



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

March 22, 1999

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

Dear Chairman Jackson:

SUBJECT: SECY-99-054, "PLANS FOR FINAL RULE - REVISIONS TO 10 CFR PARTS 50, 52, AND 72: REQUIREMENTS CONCERNING CHANGES, TESTS, AND EXPERIMENTS"

During the 460th meeting of the Advisory Committee on Reactor Safeguards, March 10-13, 1999, we met with representatives of the NRC staff and the Nuclear Energy Institute (NEI) to discuss SECY-99-054, "Plans for Final Rule - Revisions to 10 CFR Parts 50, 52, and 72: Requirements Concerning Changes, Tests, and Experiments," which includes the staff's proposed resolution of public comments and recommendations for revising 10 CFR 50.59. We also had the benefit of the documents referenced.

CONCLUSIONS AND RECOMMENDATIONS

1. We recommend that the term "minimal" rather than "negligible" be used in the final revision to 10 CFR 50.59. Although the staff and industry have not yet agreed on a definition for "minimal," they agree that "minimal" is greater than "negligible." We believe that the current guidance in NEI 96-07, "Guidelines for 10 CFR 50.59 Safety Evaluations," to determine whether increases in probability are "negligible" is acceptable. The staff's proposed revision removes the "zero risk" constraint in the current rule.
2. We agree with the staff's decision to adopt the industry approach for maintaining the design bases of fission product barriers. There are still some differences between the staff and industry positions relating to the scope of systems to be considered. We believe that these can be resolved in the ongoing discussions between the industry and staff.
3. We support the staff's proposed changes to align 10 CFR Part 71 for packaging and transportation of radioactive material and Part 72 for independent storage of spent nuclear fuel and high-level radioactive waste with 10 CFR 50.59. The staff should continue its work to extend these changes to an international level especially for the

transport of spent nuclear fuel. Experience has shown that having incompatible rules for domestic and international activities create a difficult situation.

4. At this time, there is no benefit from expanding the scope of 10 CFR 50.59. Redefinition of the scope should be considered as part of the risk-informed revision to the rule, which we believe should be pursued on an expedited basis.
5. We believe that the revised 10 CFR 50.59 can and should be implemented earlier than the schedule proposed by the staff.
6. The staff's proposed approach to resolve questions of scope and margin of safety appears to address our concerns.

DISCUSSION

There appears to be improved consistency between the staff's proposed approach and existing industry implementation guidance in NEI 96-07. We continue to believe that the 10 CFR 50.59 process has been implemented successfully for more than 30 years. The objective to simplify, clarify, and restore stability to the 10 CFR 50.59 process justifies the current initiative to revise the rule.

The proposed changes to 10 CFR 50.59 largely codify past practices. It seems, then, reasonable to expect that implementation can be accomplished in a shorter time than is being proposed.

In the March 5, 1999, Staff Requirements Memorandum, the Commission requested that the ACRS provide a list of key questions and issues which should be considered during the current 10 CFR 50.59 rulemaking effort along with any recommended answers or positions. We previously provided a list of questions to the Commission on this matter in our February 18, 1999 report. The staff and industry are making progress in resolving issues/questions associated with margin of safety. We believe that the ongoing dialogue between the industry and staff will resolve several of the key issues. Commission direction and guidance on proposed final rule language would expedite the current 10 CFR 50.59 effort.

We support completion of the proposed rulemaking to provide stability to the 10 CFR 50.59 process and look forward to reviewing the proposed final rule. The focus should soon shift to developing a risk-informed version of 10 CFR 50.59.

Sincerely,

A handwritten signature in black ink that reads "Dana A. Powers". The signature is written in a cursive, flowing style.

Dana A. Powers
Chairman

References:

1. Memorandum dated February 22, 1999, from William D. Travers, Executive Director for Operations, NRC, to the Commissioners, SECY-99-054, Subject: Plans for Final Rule - Revisions to 10 CFR Parts 50, 52, and 72: Requirements Concerning Changes, Tests, and Experiments.
2. Memorandum dated March 5, 1999, from Annette Viette-Cook, Secretary, NRC, to John T. Larkins, Executive Director, ACRS/ACNW, Subject: Staff Requirements - Meeting with Advisory Committee on Reactor Safeguards, February 3, 1999.
3. Report dated February 18, 1999, from Dana A. Powers, Chairman, ACRS, to Shirley Ann Jackson, Chairman, NRC, Subject: List of Questions to be Addressed for Possible Resolution of Key Issues Associated with the Proposed Revision to 10 CFR 50.59 (Changes, Tests and Experiments).
4. Nuclear Energy Institute, NEI-96-07, Revision 0, "Guidelines for 10 CFR 50.59 Safety Evaluations," September 1997.

