storage
 - Dry cask
 - Part 63

6



Intermediate Priorities (2000-2002)

- Risk-informed regulation
 - T/S continued progress
 - Transition to selected Part 50 regulations
- Design basis reform
- NRC staff size and cost containment
 - Task analysis of NRC work processes
- Safeguards reform



Long Term Priorities (2003-2004)

- COL issues
- Redefined advanced reactor licensing
- Risk-informed Part 50 (Holistic)
- Risk-informed balance of 10 CFR



**NRC Stakeholder Meeting
November 13, 1998**

Comments by

**James T. Rhodes
Chairman and Chief Executive Officer
Institute of Nuclear Power Operations**

First, let me say that I appreciate the opportunity to represent the Institute of Nuclear Power Operations at this meeting. We continue to be encouraged by the openness being displayed by the NRC in communicating with stakeholders. This process, an open exchange of information and ideas, can help ensure the safe and reliable operation of our nation's nuclear power plants.

Let me also add that we are very pleased to see the Commission at full strength again. This will help the Commission more efficiently carry out its work in the changing industry environment.

As you're aware, we at INPO have underway a series of initiatives geared towards improving how we meet our mission of promoting the highest levels of safety and reliability in the operation of nuclear electric power plants. Therefore, we can certainly understand the challenges the NRC faces as you strive to effectively meet your regulatory responsibilities and at the same time make needed changes in the way you carry out those responsibilities.

At INPO, we've seen many utilities challenged with managing change. Some have had success, others have struggled. Based on our observations and experience, and certainly on my previous experience at Virginia Power, it is clear that change requires clarity of purpose, constant communication, training, and most of all, persistence and hard work.

First, a clarity of purpose. A clearly defined, simple goal is necessary. With clarity and simplicity, change leaders throughout the organization can help ensure that strong support exists at all levels.

Second, constant communication is crucial for success. Communication must be two-way, involving both sending information and receiving feedback. External communications with stakeholders, through processes such as today's meeting, are to be applauded and need to continue. Being flexible enough to incorporate relevant feedback from stakeholders throughout the change process will be important to your success.

Internal communications are just as important. First, the intentions of the Commissioners and the senior staff should be repeatedly communicated throughout all levels of your organization. But then – just as importantly – employees must be engaged in dialog to assure that the messages are being received and understood.

Third, preparing and training your employees for change, and helping them succeed, is another fundamental ingredient. Our experience shows that organizations often

underestimate the effort required to engage and train the workforce on significant changes. We encourage you to look hard at the ability of your workforce to digest the changes being made. Also, as your organization changes, particularly in light of new assignments, additional skills training may be needed. Further, it is important that the NRC's award and recognition system support the successful implementation of the change process.

Finally, persistence and hard work. As you've said, what you're undertaking includes a change in culture. Cultural change takes time, tremendous energy, and most of all, significantly more persistence and hard work than often expected. However, we're encouraged by what we see happening thus far.

But Chairman Jackson, to use one of your quotes, "Performance is what performance does." We've seen many organizations with great intentions have their change programs fall short because of poor implementation. Given the far-reaching effects of the changes you are initiating, persistent and consistent execution of your change process is crucial to success. This – as I said and as you well know - will take an immense amount of hard work.

In the meantime, we encourage you to continue improving your responsiveness to industry needs, such as timely license amendments, transfers and renewals; and reducing administrative burdens, such as minor level IV violations. Additionally, while

maintaining appropriate data propriety, increased information sharing may also be appropriate to reduce duplication and administrative burdens.

In conclusion, we believe that the industry – and indeed the public – wants and needs a more predictable, objective, and responsive nuclear regulator. We are encouraged by what you are attempting to do in this regard, that is, becoming a more risk-informed, performance-based regulator with your inspection, enforcement, and assessment processes focusing on items directly related to your mission – the protection of public health and safety. We at INPO will continue to work in cooperation with you to help ensure the safe operation of our nation's nuclear power plants.

Thank you very much.

Opening Statement

During the July 17th stakeholder meeting, I stated that the NRC does not conform to the same high standards that it requires of its licensees. The staff's October 30, 1998 response to the tasking memorandum is further evidence to me that my position is correct.

During my 14 years as a consultant, I had several assignments at both top performing nuclear plants and problem plants. I observed that one of the few consistent indicators of management effectiveness is in the response to an announcement of an upcoming NRC inspection. At the good plants, management develops a presentation to do some bragging. They have all kinds of charts and tables and examples to explain to the NRC the positive results they are obtaining from strong, effective programs. At the bad plants, management panics. They rush to develop action plans to address all of the problems that they have been ignoring. They hope to convince the NRC that they are aware of the problems and have a blueprint for fixing them.

The NRC's response to the Senate's marching orders, or more specifically its preparations for the next oversight hearing, reminds me more of the reaction of a bad plant than a good plant. The true purpose seems to be to convince the Senate to leave the NRC alone, just as the bad plant's management only wants to trick your inspectors into giving them some more time. The NRC's plan is comprehensive and will probably satisfy the Senate. But, the NRC does not have mechanisms to ensure that processes described in the plan are consistently implemented. Nor does the NRC have mechanisms to evaluate revised processes to gauge whether they fulfilled the goals. Without such mechanisms, the best plan in the world is unlikely to produce a successful outcome. And as the written comments that accompany these remarks suggest, the NRC currently does not have the best plan in the world.

The NRC demands that reactor licensees have aggressive self-assessment programs complemented by effective corrective action programs. The staff's October 30, 1998 response to the tasking memorandum covers the majority of the key elements of the NRC's reactor oversight program. Its large scope and the high level of effort required to address its many items suggests either that the NRC was not aware of all these problems until the Senate, the GAO, and other external entities called attention to them, or that the NRC knew about these problems but was unable to correct them in a timely manner. The staff's response to the tasking memorandum is essentially identical to the restart plans developed by reactor licensees. The glaring exception is that reactor licensees are required to prove to the NRC that they have fixed their self-assessment and corrective action programs. The staff is not proposing to do so. We think that the NRC's initiatives will not be successful until they are complemented by substantial improvements to the staff's self-assessment and corrective action programs.

Comments on the NRC Staff's 10/30/98 Response to the Tasking Memorandum

Elements Missing from the NRC's Plan

- The NRC's interactions with the public need substantial improvements. Progress has been made, but there is still a long way to go. This area warrants NRC attention comparable to that afforded the issues contained within the tasking memorandum.
- The NRC's allegation process is *still* inadequate. Allegations are not handled in a timely manner. Allegations are often closed without the issue being addressed. For this reason, when workers ask me for advice, I do not encourage them to use the NRC's allegation process. Instead, I recommend that they get their concerns to their Congressmen or the media. The NRC must fully fix its allegation program.
- The NRC's process for handling differing professional views/opinions is suspect. In the past six months, UCS has received information from NRC employees relating to four separate safety issues. While UCS will continue to help anyone with a nuclear safety concern when we can, the NRC must examine its DPV/DPO program.
- The NRC is failing to protect nuclear workers who raise safety issues. The NRC has the regulatory tools to do so – it apparently lacks the will to do so. The NRC's "neglect" of licensee's abuse of nuclear workers raising safety concerns must stop. The NRC must include 50.7 considerations during its changes to the inspection, enforcement, and assessment programs.

UCS is concerned about the case of Mr. Neil Aiken at the Diablo Canyon plant. We have reason to believe his safety concerns have not been properly handled by the licensee or by the NRC and that he is suffering retaliation for having voiced his concerns. We are evaluating various options for assisting Mr. Aiken.

- The majority of nuclear power plants continue to operate in this country despite their not being in compliance with federal safety regulations implemented following the Browns Ferry fire in March 1975. The NRC staff's "promises" of a rulemaking fix to the fire protection problems are too old and too voluminous to be believed any more. Specifically, extended reliance on fire watches must be ended sooner rather than later and the fire barrier penetration seal issue must be resolved or the offending plants shut down.
- The NRC has problems with inconsistent implementation of processes. The NRC's initiatives do not contain provisions to monitor consistency of process implementation. The NRC has recent positive experience with such provisions. The Agency Allegation Advisor serves to promote consistency among regions and NRR on implementation of the allegation process. The review board established for the Maintenance Rule inspections served to promote consistency in classifying findings and subsequent enforcement actions. These or comparable features should be explicitly detailed in each of the staff's initiatives.

Comments on the NRC Staff's 10/30/98 Response to the Tasking Memorandum

Plant-Specific Licensing Reviews

- Licensees have unlimited time to prepare a license amendment request. The NRC staff has unlimited time – albeit with some defined goals – to review and approve license amendment requests. The public, on the other hand, has but 30 days – *sometimes* 60 days – to review a license amendment request and submit the technical basis for intervention. This one-sided time constraint is blatantly unfair. In addition, the public's clock runs out 30 or 60 days after the *Federal Register* notice is published and is not reset when the NRC staff issues requests for additional information that can, and often will, prompt the licensee to submit substantial changes to the original license amendment request. The NRC must provide the public equal opportunities, not just cameo appearances, in all licensing actions.

Risk-Informed Regulation

- I attended the 07/22/98 NRC workshop on risk-informed regulation and submitted a letter dated 07/23/98 to Mr. Gary Holahan expressing concerns with the NRC's plans. Mr. Holahan called me shortly thereafter indicating a desire to arrange a meeting to explore my concerns. There have been no further contacts. Rather than waiting by the phone or the mailbox, UCS is preparing a series of reports detailing the very real hazards with risk-informed regulation.

Enforcement Program Initiatives

- The NRC's current enforcement policy allows a proposed civil penalty to be set aside if the licensee has not had a civil penalty within the prior two years. How then does a wayward licensee get the first civil penalty?
- Regulations provide for a civil penalty of up to \$110,000 per violation per day. Yet, violations are all-too-often grouped together to provide licensees with a volume discount. In addition, the per day component is very, very, very seldom invoked even when the NRC knows that violations existed for weeks, months, years, and sometimes decades. The NRC staff should explain why it seldom applies the per day component to civil penalty assessments.

License Renewal

- Prior changes to the NRC's license renewal rule and regulatory policies have virtually guaranteed that all applications will be approved. These changes totally eliminated meaningful public involvement in the process and have narrowed the scope of the staff's review to render it useless.

The NRC should do the following for all license renewal applications:

1. Compare the plant's licensing bases to current safety regulations and justify all shortfalls.
2. Permit the public to have meaningful – not token – involvement in the process.

Comments on the NRC Staff's 10/30/98 Response to the Tasking Memorandum

Improved Standard Technical Specifications

- Many plants have already adopted the Improved Standard Technical Specifications, which reduced the number of Limiting Conditions of Operations by $\approx 40\%$. It would seem logical that these plants would therefore submit $\approx 40\%$ fewer license amendment requests, all other things being equal. Yet, the volume of license amendment requests, and resulting burden on the NRC staff, seems to have remained the same, if not slightly higher than before. The NRC staff should determine why the change to Improved Standard Technical Specifications has not reduced their burden in handling license amendment requests.

Generic Communications

- The NRC has two routes for addressing generic safety problems. One route is a wide, paved superhighway that the NRC uses in response to actual industry events (e.g., the Dresden 1 service water pipe rupture and the Surry erosion/corrosion fatality event). The NRC reviews the event and issues appropriate generic communications outlining necessary actions to be taken by licensees. This process is relatively swift and efficient. The other route is a narrow, winding, bumpy, dirt lane that the NRC uses for potential problems (e.g., Thermo-lag, Rosemont and condensate pot level transmitters, and the Susquehanna spent fuel pool issues). The NRC brings in the National Labs and industry owners groups to study, explore, examine, benchmark, classify, ponder, and everything else except resolve the concerns.

The pace, depth, and scope of the NRC's actions related to generic safety issues should not be so dependent on whether it has already happened. Instead, risk should dictate the response.

2.206 Petition Process

- The staff's 10/30/98 update to the tasking memorandum indicates that stakeholder feedback on the process will be obtained by 12/98. To help the staff meet that goal, I'll submit my feedback now – the current 2.206 process is badly broken and needs massive repairs, not mere band-aid fixes. The current process does not meet the needs of the staff, its licensees, or the public.

Application of the Backfit Rule

- Each of the 103 currently operating nuclear power plants (104 if Browns Ferry Unit 1 counts) has a unique design and licensing bases. According to both NRC staffers and NEI representatives, the Individual Plant Examinations submitted by licensees were performed to different criteria and guidance with wide ranging sophistication. It thus appears a strong possibility, if not an outright certainty, that movement to risk-informed regulation could further diffuse the regulatory oversight picture. If so, it would complicate the NRC staff's ability to apply generic backfits. Plant-specific backfits would not be affected, but it would be a huge burden for the staff to accurately assess the impact of a proposed backfit on 103(4) uniquely licensed facilities which have made varied progress towards risk-informed regulation using wide ranging PRA methods. The NRC should determine how to meaningfully conduct generic backfits before moving too far towards risk-informed regulations.

Comments on the NRC Staff's 10/30/98 Response to the Tasking Memorandum

Reorganization – Restructuring Line Organization

- The Office of Investigations should be eliminated as soon as possible and its functions relocated to the Office of the Inspector General.
- The NRC appears to be in a constant state of reorganization. A high percentage of NRC supervisors and managers are Acting. In our dealings with the agency, we almost always encounter staff turn-over on issues about every six months. The NRC should examine whether “musical chairs,” while a fun game, is an effective management process.
- The NRC has problems with inconsistent implementation of processes. It appears that the NRC organization promotes, rather than minimizes, inconsistency. For example, it is not clear why the Office of Nuclear Reactor Regulation is organized to essentially match the geographical divisions of the regional offices. It would seem to make more sense to align the NRR Project Managers by reactor type (e.g., all the BWR/6 or ice condenser plants being in the same directorate) than by region.

Increased Employee Involvement

- Nuclear utilities are required to have operational experience review programs to ensure that lessons learned at other facilities are reviewed for applicability at their plants. Those programs contain features which disseminate relevant information to plant workers.

It is my impression that the NRC lacks a comparable program to inform staffers about relevant information. NRC staffers appear to be so compartmentalized that they have very little awareness of problems and events outside of their assigned plant or issue. “Tunnel vision” within the NRC must be reduced for the same reason that it was reduced by the industry back in the early 1980s. The NRC must improve the dissemination of nuclear industry information to its regulatory staff.

License Transfers

- During the Senate oversight hearing, the 4½-year period it took the NRC to review and approve the Vogtle license transfer was questioned. The more than 5-year period it took the NRC to review the employee concerns issues that were indivisibly linked to that license transfer was overlooked. The NRC took too long in both cases.
- The NRC's evaluation for license transfers must be broadened to consider any financial incentives which might put electricity generation ahead of safety. For example, there are rumors that Pilgrim's new owners could receive a performance award greater than their purchase price of the facility if the plant operates at or about two-thirds capacity for three years. The NRC has formally discouraged such performance incentives and should examine license transfer applications carefully to ensure that any such provisions do not represent an undue challenge to safety.

Comments on the NRC Staff's 10/30/98 Response to the Tasking Memorandum

Use of Informal Adjudicatory Procedures

- In June 1998, UCS formally acknowledged that the Commission had been fair and open in its consideration of public views on the Millstone Unit 3 restart process. That acknowledgement does not in any way imply that UCS felt that the entire Millstone Unit 3 restart process was adequate. In fact, UCS feels that process was an injustice which the NRC should never again impose on the American public. The NRC's Special Projects Office for Millstone did an extremely poor job of verifying that the facility was ready for restart. In addition, the Millstone SPO's interfaces with the public left much to be desired.

The ongoing restart process for D C Cook is at the other end of the spectrum. The NRC staff is doing an extremely good job of ensuring that the facility will not be restarted until it is ready to do so safely. The NRC staff 's interfaces with the public could hardly be better.

Informal adjudicatory procedures are only beneficial when they permit injustices, such as that perpetuated by the Millstone SPO, to be remedied before the subject decision is made.

Comments on the NRC's tasking memorandum on regulatory reform

Jill Lipoti, Ph.D.,
Assistant Director
New Jersey Department of
Environmental Protection

State Perspective

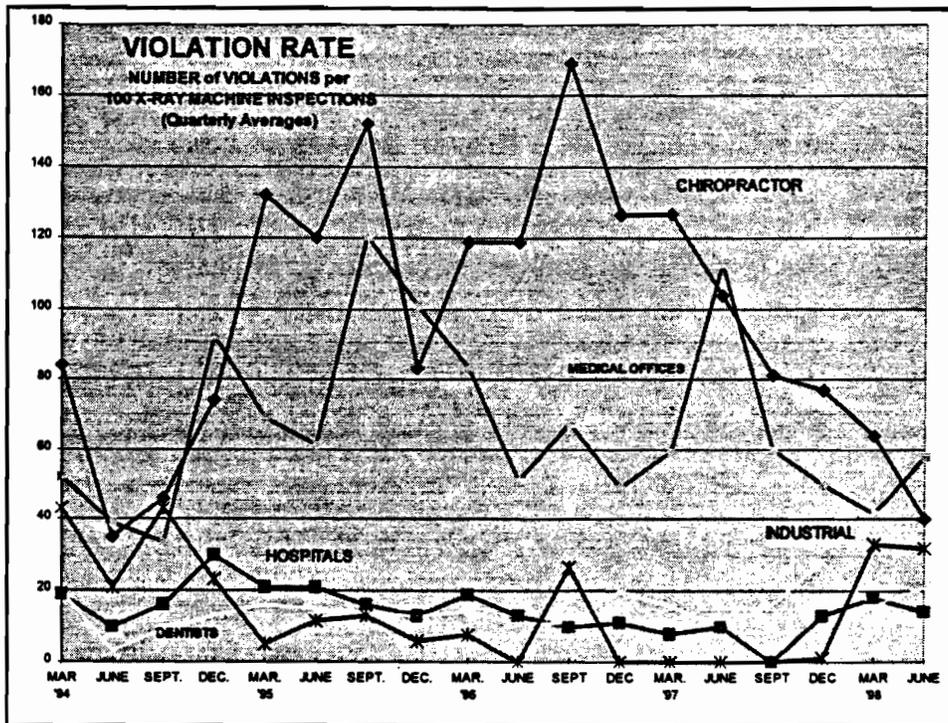
- **Emergency Planning**
 - emphasis on responding to things that went wrong
 - prefer prevention
 - need to examine licensee processes
 - comment on NRC regulatory control
- **Limited resources at federal and state level**
 - Use of PRA and IPE essential for prioritization

Regulator's Perspective

- State has inspection/ enforcement programs
 - x-ray machines, NARM facilities, radon businesses, RF sources
- State has limited resources
- How do we cope?

Prioritize

- According to PRA, priority inspections are:
 - High exposure potential (fluoroscopy)
 - High population exposure (hospital)
- Reality - hospitals have QA programs, identify and correct problems before the inspection
- Reality - small medical and chiropractor offices have the most violations
- Inspect where the inspection will do the most good



State Performance Indicators

- State priorities are off site
 - Exercise assessments (from FEMA or self-assessment)
 - Non-degradation of environment
 - 1400 samples - air, water, biota,
 - TLDs
 - real-time Reuter-Stokes
- NRC has emphasis on partnering, but they terminated the cooperative agreements with states due to resource constraints
- What are your off-site environmental indicators?

Guiding Principles for NJ

- Continuous quality improvements
- Effective partnerships
- Innovative management strategies
- Enhanced scientific assessments of data by using indicators to reflect conditions, trends, and results
- Linkages among causes, conditions, and effectiveness of management strategies

Plant-specific licensing issues

- Where is the report on lessons learned so that future staff reviews can be faster, more predictable?
- Where are your performance indicators?
- Emphasis on objective performance indicators
 - allows creativity in the review process so that the bottom line becomes important, not the process checklist

Risk Informed Baseline Inspection Program

- Lacks outside comment after draft developed
- Fast track implementation
 - Can you identify if a facility is in a downward trend and needs additional inspection resources?
 - Not easy to detect - requires creativity - does the process allow for that?
- Good emphasis on team approach
 - Need to continue to involve outside comments
 - Involve the State Liaison Officers

Inspection Program (continued)

- Examples of power plant systems that are not high on the risk ranking, but which are extremely important to states due to off-site responsibilities
 - Radiation Monitoring System
 - Emergency Preparedness
- Training very important
 - Have to influence inspectors to wake up and do something different than they did before

Enforcement Program Initiatives

- Whether or not you set the number of enforcement actions as a performance indicator - you will be judged by that number.
- NJ experience - Governor's record on the environment was based on # FTE in the agency and # enforcement actions
- More effective Field Notice of Violation
 - 30 days to compliance and no fine - 76% compliance
- Old Administrative orders
 - 90 days to compliance - 63% compliance
- Your report card will be in the media

Performance Assessment - Performance indicators

- Contractor develop indicators - 11/98
- Industry propose indicators - 6/99
 - Whose indicators will be used?
 - Comments will be valuable on the draft
- Performance indicator should be a predictor of long term performance
- Periodicity of these Stakeholder meetings - suggest between 3/99 and 6/99 need another meeting

Generic communications

- Parochial input
- Industry view and NRC self-assessment
- Who else reads these and uses the generic letters?
 - States - SLOs
 - Where is their input?

CAL

- Needs standardization
 - CAL for Salem restart
 - CAL for TMI Emergency planning
- Different levels of seriousness
- Should not trivialize the use of the CAL

NRC organization and structure

- Misses the current trend in management
 - Trend toward postmodern management
 - Deconstruction of the bureaucracy
 - Emphasis on creativity
- Reliance on partnerships (limited)
- Indicators to reflect conditions, trends, and results
 - How do you propose to improve public understanding of issues?

What does your new culture look like?

Decommissioning

- Largest gap in your plan
 - Need critical shift in thinking - clean up issue
 - Need stakeholders for just this issue
 - State - EPA - NRC
- Example: shutdown emergency preparedness rule
 - private meetings of NRC and NEI
- MARSSIM is a good product based on collaboration
- Continuum -
 - operations - shutdown - decommissioning
- Proactive assignment of project manager to Oyster Creek

Event Reporting

- Tabletop exercise, involving who?
- Emphasis should not be on reporting less
 - report things that matter
 - report to the people who need to know
 - if missed surveillance is not reportable - how does a state know that the emergency equipment will be functional if needed
 - RMS included on maintenance rule - people outside the fence want to know about the ability to monitor a release to the environment
- Failure report is too late

KI

- good process - involve partners
- States, AL, TN, AZ
- CRCPD Committee E-6
- FDA
- EPA
- FEMA

Plan Sufficient?

- Accountability good - dates, people
- Responsive to Congressional requests
- Is it at the expense of a thoughtful process
 - Are you too busy with the checklist to think of the agency as a whole?
- Why is it outside the normal management process?
- Missed some good issues like EP and RMS

Successful Completion of plan?

- Should be no completion
- Should be part of a continual improvement process
- Should be a living document

NRC in the long term

- The plan responded to the Congressional hearings
- Missed the big issues, e.g.,
 - So you approve 6 types of Multipurpose Canisters
 - That doesn't solve the problem of spent fuel stored at 100 locations and no permanent waste disposal facility
- Time to revisit the Direction Setting Issue papers - reconsider involvement in big picture issues
- Didn't anticipate the quantity of plants that are shutting down and decommissioning early
- Time to revisit your trending data - place more emphasis on the transition to decommissioning

From: Harold B. Ray, Harold
To: Annette L. Vietti-Cook
Date: Tue, Nov 10, 1998 4:16 PM
Subject: November 13 Commission Meeting

The following is in response to the October 26, 1998, letter from Ms. Annette L. Vietti-Cook, Acting Secretary of the Commission, to Mr. Harold B. Ray, Executive Vice President, Southern California Edison Company, concerning the subject meeting. We were unable to meet the November 5 requested date for advanced submittal of written material, and we trust that this late submittal will be of some benefit to the commissioners. We believe periodic meetings of this sort are extremely important and appreciate the effort the agency is making to involve all stakeholders during this period of rapid change.

The five issues identified in the October 26 letter are repeated below, followed by our response.

Issue 1

Is the content and implementation of the (NRC action plan, as updated October 30, 1998) sufficient, too much or too little? Are the tasks being taken up in the right order, and are they directed toward the issues and insights you find significant?

Response to Issue 1

The plan is comprehensive and reflects a thoughtful approach to change management by the commission and staff. The following comments are offered for consideration in its further improvement.

1.a. The plan is organized by topic areas, with specific issues grouped within each topic area. We recommend that consideration be given to separately identifying potentially transcendent, regulatory policy issues which may be necessary bases for resolution of the specific issues listed.

1.b. For example, the terms "important to safety" and "risk significant" are increasingly used to qualify the scope of regulatory requirements and to establish criteria for compliance with requirements. (e.g., The proposed revision of the Maintenance Rule, 10 CFR 50.65(a) and (b).) These terms reflect an intention to focus and prioritize regulatory attention, based on safety. This is both needed and welcome. However, it is vital that the process of change to a more risk-informed paradigm proceed with clarity and consideration of unintended consequences. A potential regulatory policy issue would involve the need to define what is "important to safety" and "risk significant" and how they are to be defined. (Note: In its September 30, 1998, letter to Chairman Jackson, the ACRS noted that, "The principal weakness (of the current regulatory system) is its inability to quantify the risk significance of Structures Systems and Components.") Of course, as

with all other issues, stakeholders will need to participate with the commission in resolving this issue.

1.c. As another example, Action Plan Specific Issue IV.C. has as its objective, "To provide consistent guidance on information to be contained in (the) FSAR". Nowhere in the Action Plan is the issue of what is the Licensing Basis discussed, and an underlying cause of confusion in the regulatory process is the status and function of the FSAR. (Note: In the ACRS letter referenced above, the phrase appears, "...the Final Safety Analysis Report, which is the basis for licensing the facility.) While the objective to provide "consistent guidance" on the content of the FSAR is unexceptionable, the lack of a definitive determination as to its regulatory function is a regulatory policy issue which should be addressed. Misunderstanding on this point has already had serious consequences for the industry and the NRC. In the background is the danger that the FSAR will become a de-facto, mega-Technical Specification, as an unintended consequence of the simple intention that it be maintained accurate and complete.

1.d. The ACRS letter referenced above also recommends that "the NRC should be prepared to accommodate a two-tier system" of power reactor regulation. This recommendation is addressed in the important context of the "Transition to Risk-Informed Regulation". Again, we believe it reflects the need for a regulatory policy issue to be identified which we cannot find among the specific issues of the Action Plan.

1.e. Action Plan Specific Issue IV.D. has the objective, "To provide a clear definition of what constitutes design bases information." This important issue is related also to the definition of Licensing Basis, to the concept of Margin of Safety and potentially to how the content of the FSAR is defined. While the industry recognizes these linkages, and struggles to propose a reasonable framework that will allow them to consistently be risk-informed, it would be helpful if the Action Plan included the linkages as a separate regulatory policy issue as well.

1.f. Action Plan Specific Issues I.A.9 and 13 relate to the "NEI Whole Plant Study". The status of this issue is now shown as being "subsumed" in a public meeting that was held on short notice on October 27-28 concerning "options for modifying Part 50 to be risk-informed". We are concerned that the initiative to allow selected pilot projects to proceed on a so-called "whole plant" basis will not be recommended as part of the Specific Issue I.A.10b issue paper due to the commission later this month. This is a critical policy matter that warrants careful consideration by the commission, as it will significantly affect the direction and pace of this major initiative. The underlying strategy for risk-informing Part 50 is recommended to be a separate regulatory policy issue, similar to the others identified above.

1.g. Action Plan Specific Issue VI.A. has the objective, "To ensure that

license transfers are conducted in a timely and technically correct manner and that review and submittal guidance is appropriately disseminated." This is an extremely important issue which is essential to support industry restructuring in many areas, and perhaps nationally. In this regard, the experience of the airline industry in the wake of similar restructuring, while anecdotal, needs to be considered in terms of regulatory policy. That is, the existing body of power reactor regulatory requirements has been developed over a long period on the basis that licensees would be "electric utilities", as defined. The commission should affirm that a change from cost-based to market-based revenues for individual, merchant plant licensees does not introduce new issues not yet included in the Action Plan. (e.g., Price-Anderson retrospective premium assessments.)

1.h. Finally, with regard to overall Action Plan schedules, while they may appear reasonable when each issue is considered in isolation, we believe they will have to be reconsidered and lengthened as a result of the time required to address the regulatory policy issues identified above, and that this will be the case, whether or not these policy issues are separately identified. (i.e., The identification of the policy issues will not itself result in delay. Rather, it should expedite final resolution of affected issues.)

Issue 2

What should be measured to determine successful completion of this plan (being mindful that it cannot be everything for all stakeholders)?

Response to Issue 2

In the first place, successful completion of the plan should be measured in terms of the extent to which stakeholders participate with the NRC in establishing achievable schedules for deliverable results, and in arriving at those results. This does not mean that the stakeholders will all agree with either the schedules or the results, but participation is essential to success. Secondly, successful completion of the plan should be measured by the extent to which fundamental regulatory policy issues, such as those suggested above, are defined and addressed. Often this will require decision and direction by the commission itself. However, this commission has demonstrated its willingness to take the initiative required.

Issue 3

What legislative changes might be useful or necessary?

Response to Issue 3

The restriction on foreign ownership of power reactor facilities is inconsistent with the increasing development of international companies providing generating services in competitive markets and is not warranted by

any reasonable security consideration. It threatens the commercial viability of some facilities in this changing marketplace. We recommend the commission support removal of the restriction, while maintaining other provisions of the AEA which adequately assure safety and security. Also, we recommend that the commission seek removal of the AEA requirement that it make findings with respect to anti-trust implications of plant ownership. Again, the changing marketplace, and the active oversight in this area for all generating facilities by other agencies of government, make findings by the NRC with respect to anti-trust redundant and inefficient.

A consequence of electric industry restructuring may be that former plant owners will continue to be responsible for funding decommissioning costs. The NRC should consider whether and how it will provide oversight for the collection and continuing availability of these funds, such as by contractual arrangements between the former owner with the new owner and licensee, or by retaining limited licensed status of the former owner, or by some other means. Also, the need for added statutory protection of decommissioning trust funds in the event of bankruptcy should be considered.

Issue 4

What are the potential costs of this plan? Are they justifiable? For example, consider the need for higher investments in risk information and infrastructure, and/or a potentially much less forgiving regulatory process as a result of reliance on more objective performance indicators?

Response to Issue 4

With respect to the prospect of a less forgiving regulatory process as a result of reliance on more objective performance indicators, we do not believe any of the performance indicators considered to date, or the process for their use in the regulation of plant safety, need to be problematic. Nevertheless, there is a danger that they will result in perverse incentives and unintended consequences, relative to plant safety, if they are not carefully selected or are improperly applied.

With respect to the potential costs of the plan, and specifically considering investments in risk information and infrastructure, if we assume an annual average O&M cost per power reactor of about \$80 million, and we assume that 0.5% of this amount, or \$400,000 were devoted to implementation of this plan each year for 5 years, then our experience would indicate that this would be more than ample to achieve success. (Actually, far less than this, on a per-unit basis, should be sufficient.) In contrast, savings of at least 1% of annual O&M should certainly be achievable over the long term, and far more than this would be a reasonable goal. On another basis, only a few hours of avoided, market-based revenue loss per year, as a result of fully risk-informed regulation, would offset the assumed cost of plan implementation by any one unit. In our experience, this should certainly be achievable.

Finally, even if there were no O&M savings, but only added cost, and even if there were no increased production, the increase in public confidence, and the reduction in owner risk due to reduced regulatory uncertainty, that should result from implementing the plan would, in our opinion, make it fully worthwhile.

Issue 5

While the plan reflects some long-term actions, what are your views with respect to where the NRC should be in the longer term?

Response to Issue 5

We believe the NRC should seek to be a learning organization focused on continuous improvement of regulatory processes to meet its mandate under the AEA. In contrast to this vision, it should seek to eliminate the extent to which it feels obligated to, defacto, co-manage the facilities which it attempts to regulate. This means that increased resources need to be devoted to producing scrutable, transparent, regulatory requirements which are sufficient both to ensure adequate margins of safety are maintained and to provide adequate warning of licensee performance which threatens to erode these margins. Development and implementation of such requirements is difficult and will probably require longer schedules than are presented in the current Action Plan.

Thank you for the opportunity to provide these thoughts for your consideration in advance of the subject meeting.

Harold B. Ray
Executive Vice President
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