



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

October 9, 1997

The Honorable Shirley Ann Jackson
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Chairman Jackson:

SUBJECT: PROPOSED CHANGES TO 10 CFR 50.59 AND PROPOSED REVISION 1
TO GENERIC LETTER 91-18

During the 445th meeting of the Advisory Committee on Reactor Safeguards, October 2-3, 1997, we met with representatives of the NRC staff and the Nuclear Energy Institute (NEI) to discuss SECY-97-205, "Integration and Evaluation of Results From Recent Lessons-Learned Reviews," which includes proposed changes to 10 CFR 50.59 (Changes, Tests and Experiments) and Revision 1 to Generic Letter 91-18, "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions." We also discussed the proposed industry guidance document NEI 96-07, "Guidelines for 10 CFR 50.59 Safety Evaluations." We had the benefit of the documents referenced.

Conclusions and Recommendations

1. We recommend that the NRC issue Revision 1 to Generic Letter 91-18, since it explicitly clarifies the applicability of 10 CFR 50.59 evaluation process to address degraded and nonconforming conditions.
2. Because the current legal interpretation of 10 CFR 50.59 is at variance with past staff and industry practices, rulemaking appears to be necessary.
3. The staff should continue to work with NEI to reconcile NEI 96-07 with the staff's position rather than developing

separate guidance for implementing the 10 CFR 50.59 process. We recommend that the NRC endorse this industry approach with appropriate exceptions and clarifications.

4. We encourage the continued development of a plan for a 10 CFR 50.59 process that is consistent with risk-informed, performance-based regulation.

Discussion

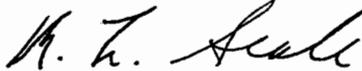
In our April 8, 1997 report to the Commission, we recommended that the proposed guidance related to implementation of 10 CFR 50.59, as described in SECY-97-035, not be issued for public comment. Instead, we recommended that the NRC work with the industry to build on the guidance contained in NSAC-125. Our recommendation was based on consideration of over 30 years of industry experience, during which the staff identified problems in only a very small number of situations evaluated under 10 CFR 50.59.

Because the legal interpretation of 10 CFR 50.59 is at variance with past staff and industry practices, rulemaking appears to be necessary. However, rather than developing new regulatory guidance to support the current rule, the staff should issue a safety evaluation report or regulatory guide endorsing the guidance in the revised NEI 96-07 document. Any provisions in NEI 96-07 that the staff finds unacceptable could be identified as exceptions to NRC's acceptance of the industry guidance. This would be similar to past NRC practices of endorsing industrial standards subject to certain exceptions and clarifications.

The debate spawned by the proposed changes to 10 CFR 50.59 is indicative of the need to accelerate the move to risk-informed, performance-based regulation. The current 10 CFR 50.59 requirements already implement a form of this regulatory philosophy but at a very detailed level and in a manner that is inconsistent with current risk-management technology. Ideally, the performance requirements would be identified at a system or function level, and the licensees would have flexibility to manage the plants so long as these performance requirements are met (i.e., they stay within the defined envelope). Defining such performance requirements in advance would eliminate the present disagreements over whether "small" or "zero" risk increases are allowed.

The staff outlined a plan designed to enhance NRC oversight of licensee activities and to improve the existing regulatory process during the transition period to a more risk-informed, performance-based regulatory framework. In the interim, the industry needs to know whether it has a method acceptable to the NRC for performing proper safety evaluations per 10 CFR 50.59. We were informed by representatives of NEI that the industry is currently reviewing NEI 96-07, Revision 0, and that it is expected licensees will uniformly accept this guidance for performing safety evaluations.

Sincerely,



R. L. Seale
Chairman

References:

1. SECY-97-205, Memorandum dated September 10, 1997, from L. Joseph Callan, Executive Director for Operations, NRC, for the Commissioners, Subject: Integration and Evaluation of Results from Recent Lessons-Learned Reviews.
2. Draft NRC Generic Letter 91-18, Revision 1, "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions," September 1997.
3. SECY-97-035, Memorandum dated February 12, 1997, from Hugh L. Thompson, Jr., Acting Executive Director for Operations, NRC, for the Commissioners, Subject: Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests and Experiments).
4. U.S. Nuclear Regulatory Commission, Draft NUREG-1606, "Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests and Experiments)," April 1997.
5. Letter dated July 21, 1997, from Ralph E. Beedle, Nuclear Energy Institute, to Frank J. Miraglia, Jr., NRC, regarding NEI 96-07, Final Draft, Subject: Guidelines for 10 CFR 50.59 Safety Evaluations.
6. Report dated April 8, 1997, from R. L. Seale, Chairman, ACRS, to Shirley Ann Jackson, Chairman, NRC, Subject: Proposed

Regulatory Guidance Related to Implementation of 10 CFR 50.59
(Changes, Tests and Experiments).