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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

October 19, 2009

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0122
ATTN: Rulemaking and Adjudications Staff

RE: Docket ID NRC-2008-0122

Dear sirs:

Enercon Services, Inc. (ENERCON), is pleased to submit comments on NRC's proposed rulemaking related to "Enhancements to Emergency Preparedness Regulations" promulgated in *Federal Register Notice of Proposed Rulemaking*, dated May 18, 2009, in *Federal Register* Vol. 74, No. 94, pages 23254-23286. We recognize the need for the NRC to consider these enhancements to emergency preparedness regulations following the terrorist attacks of September 11, 2001, and the extensive operational experience gained by the industry under the current emergency preparedness regulations and guidance promulgated after the Three Mile Accident over 30 years ago.

Our detailed comments are included as an attachment to this letter. We believe there are numerous opportunities for the NRC staff to consider alternative methods to achieving goals stated in the *Federal Register Notice.* We appreciate the opportunity to participate in the rulemaking process

Sincerely,

Jay J. Maisler
Emergency Planning Services Manager

Attachment

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Comments on *Federal Register*/ Vol. 74, No, 94, May 18, 2009, pages 23254-23286

General Comments

We recognize the importance of NRC codifying provisions in NRC Order EA-02-026, but believe the proposed regulations go well beyond this stated purpose. Our comments are intended to improve the final rules to focus on the important aspects of this Order.

In general, several of the NRC considerations indicate that the "no action" option was rejected because "there would continue to be no regulatory requirement..." This seems to presume that the goal is to have regulatory requirements rather than addressing a specific deficiency in the current regulations. This sort of circular argument does not provided adequate support for imposition of burdensome regulatory requirements.

While the Discussion mentions several examples of issues identified with licensee implementation of existing emergency preparedness, insufficient data is provided to support the staff's contention for the need of the proposed regulations. In many cases, one or two problems limited to individual plants is discussed, but data identifying problems across the industry are not reported. In other cases, the NRC staff justifies rejecting the "no action" based on generic communications issued over ten years ago; in some cases over 20 years ago. Several specific comments are provided in more detailed comments below.

Our concern is that there is a plethora of data available for the NRC to consider, which could better inform this rulemaking. Thousands of drills, exercises, and actual events have been conducted for nearly 30 years under the current regulations. Each of these drills, exercises, and actual events have post-activity critiques and reports, including data regarding participant performance, timeliness of emergency classification and required notifications, adequacy of staffing, implementation of protective actions, etc. There is no indication in the *Federal Register Notice* that the NRC staff analyzed this important data in arriving at their rejection of the "no action" option.

Specific Comments

I. Background

1. The Background section of the *Federal Register Notice* discusses five "Interim Compensatory Measures" (ICMs). The recent industry initiative on hostile action drills tested implementation of these ICMs. Apparently, for Safeguards purposes, several reports to the Commission are not available publicly. Accordingly, the rationale for certain aspects of this comprehensive rulemaking do not have the benefit of public review. We recommend strongly that the results of the industry hostile action based drill initiative be fully analyzed before promulgating new regulations based on limited information contained in publicly-withheld documents.
2. The discussion related to developing emergency planning exercise scenarios that would ensure that EP drills and exercises are challenging and do not precondition participant responses presents a paradigm shift for licensees. For nearly 30 years, the industry has been required to develop biennial exercises that require implementation of public

protective actions. By the very nature, responders are preconditioned to anticipate the need for protective action aspects of these exercises. The primary benefit of drills and exercises is to provide an important training opportunity. Unfortunately, there has been a heavy emphasis on the need to "pass" the exercise rather than enhance the training opportunity. The requirements to maintain the timeline of the scenario precludes training opportunities to be realized. Nothing in the proposed regulations seem to correct this fundamental flaw, but focuses on exercise scenarios, which are submitted to the NRC and FEMA for approval. The resolution to NRC's stated concern does not seem to involve imposing new regulatory requirements on licensees, but to re-evaluate NRC and FEMA guidance to more clearly reflect these agencies' expectations and goals for biennial exercises.

II. Discussion

A. Security-Related Issues

3. The Discussion makes the statement that, "The changes that are proposed by the NRC in this rulemaking are designed to affect the onsite plans, not the offsite plans. The proposed changes have been written in a way that is expected to limit the chance of unintended impacts on FEMA regulations." Whether or not there are unintended impacts on FEMA regulations is arguable. Several proposed regulations have a direct impact on State and local planning, which fall under FEMA regulations. For example, the need for backup methodology for alert and notification system failure presents a huge burden on local resources, which are already required to address backup means of public notification. More frequent updates to evacuation time estimates (ETEs), subject to NRC approval, presents a burden on the end-users of ETEs, State and local agencies. Additional detailed comments on the proposed ETE regulations are subsequently provided, but NRC's proposed regulations fail to recognize the ETEs and the need for updates must be coordinated with offsite agencies and the results must be acceptable to these agencies; NRC approval is an unnecessary burden. A third example is the proposed regulation that would require the licensee to ensure that offsite response organization (ORO) personnel assigned to emergency plan implementation duties would be available to do so. Licensees have no control over the availability of ORO personnel and typically execute letters of agreement and other instruments to ensure OROs uphold their agreed upon and documented responsibilities. This type of activity is best addressed by FEMA within their scope of responsibility for offsite emergency response activities.

4. With regard to "On-Shift Multiple Responsibilities," although the Discussion determined that the proposed amendments "would not be necessary to ensure adequate protection during a hostile action event" because "the existing regulatory structure ensures adequate protection of the public health and safety and the common defense and security," the NRC concludes that, "these enhancements would result in a substantial increase in emergency preparedness and the protection of public health and safety." The need for a substantial increase in emergency preparedness is not supported by the limited data

presented by the staff. There is no discussion of how the industry has worked with State and local agencies to incorporate lessons learned from Hurricanes Katrina and Rita. Data cited relies, in several cases, on events over a decade old. More recent events cited indicate that a very limited number of licensees failed to consider industry experience in the 1990's. More concerning is the absence of substantial data supporting the contention that the staff emergency preparedness regulatory enhancements are warranted. Existing NRC inspection and enforcement activities would seem to be adequate to remedy the limited number of issues cited by the NRC staff.

In the discussion of several "items of interest" relative to challenges involving shift staffing addressed in IN 91-77, the staff cites. "Five of seven licensees surveyed used licensed personnel to staff the fire brigade." With over 50 licensed nuclear plant sites, the statistical significance of this data is not justified. The dates when the surveys were performed is not provided. As the fire brigade staffing is a Tech Spec requirement, as are operations shift staffing levels, the point of this example is unclear.

Further in the staff's discussion, the statement is made that, "Multiple NRC inspection findings indicate the need for regulatory change." The subsequent discussion only provides two unrelated events justifying the stated concern. Clearly, if this problem is pervasive throughout the industry, more inspection data could be presented in summary fashion to justify the need for these proposed regulatory enhancements.

The need to explicitly limit on-shift emergency response organization (ERO) response duties to ensure that these emergency responders do not become overburdened during an emergency event indicates that other assigned functions could result in inadequate or untimely response. This logic implies that the current NRC policy where emergency response requirements only consider the need to address one casualty, not multiple events. If personnel are assigned to the Fire Brigade, which is governed by Tech Specs, there still is sufficient staff to make necessary notifications/communications. Clearly, if the event escalates, activation of onsite support facilities, such as TSC and OSC will provide additional augmented staffing. Once again, data substantiating NRC contentions is not provided. In fact, we believe that an analysis of industry performance during drills, exercises, and real events would be tremendously beneficial to informing this proposed regulation.

The Discussion indicates that a shift staffing study referenced in IN 95-48 found that "the licensees surveyed did not use a systematic process for establishing shift staffing levels and additional tasks, not required by regulation, were assigned to the licensed and non-licensed operators. This practice could result in operators being overburdened during an emergency." From the wording in the *Federal Register Notice,* the study did not definitively find that operators were overburdened. Given a study that is at least fourteen years old, more recent data is certainly available to support or refute the staff's contention that operators are overburdened. The NRC should reconsider the alleged concern regarding overburdening of operators by analyzing more recent data from exercises, drills, and real emergencies.

In the last paragraph of this section of the Discussion, the NRC concludes that "many licensees have requested NRC permission to reduce on-shift staffing levels and the NRC expects this practice to continue." If the concern with overburdening the operating crew is genuine, clearly the NRC has existing mechanisms to deny requests by licensees to reduce on-shift staffing levels. Accordingly, promulgating new regulations is unnecessary for the stated concern.

5. In the section of the Discussion, "Licensee Coordination With Offsite Response Organizations During Hostile Action Events," as mentioned previously, the NRC is proposing an amendment to require licensees to ensure that ORO personnel assigned to emergency plan implementation duties would be available to do so. Licensees have no control over the availability of ORO personnel and typically execute letters of agreement and other instruments to ensure OROs uphold their documented responsibilities. This type of activity is best addressed by FEMA within their scope of responsibility for offsite emergency response activities. The proposed amendment should be removed from the final rulemaking.

B. Non-Security Related Issues

6. Under the section of the Discussion dealing with "Backup Means for Alert and Notification Systems," the NRC implies that the alert and notification system (ANS) is intended to address not only the plume exposure pathway, but the ingestion pathway, as well. NRC specifically states, "Moreover, the Energy Policy Act of 2005 directed the Commission to require backup power for the emergency notification system, including siren systems, for nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50-mile radius of the power plant. Therefore, it is appropriate that the NRC also consider changes to its existing regulations and guidance regarding warning systems for all nuclear power reactor licensees." The 50-mile statement implies ingestion pathway, where the prompt notification to the public is not required. The NRC should clarify the basis for requiring backup power to the ANS in the final rulemaking.

7. The NRC indicates that it has observed "a few licensees whose responses in performing emergency declarations were inappropriately delayed." There is no indication that NRC has validated this assumption, nor are any data provided (e.g., percentage of all declarations that are delayed) indicating the extent of the problem. The NRC rejected the "take no action" option because it would not address the regulatory problem. However, there is no indication that a "regulatory problem" exists. For many years, the nuclear industry has focused their emergency response on mitigation of the event and avoiding escalation, while assuring notifications to offsite agencies are timely. Unusual Events are generally minor events that do not affect the public. Placing undue emphasis by regulating "timely declaration," could have the adverse impact on reactor safety by distracting operators from fixing the problem. NRC did not consider a graded approach where Unusual Events and Alerts could be allotted longer declaration times than Site

Area Emergencies or General Emergencies, since timely action by offsite agencies could be extremely important to public health and safety.

Without further justification, the basis for the proposed requirement is absent and the proposed requirement should be removed from the final rulemaking.

8. Regarding "Evacuation Time Estimate Updating," the NRC fundamentally ignores the signal most important use of ETEs – providing information useful to offsite agencies in developing strategies for and implementing public protective actions. The entire purpose of the proposed regulations culminate in NRC approval of the ETE, not acceptance by the offsite agencies involved. Clearly, the impact on offsite planning needs to be considered in the culmination of these proposed regulations.

   The NRC discusses a requirement to update ETEs based on a 10% population change. It should be possible to assess the impact of population changes via performance of an *a priori* sensitivity analysis, thereby eliminating the need for ETE updates based solely on small population changes. In concert with offsite agency coordination, NRC should provide allowances for performance of structured analyses to assess the impact on ETE of small population changes or other alternatives acceptable to affected offsite agencies.

   Also, NRC indicates that the licensee would be required to update the ETE based on permanent resident and transient population changes of 10%. It is not clear if this discussion addresses the permanent resident and transient populations independently or as a total population. The related text of the proposed rule amendment discusses decennial census data and licensee estimates of permanent resident population changes. Neither of these population data sources would reflect changes in transient populations. NRC should clarify the treatment of transient population changes for ETE updates.

   With regard to periodic ETE updates and NRC approval of ETEs, recent experience with ESP and COL applications indicates that review and revision of an ETE will require significant NRC and licensee resources. It is not apparent that the resources exist within the U.S. to perform an ETE for each site in the proposed timeframe, nor is it likely that NRC and licensees have adequate resources to complete the regulatory review and approval process. NRC should reconsider proposed requirements for ETE revision, review, and approval as needed to address a realistic assessment of the resources required to complete these activities.

   Recent discussions involving ESP and COL applications have led to the conclusion that the ETE supports, but is not actually part of, the licensee's emergency plan. Therefore, requirements for ETEs should be constructed to eliminate confusion regarding the ETE's status in relation to the licensee's emergency plan. NRC should revise the rule to clarify the status of the ETE in relation to the licensee's emergency plan. In particular, NRC should remove the ETE requirements from the requirements for "Content of Emergency Plans."

IV. Specific Request for Comments

9. NRC requested comments regarding inclusion of National Incident Management System/Incident Command System in EP programs. The NRC is considering the need to integrate the National Incident Management System (NIMS) and more specifically, the Incident Command System (ICS), into licensee EP programs. Incorporating NIMS and ICS into licensee EP programs would be the most significant enhancement to emergency preparedness that the NRC can propose. All other emergency response in this country is based on NIMS and ICS. Operating under a separate emergency response structure currently imposed by NRC for its licensees arguably reduces the effectiveness of offsite agency response by relying on an emergency response approach based on 1980's knowledge. Clearly, the NRC should encourage licensees to develop plans consistent with those used by their State and local counterparts used for all other emergency response in their jurisdictions.
10. With regard to "Shift Staffing and Augmentation," NRC sought comments on better guidance for determining adequacy of shift staffing for emergency response. In addition to the comments previously provided regarding proposed regulations intended to address NRC's concerns regarding overburdening the operating shift, the associated guidance in Table B-1 of NUREG-0654 is arbitrary and not uniformly implemented by the industry or enforced by NRC. Clearly, this issue bears a more rigorous study based on operating plant designs and new plant designs. Tech Specs should provide the minimum acceptable staffing for routine and short-term abnormal operations. The need for staff augmentation is design-specific; passive plants are designed for the absence of operator actions for 72-hours post-event. There is no justification the existing for 30 and 60 minute augmentation times, nor are the appropriate positions addressed in NUREG-0654, Table B-1, e.g., no I&C/computer augmentation identified.
The table provided in the *Federal Register Notice* is certainly more palatable than current Table B-1 in NUREG-0654. However, the specific positions are based on operating plant designs and do not appear to consider passive plants designs. We suggest a further, more comprehensive study of staffing needs for operating plants, as well as advanced plant designs be considered in developing optimal guidance for shift and augmented emergency response staffing.

Specific Comments on Proposed Regulations

§50.47(10): Proposed changes would require that ETEs be developed and updated periodically. The provision for requiring submittal to NRC for review and approval provides unwarranted emphasis on an issue that is best handled through NRC and FEMA guidance. Applicants and licensees must coordinate efforts related to ETE development with State and local agencies. The ETE is ultimately a tool used by State and local emergency management agencies for developing and implementing protective action strategies. NRC review and approval are irrelevant to ensuring the State and local stakeholders are satisfied with the content and usability of the ETEs.

Also, in some cases, State and local officials may develop ETEs that meet their needs for emergency preparedness purposes other than nuclear power plant emergency response.

The proposed regulations do not consider alternatives to licensee or applicant submittal of ETEs for NRC review and approval.

§50.54(q)(ii): Proposed changes define "emergency plans," but do not explicitly include emergency plan implementing procedures (EPIPs), which are currently considered as a component of the "emergency plan." The "emergency plan" definition is somewhat ambiguous and should clarified to specifically identify components that are considered as the "emergency plan," such as EPIPs.

§50.54(q)(iv): The definition of "reduction in effectiveness" is ambiguous. The determination of whether or not the emergency plan's effectiveness has been reduced should be defined in terms of meeting the regulatory planning standards. Changes in emergency plans that do not affect the ability of the licensee to meet the regulatory planning standard should not be considered as a "reduction in effectiveness."

§50.54(s(1): The proposed regulation discusses focusing on plans for the ingestion pathway EPZ, but does not include similar language for the plume exposure pathway EPZ.

The proposed regulations continue to allow adjustments of the EPZ sizes for gas cooled reactors and for reactors with an authorized power level of less than 250 MW thermal, but does not allow consideration for other advanced reactor designs. The original EPZ sizes were based, in part, on 1960's reactor technology, which relied on source terms presented in WASH-1400. Significant advancements in reactor technology and understanding of source term were not considered in the proposed rule. A process to allow alternative EPZ sizes should be included in the final rule.

Appendix E to 10 CFR 50

IV: The introductory section addresses requirements for an applicant for an OL, COL, or ESP to demonstrate compliance with the requirements of 10 CFR 50.47(b). Not all of the requirements of 10 CFR 50.47(b) apply to a major features plan submitted in support of an ESP application. NRC should revise the proposed requirements to clarify applicability to ESP applications.

Comments with respect to the additional proposed requirements related to ETEs are discussed previously in this set of comments. However, the critical component of ensuring State and local needs are met is not addressed.

IV.A.9: 10 CFR 55 provides requirements for minimum shift staffing. In addition to comments regarding shift staffing overburden previously discussed, NRC has clearly identified emergency response actions that cannot be delegated. Adding a burden for licensees to perform a detailed analysis of on-shift staffing is not indicated by NRC's discussion supporting the need for emergency preparedness regulatory enhancements. The current regulations are adequate to meet NRC's stated concerns.

IV.B.2: . As written, the proposed regulations would not allow for emergency action level (EAL) schemes currently under review by NRC, such as NEI 07-01, nor would it

allow for any future EAL schemes. NRC should revise the text to allow more flexibility for EAL schemes developed and endorsed in the future.

IV.C.2: The last sentence includes the phrase, "does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety," needs to be clarified. As previously discussed, the undue emphasis suggested in the proposed rulemaking that would require emergency declaration within 15 minutes of the initiating event could adversely affect the licensees responsibility to protecting the public health and safety by distracting the operating crew from taking actions that could mitigate the consequences of minor events. A single standard for all four classes of emergency is inadvisable; a graded approach may be an appropriate enhancement to emergency preparedness.

IV.D.3: The proposed language is not clear when the 15 minute time clock begins. The proposed rule also discusses requirements for a "public alerting and notification decision." The terms "alerting" and "notification" are not defined. NRC should revise the text to indicate the point at which the 15 minute criterion begins. Provide definitions for the "alerting" and "notification" functions.

The last paragraph of this section requires licensees and applicants to "implement the requirements for backup method of public alerting and notification." This language conflicts with NRC's discussion that such measures are implemented by State and local authorities; not by the nuclear plant operator. The final rule should not include provisions that are beyond the authority of the applicant or licensee.

IV.E.8.d: NRC provides language not previously used: "if the site is under threat or actual attack." In proposed changes to IV.A.7, the term, "hostile action," is used. NRC should use consistent terminology to prevent confusion.

IV.F.2: The proposed rule discusses testing of the "public notification system." It is not clear if this is the same as the previously-discussed "alert and notification system," or just the "notification" subset of that system. NRC should clarify use of the term "public notification system."

IV.F.2.a: The proposed rule would require exercise scenarios to be submitted to NRC under §50.4 for review and approval. Although licensees have been submitting exercise scenarios for years, conforming changes to §50.4 are not included in the proposed rulemaking. §50.4 only speaks to submittal of emergency plans, changes to emergency plans, and emergency plan implementing procedures. The §50.4 requirement should be clarified in the final rule.

IV.F.2.i, j, k: Concerns regarding requirements related to exercise scenario content were previously discussed. The information provided in the proposed new sections appear to be more guidance in nature.

IV.F.2.j: The proposed rule addresses "key skills specific to the TSC, OSC, EOF, and joint information center." It appears that this is the first and only mention of the joint

information center in the regulation. Clarify requirements for the joint information center beyond the fact the key skills must be demonstrated.

Comments on Proposed NUREG Addressing Evacuation Time Estimates and Related Proposed Regulatory Requirements

General Comments

1. The relationship between this and all of the preceding ETE guidance, going back to NUREG-0654, is not clear. In some cases, inconsistencies or conflicts occur. NRC should clarify relationships between the documents and eliminate inconsistencies and conflicts.

2. The underlying regulatory requirement, 10 CFR 50, App E, indicates that, "The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations." This document provides no guidance for performing an analysis of the time required to take "other protective actions." NRC should provide guidance for licensee performance of analyses of the time required to take "other protective actions."

Specific Comments

1. Executive Summary, pg vii

   The last sentence on pg vii indicates, "When the 0-2 mile evacuation is about complete, the 2-5 mile zone is ordered to evacuate." It is not clear if the evacuation order for the 2-5 mile zone occurs when the evacuees from the 0-2 mile zone leave the EPZ, when they leave the 0-2 mile zone, or at some other point. NRC should clarify time-frame for providing order to evacuate 2-5 mile zone.

2. Table 1-2, Assumption 1

   This assumption indicates that the ETE is measured from the start of the initial EAS broadcast. This appears to conflict with Sec. 4.1.1, pg 22, which indicates that the notification time, which precedes the EAS message, is considered part of the trip generation time. NRC should clarify treatment of notification time.

3. Sec. 2.1, pg 11

   The text indicates that the ETE should use population values for the year the ETE is prepared. Section C.I.13.3 of Reg Guide 1.206 indicates that projections of the population over the requested duration of the application are necessary. NUREG-0800 provides similar guidance. Many RAIs on ESPs and COLAs have questioned the use of current population data and resulted in use of population projections for projected construction years and operational years. NRC should provide consistent guidance for use of current and projected population data.

4. Sec. 2.5.1, pg 15

The text indicates that "This is based on site specific characteristics as there may be seasonal events that warrant development of additional ETEs." This sentence seems to conflict with the previous sentence, which indicates that only one special event ETE requires analysis. NRC should clarify guidance for performance of multiple special event ETEs.

5. Sec. 2.5.2, pg 16

One sentence indicates that, "A shadow evacuation of 20 percent of the permanent resident population... should be assumed to occur in areas outside the evacuation area." A subsequent sentence indicates that, "For a staged evacuation, when developing the 0-2 mile ETE, it should be assumed that 20% of the remaining EPZ permanent resident population evacuates as a shadow evacuation." It is not clear if the 0-2 mile analysis is supposed to consider a shadow evacuation of the 15 mile radius, or of only the remainder of the plume exposure pathway EPZ (i.e., the 2-10 mile zone). NRC should clarify the population considered for the analysis of the shadow evacuation for zones other than the full plume exposure pathway EPZ (i.e., shadow populations to be considered for 2-mile and 5-mile radius evacuations).

6. Sec. 3.1, pg 17

The text indicates that, "In all cases, a field survey of the key routes ... should be performed. It is not clear if a field survey is necessary for an ETE update in the absence of significant changes to the road network. NRC should clarify guidance for field surveys for ETE updates.

7. Sec 5.4, pg 32

The text addresses the need for an ETE update when population changes by 10% or more. It should be possible to perform an *a priori* sensitivity study to determine the extent to which small population changes may affect the ETE. NRC should provide guidance allowing for sensitivity studies in lieu of full ETE updates.

Rulemaking Comments

From: Jay Maisler [jmaisler@enercon.com]
Sent: Monday, October 19, 2009 5:08 PM
To: Rulemaking Comments
Subject: EP Rulemaking/Docket ID NRC-2008-0122
Attachments: EP Rulemaking Comments_ENERCON.doc

Importance: High

Please find attached comments on proposed rulemaking entitled, "Enhancements to Emergency Preparedness Regulations." We appreciate the opportunity to comment on this important regulatory initiative.

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