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62FR 24997
May 7, 1997
(39)
James Knubel
Senior Vice President and
Chief Nuclear Officer

July 7, 1997
JPN-97-022
IPN-97-088

Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: Indian Point 3 Nuclear Power Plant
Docket No. 50-286
James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
COMMENTS ON DRAFT NUREG-1606
"PROPOSED REGULATORY GUIDANCE
RELATED TO IMPLEMENTATION OF
10 CFR 50.59 (CHANGES, TESTS OR EXPERIMENTS)"

REFERENCES: References are listed below.

Dear Sir:

The Authority has reviewed the proposed regulatory guidance recently published for comment on 10 CFR 50.59 (Reference 1). This letter summarizes our comments on draft NUREG-1606.

The Authority has also reviewed the comments submitted on behalf of the nuclear power industry by the Nuclear Energy Institute (NEI) Reference 2. In general, the Authority endorses and supports NEI's positions on NUREG-1606. NEI's comments are comprehensive and in-depth. Rather than reiterating those comments, this letter will limit itself to concerns and issues the Authority considers most important.

GUIDANCE NOT FOCUSED ON SAFETY

If the guidance in NUREG-1606 is adopted by the NRC, its new positions will substantially increase the regulatory burden on the Authority and other commercial nuclear power plant licensees. The guidance will also result in a significant increase in the number of USQs (unreviewed safety questions) prepared by licensees and submitted to the NRC. Because this increased burden has not been shown to be accompanied by an increase in safety, the

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Authority is concerned. The Authority is also concerned that this guidance, under certain circumstances, may not be in the best interest of safety. NEI's comments include at least one example of these circumstances.

Much of NUREG-1606's guidance is the result of a literal interpretation of 50.59. By using this approach, much of the original safety emphasis, upon which 50.59 was originally written and promulgated, has been lost. When issued in 1962, the CFR 50.59 threshold for what constituted a change, test or experiment, was tied to its safety significance.

Positions developed from literal interpretations can run contrary to the safety-oriented intent of 50.59. To be meaningful and effective, any guidance on 50.59 must consider safety its primary basis.

PRIOR GUIDANCE GENERALLY ACKNOWLEDGED AS ACCEPTABLE

The Authority, the nuclear industry, and the NRC have made a significant investment of time and resources in developing and implementing NSAC-125 (Reference 3). NSAC-125 reflects current industry practice for the preparation of nuclear safety evaluations and has been implemented at many nuclear power plants. A concerted, good-faith effort was made by all parties to make NSAC-125 a document that met regulatory requirements, as well as the needs of the NRC staff and industry. Despite the fact that the NRC could not completely endorse it, NSAC-125 (and its successor, NEI 96-07, Reference 4) come very close to fulfilling that goal. NSAC-125 guidance has been widely accepted by nuclear utilities, and has been acknowledged by the NRC staff as "generally sound" (Reference 5).

The ACRS recommended (Reference 6) that the NRC staff restart its work with the nuclear industry to build on NSAC-125. The Authority agrees. The work started with NSAC-125 should be built upon. Since its publication eight years ago, the guidance in NSAC-125 has shown that it triggers licensee requests for prior NRC approval reliably and when appropriate. These eight years of experience have shown that it is a reasonable foundation for further discussion, that can be improved through open dialogue.

ESTABLISHES NEW AND DIFFERENT POSITIONS

NUREG-1606 introduced several new or different regulatory positions regarding the implementation of 50.59. The proposed guidance varies from industry practices which have been used by nuclear power plant licensees since 50.59 became effective thirty-five years ago. NUREG-1606 also does not acknowledge the NRC's implicit approval of those evolving practices.


In those thirty-five years, industry practices have improved. Practices evolved to respond to new questions, issues and concerns. The industry developed these practices within the view of the NRC. Before the development of NSAC-125, utility-specific processes and procedures were shared with the NRC. In some instances, these processes and practices were implicitly accepted by the NRC as part of the inspection process. By 1989, sufficient agreement had been reached by industry and staff to allow the NRC to state that if the remaining issues were addressed, the staff expected to endorse NSAC-125 in a Regulatory Guide (Reference 7). Guidance on the implementation of 50.59 must acknowledge its thirty-five year legacy.

NRC adoption of the guidance detailed in NUREG-1606, would require rulemaking to adopt new and different regulatory positions.

The Authority will continue work through NEI, with the NRC and other industry organizations, to develop guidance that meets the requirements of 50.59, focusing on safety as its primary goal, while meeting the needs of the NRC staff and nuclear utilities.

This letter does not contain any new commitments. If you have any questions regarding this matter, please contact the Director - Nuclear Licensing, Ms. C. D. Faison.

Very truly yours,


Jim Knubel
Senior Vice President
Chief Nuclear Officer

cc: Regional Administrator
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REFERENCES

Federal Register Notice, 62 FR 24997, dated May 7, 1997, "NUREG-1606, Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests or Experiments)."

NEI letter, NEI to USNRC Chief, Rules and Directives Branch dated July 7, 1997, regarding comments on draft NUREG-1606.

Electric Power Research Institute, Nuclear Safety Analysis Center, NSAC-125, "Guidelines for 10 CFR 50.59 Safety Evaluations," June 1989.

Nuclear Energy Institute, NEI 96-07, "Guidelines for 10 CFR 50.59 Safety Evaluations."

SECY-97-035, dated February 12, 1997.

Memorandum dated April 8, 1997, from R. L. Seale to Shirley Ann Jackson, Chairman, NRC, (ACRSR-1691) Subject: Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests and Experiments)."

NRC letter, C. E. Rossi to T. E. Tipton, dated May 10, 1989, regarding NRC staff review of joint NUMARC/NSAC working group's final draft 10 CFR 50.59 guidance document.