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PALLADINO,N.J. Commissioners

SUBJECT: Expresses disagreement w/technical justification for proposed rule 10CFR50 re licensed operator staffing.

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NRC-83-182

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DOCKET NUMBER
PROPOSED RULE PR-50 (28)
(47 FR 38135)

September 30, 1983

Chairman Nunzio Palladino
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gentlemen:

Docket 50-305
Operating License DPR-43
Kewaunee Nuclear Power Plant
Rulemaking on Shift Staffing

As you are well aware, the NRC has recently promulgated a rule dealing with Licensed Operator Staffing at Nuclear Power Plants. A copy of the Federal Register Notice is enclosed for your convenience (48FR133, pp 31611-31614). You may not be aware of the role WPSC has played in the development of the rule. Although WPSC is implementing a program to comply with the rule, we are in disagreement with the staff on the technical justification for it. Our original commitment to comply was formed, not on the technical merits of the requirement, but on the repercussions that were sure to follow had we "bucked the system". Of course all of this has become moot upon publication of the rule. For your information on our position, we have attached a copy of our comment letter dated September 27, 1982.

The reason for this letter is to provide you with our perception of a most undesirable attitude exhibited by the staff in the supplemental information accompanying the final rule, and to assure you of our intentions to operate the Kewaunee Nuclear Power Plant in the safest manner possible.

As noted above, WPSC contends that there is no technical basis for the requirement that an SRO be in the control room at all times. Upon review of our comments in the September 27, 1982, letter I believe you will agree that this is the case. Ironically, the staff also came to the same conclusion and stated as much in the supplemental information published with the final rule:

> ....an empirical data base which specifies the number and qualifications of licensed operators needed on shift at nuclear power plants does not exist.... (48FR133, p 31612)

DS10 add: EW Murphy
5650 NL
1/1

Acknowledged by card 10/14/83 PD

This lack of technical justification did not prevent the staff from proceeding with the rule. The staff went on to provide what they considered to be an acceptable justification, but which WPSC feels is a circular argument that does not adequately address our technical comments.

Of particular concern to WPSC, however, is the statement made in the supplemental information that:

> The Commission notes, in this regard, that although these staffing levels have been commission policy for several years, they have not previously been codified through rulemaking because of a belief that the industry recognized the importance of adequate, competent staffing and would voluntarily implement these staffing levels. However, this assumption has proven false in several cases. (48FR 133, pp 31612)

The insinuation in this statement that those utilities who disagree with the Commission do not "recognize the importance of adequate, competent staffing" is totally unwarranted. This insinuation is especially ironic in that the staff has agreed that there is no technical justification.

Yet the damage has been done. The staff has succeeded with this statement in telling the public that licensees do not care about safety. It is particularly distressing that the staff has determined this on the basis of differing opinion. The attitude that this represents, that the NRC is always right and the licensee is always wrong, should not exist. Aside from the obvious difficulties inherent when an agency acquires this attitude are the more subtle difficulties which undermine the entire regulatory process.

For, with this attitude the staff has made it clear that it does not intend to seriously consider comments received in the rulemaking process. Furthermore, it undercuts the right of licensee's to participate in the rulemaking process by raising the specter that disagreements with the staff will be interpreted as a disregard for safety. Finally, if the attitude becomes pervasive, it will destroy the day-to-day interaction necessary in the regulator-regulated environment. Fortunately, our experience with our Project Manager and Resident Inspector has been very good, indicating that this attitude is not common to all of the staff.

We understand that the regulator-regulated relationship cannot be characterized as "friendly". Yet, we do not believe that it needs to be adversarial either. The attitude displayed by the NRC in promulgation of this rule, however, is definitely bordering on the latter. We hope that pointing this out now will prevent a further degradation of this attitude.

We also wish to assure you that, as always, we are committed to the safe operation of the Kewaunee Nuclear Power Plant. As such, we do not intend to compromise safety in order to meet arbitrary deadlines.

Sincerely,

Carl W. Giesler
Vice President - Nuclear Power

smv

Enc.

cc - Mr. S. A. Varga, US NRC
Mr. Robert Nelson, US NRC
Mr. David Baker, Foley and Lardner

Rules and Regulations

Federal Register
Vol. 48, No. 133
Monday, July 11, 1983

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensed Operator Staffing at Nuclear Power Units

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require licensees of nuclear power units to provide a minimum number of licensed operators and senior operators on shift at all times to respond to normal and emergency conditions. These requirements will further assure the protection of the health and safety of the public by allowing the senior operator in charge the flexibility to move about the facility as needed while assuring that a senior operator is continuously present in the control room during unit operation.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: James Norberg, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–443–5863, or Clare Goodman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–4894.

SUPPLEMENTARY INFORMATION:

Background

In the aftermath of the Three Mile Island (TMI) accident, a number of studies and investigations conducted by the NRC, the industry, and others recommended changes in the numbers, qualifications, and organization of nuclear power plant personnel.[1] The "NRC Action Plan Developed as a Result of the TMI–2 Accident" (NUREG–0660), Item I.A.1.3, adopted these recommendations and "Clarification of TMI Action Plan Requirements" (NUREG–0737) was issued to provide interim shift staffing criteria to all licensees of operating units, all applicants for operating licenses, and all holders of construction permits. NUREG–0737 criteria include the provisions that: (a) A shift supervisor with a senior operator's license shall be on site at all times that a nuclear power unit is loaded with fuel; (b) a licensed senior operator shall be in the control room from which a unit is being operated; (c) an individual who holds a senior operator license shall supervise core alterations; and (d) one or more control room operators shall be assigned on shift for each fueled unit depending on the number of units being operated from the control room.

These criteria have been used for licenses issued after the accident at Three Mile Island, and all licensees of operating nuclear power units are aware of the NRC's staffing criteria provided by NUREG–0737. To ensure that all operating nuclear power units are adequately staffed with licensed personnel, the amendment will apply these NUREG–0737 criteria to all operating nuclear power units. The staffing criteria of NUREG–0737 and the current technical specifications for nuclear power units call for more licensed operators than are required by current NRC regulations. Under current NRC regulations it is only necessary to have a licensed senior operator present at the facility or readily available on call during operation, and an operator or senior operator must be present at the controls at all times during operation.

Proposed Rule

On August 30, 1982, the NRC published a proposed rule in the Federal Register (47 FR 38135) that would require all licensees of nuclear power units to provide a minimum number of licensed operators and senior operators on shift and a person with a senior operator license in the control room at all times that the unit is being operated. Interested persons, applicants, and licensees were invited to submit written comments to the Secretary of the Commission. After consideration of the comments, the staff has amended the proposed rule, as discussed in the following section.

Comments on the Proposed Rule

The Commission received twenty-seven letters commenting on the proposed rule. Copies of those letters and an analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

Implementation Schedule

A large number of the comments received stated that the implementation schedule for this rule is too ambitious. The long lead time necessary to acquire, train and license operators may make it very difficult to meet a near-term requirement to increase the number of operators required during operation. Additionally, several comments suggested that one means of easing the manpower problem would be to allow the second senior operator to replace the shift technical advisor. In a related effort, the Commission has under consideration a draft policy statement which would allow the functions of a senior operator and a shift technical advisor to be merged. In order to allow time to acquire, train, and license the required number of operators, the implementation date for the rule has been delayed one year, to January 1, 1984. All licensees of nuclear power units will be expected to meet these staffing requirements by January 1, 1984.

Licensees that believe they cannot meet this deadline must submit a request for an extension by October 1, 1983, to the Director of the Office of Nuclear Reactor Regulation. In that request they should address the following criteria:

1. Whether the licensee is firmly committed to hire and train the necessary number of operators. This criterion will be used to assure that a

[1] The recommendations of the investigating groups are collected in NUREG–0660, "NRC Action Plan Developed as a Result of the TMI–2 Accident." NUREG–0660, in Appendix E, discusses the availability of the reports prepared by the various organizations. NUREG documents are available for public inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC. Copies of NUREG documents may be obtained from: the GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and the National Technical Information Service, Springfield, VA 22161.

Commission finds that these considerations are sufficient to justify imposition of the requirement that a senior operator be present at all times in the control room from which a unit is being operated.

Also, the additional senior operator is required in order to avoid limiting the shift supervisor's freedom to move about the plant as needed during normal and emergency situations. A senior operator may have to use knowledge and training to act outside the control room to mitigate the consequences of any accident and to deal with such items as technical communications regarding operations or emergency responses or to supervise at the site of the emergency within the plant. Another individual licensed as a senior operator is also necessary to provide routine relief for the senior operator in the control room should it be necessary to leave the control room for any reason. Finally, it is not envisioned that any individual senior operator assigned to the control room will be prevented from periodically touring the plant.

It must also be noted that the rule does not define "control room." Since some control rooms are defined so that a senior operator can be within the confines of the control room but not have direct and prompt access to information on current plant conditions, some additional clarification is necessary. The senior operator in the control room is expected to normally spend most of the time in that portion of the control room where there is direct and prompt access to information on current plant conditions and where the operator at the controls can be supervised. As duties may necessitate, the senior operator is to have the flexibility to periodically move to other parts of the control room. However, the senior operator should remain, at all times, in a position to provide prompt assistance to the reactor operators when requested. Additionally, this means that the senior operator must either (1) be in sight of or in the audible range of the reactor operators at the controls, or (2) be in the audible range of the control room annunciators. This is necessary so that the senior operator's training and knowledge will be immediately available as needed. The staff plans to amend Regulatory Guide 1.114, "Guidance on Being an Operator at the Controls of a Nuclear Power Plant," to include more detailed guidance on this subject.

(c) Core alterations shall be supervised by an individual who holds a senior operator license or a senior operator license limited to fuel handling for that unit. This requirement is based on the need for the presence during core alteration of a person whose training exceeds the minimum requirements for a reactor operator in the areas of: conditions and limitations in the facility license, the facility's technical specifications, procedures and limitations involved in core alterations, and fuel handling facilities and procedures. The presence of a person trained in these areas is necessary to assure that core alterations are conducted safely and do not endanger those working on the alterations. This training can be achieved by either successfully completing the requirements for a senior operator license, or by completing those portions of the requirements for a senior operator license which are applicable to core alterations.

(d) Each unit shall have one licensed operator at the controls at all times in addition to the requirement for a senior operator in the control room, and operating units shall have an additional licensed operator assigned to the unit. The requirement that an operator be at the controls is consistent with existing NRC regulations and will assure that plant instrumentation is continuously monitored and that controls are properly manipulated. The requirement for an additional licensed operator for operating units is necessary so that a qualified individual will be able to provide relief for the operator at the controls. The senior operator in the control room cannot be relied on for such relief under the rule because having the senior operator perform the functions of a reactor operator, even for a limited time, would result in loss of the oversight function of the supervisor which might decrease the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences. If the senior operator in the control room was without a second licensed individual to monitor plant instrumentation and manipulate controls, the senior operator might not be able to oversee and observe other relevant plant conditions. The additional licensed operator is also needed to assure that a licensed operator is available to perform other duties, such as conducting valve line-up checks, taking routine tours, investigating problem areas, and providing assistance during emergencies. It is necessary to have a licensed operator available for these tasks because the training that is provided to operators gives greater assurance that problems will be discovered and mitigated quickly.

Substantive Changes to the Proposed Rule

Based on the comments received, the following substantive changes have been incorporated into the final rule:

(1) The implementation date for the rule was revised from January 1, 1983 to January 1, 1984. (*See* §§ 50.54(m)(2) and (m)(3).)

(2) The points selected for the transition from "not operating" to "operating" were changed to be consistent with the operating mode definitions in the standard technical specifications and the phrase "For the purpose of this table . . ." was added to ensure that this footnote is not used as a definition of "operating" in other sections of title 10. (*See* § 50.54(m)(2)(i) footnote (2).)

(3) The rule was changed to allow for temporary deviations from the required minimum staffing levels to provide for unexpected situations such as illness of an operator during a shift. (*See* § 50.54(m)(2)(i) footnote (1).)

(4) The rule has been changed to state clearly that a senior operator with responsibility for overall plant operation shall be on site at all times that a nuclear unit is loaded with fuel. (*See* § 50.54(m)(2)(ii).)

(5) The rule has been changed to state clearly that a minimum of two operators (the senior operator in the control room and the operator or senior operator at the controls) shall be in the control room during operation and that an operator or senior operator shall be present at the controls at any time a unit is loaded with fuel. (*See* § 50.54(m)(2)(iii).)

(6) The requirement for core alterations to be supervised by a senior operator has been revised to allow core alterations to be supervised by a senior operator or a senior operator whose license is limited to fuel handling. (*See* § 50.54(m)(2)(iv).)

Paperwork Reduction Act Statement

The information collection requirements contained in this final rule impact nine or fewer entities and, therefore, are not subject to Office of Management and Budget clearance as required by 44 U.S.C. 3501, et seq.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects the staffing requirements of facilities licensed under the provisions of 10 CFR § 50.21(b) and 10 CFR § 50.22. The companies that own these facilities

real and continuing effort will be made to meet the intent of the rule.

2. Whether the licensee has set a reasonable target date by which it would meet the requirements. This criterion will assure that the upgraded staffing requirements will be met as quickly as possible, rather than delayed simply because the option was there.

3. Whether the licensee has an active recruitment program to hire the necessary numbers of operators. This criterion will be used to indicate whether or not the licensees have realistically considered the effects of attrition.

4. Whether the licensee has an adequate training program to assure that it has well-trained operators readily available. This criterion will be used to assess the estimates of the percentage of candidates that can be reasonably expected to become licensed and to ensure that the operators who control the unit while in a reduced staffing capacity are adequately trained.

5. Whether implementation of the rule would adversely affect the licensee's training program, overtime practices, number of shifts, or length of shift. This criterion will be used to assess the possible negative effect on safety of requiring increased staffing levels if this increase is made at the expense of excessive overtime, the training program, or the number of shifts available.

This request will be reviewed in accordance with the provisions of 10 CFR 50.54 by the Director of the Office of the Nuclear Reactor Regulation using the criteria listed above and any other information which is considered to be pertinent to the request. If the licensee demonstrates good cause for the request, the implementation date will be extended for that unit.

Exemptions From the Substantive Provisions of the Rule

Licensees that wish to be exempted from the substantive requirements of the rule must submit a request in accordance with the provisions of 10 CFR 50.12 and adequately justify reduced staffing levels based on plant size, lack of complexity, or other unique factors. If the licensee demonstrates good cause for the request, it will be granted.

Justification for the Provisions of the Rule

Several commentors stated that the NRC had not provided adequate justification of the need for codifying the proposed staffing requirements and that the comment period should be extended until the staff develops a technical basis which demonstrates an increase in safety as a result of implementation of the rule. While an empirical data base which specifies the exact number and qualifications of licensed operators needed on shift at nuclear power plants does not exist, the basis described below is considered sufficient to warrant these increased staffing requirements pending confirmation by research programs which are planned or are currently underway.

The Commission notes, in this regard, that although these staffing levels have been Commission policy for several years, they have not previously been codified through rulemaking because of a belief that the industry recognized the importance of adequate, competent staffing and would voluntarily implement these staffing levels. However, that assumption has been proven false in several cases. The Commission has therefore decided that to protect the health and safety of the public, it is necessary to adopt this rule to guarantee that all plants have an adequate number of licensed operators and senior operators available on shift. The changes made to the existing requirements and the bases for them are:

(a) A shift supervisor with a senior operator's license shall be on site at all times that any unit is loaded with fuel. The presence of this individual will assure that a technically competent supervisor will be present on each shift to direct the overall operation of the plant. A situation can arise at any time that requires the presence of someone with knowledge of the facility's technical specifications and the conditions and limitations in the facility license. Under current NRC requirements, senior operators are examined in more depth and more areas concerning a unit's conditions, limitations, and specifications than a reactor operator or unlicensed manager. In addition, a senior operator normally has more operational experience, further enhancing the senior operator's ability to respond to any situation that may occur. The absence of this knowledge on site, where it is readily available, could possibly create a hazardous condition. This person is required to be on site at all times that any unit is loaded with fuel, rather than just when a unit is being operated because the conditions and limitations in the facility's license and in the facility's technical specifications continue to apply.

(b) A senior operator shall be present at all times in the control room from which a unit is being operated. A senior operator's technical expertise is required in the control room in addition to a reactor operator's technical expertise because of the differences in their training programs and experience. A senior operator typically has greater operating experience than a reactor operator. Also, a senior operator is trained and examined in seven areas that are not required for a reactor operator. These areas are conditions and limitations in a facility license, design and operating limitations in the technical specifications, certain radiation hazards, coolant chemistry, procedures and limitations involved in core alterations and rod programming, fuel handling facilities and procedures, and procedures and equipment available for handling and disposal of radioactive materials. More detailed knowledge in some of these areas would be helpful to the operators in the control room in the event of an emergency. In addition, a senior operator's knowledge and analytic abilities in heat transfer and fluid flow are tested in more depth than a reactor operator's knowledge and analytic abilities. Individuals with this knowledge have a better basis to provide a broader viewpoint and, therefore, should be available in the control room of an operating nuclear power plant at all times.

The requirement for a senior operator's continuous presence in the control room would assure that: (1) A person is available who can provide the oversight function of the supervisor so that the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences might be increased; (2) the senior operator in the control room is aware of plant conditions prior to and resulting from an abnormal event so that the senior operator will be able to use extra experience, training and knowledge to act promptly to mitigate that event; and (3) the reactor operator is able to direct attention to performing the immediate actions necessary to mitigate that event rather than having to brief the senior operator about the background of that event if that person were absent from the control room. It cannot be foreseen how quickly accidents will develop; having a senior operator in the control room at the initiation of any incident, rather than several minutes later if the senior operator is simply on site, could alleviate potentially serious consequence of foreseeable accidents. The presence of a senior operator, with increased experience and training, will also increase the probability of correctly detecting abnormal events and human error early enough to mitigate potential consequences of any accident. The

do not fall within the scope of "small entities" as set forth in the Regulatory Flexbility Act or the small business size standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

Regulatory Analysis.

The Commission has prepared a regulatory analysis of this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the analysis may be obtained from Clare Goodman, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 492–4894.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Part 50 are published as a document subject to codification.

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282,; secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161o, 69 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (m) of § 50.54 is redesignated paragraph (m)(1) of § 50.54 and paragraphs (m)(2) and (m)(3) are added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(m) * * *

(2) Notwithstanding any other provisions of this section, by January 1, 1984, licensees of nuclear power units shall meet the following requirements:

(i) Each licensee shall meet the minimum licensed operator staffing requirements in the following table:

MINIMUM REQUIREMENTS [1] PER SHIFT FOR ON-SITE STAFFING OF NUCLEAR POWER UNITS BY OPERATORS AND SENIOR OPERATORS LICENSED UNDER 10 CFR PART 55

Number of nuclear power units operating [2]	Position	One unit	Two units		Three units	
		One control room	One control room	Two control rooms	Two control rooms	Three control rooms
None	Senior Operator	1	1	1	1	1
	Operator	1	2	2	3	3
One	Senior Operator	2	2	2	2	2
	Operator	2	3	3	4	4
Two	Senior Operator		2	3	[3] 3	3
	Operator		3	4	[3] 5	5
Three	Senior Operator				3	4
	Operator				5	6

[1] Temporary deviations from the numbers required by this table shall be in accordance with criteria established in the unit's technical specifications.

[2] For the purpose of this table, a nuclear power unit is considered to be operating when it is in a mode other than cold shutdown or refueling as defined by the unit's technical specifications.

[3] The number of required licensed personnel when the operating nuclear power units are controlled from a common control room are two senior operators and four operators.

(ii) Each licensee shall have at its site a person holding a senior operator license for all fueled units at the site who is assigned responsibility for overall plant operation at all times there is fuel in any unit. If a single senior operator does not hold a senior operator license on all fueled units at the site, then the licensee must have at the site two or more senior operators, who in combination are licensed as senior operators on all fueled units.

(iii) When a nuclear power unit is in an operational mode other than cold shutdown or refueling, as defined by the unit's technical specifications, each licensee shall have a person holding a senior operator license for the nuclear power unit in the control room at all times. In addition to this senior operator, for each fueled nuclear power unit, a licensed operator or senior operator shall be present at the controls at all times.

(iv) Each licensee shall have present, during alteration of the core of a nuclear power unit (including fuel loading or transfer), a person holding a senior operator license or a senior operator license limited to fuel handling to directly supervise the activity and, during this time, the licensee shall not assign other duties to this person.

(3) Licensees who cannot meet the January 1, 1984 deadline must submit by October 1, 1983 a request for an extension to the Director of the Office of Nuclear Regulation and demonstrate good cause for the request.

Dated at Washington, DC, this 5th day of July 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-18637 Filed 7-8-83; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563b, 563c, and 563d

[No. 83-348]

Information Disclosure Requirements In Connection With Conversions From the Mutual to the Stock Form of Organization, Filings Under the Securities Exchange Act of 1934, the Issuance of Mutual Capital Certificates, Debt Securities, and Retail Repurchase Agreements

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has adopted amendments to its regulations governing the information disclosure requirements applicable to an institution the accounts of which are insured by the FSLIC ("institution") converting from the mutual to the stock form of organization, and to an institution which has registered a class of its equity securities with the Board under section 12 of the Securities and Exchange Act of 1934, 15 U.S.C. 781 ("1934 Act"). The amendments also affect the form and content of financial statements included in certain offering circulars covering the offer and sale by an institution of mutual

NRC-82-170

WISCONSIN PUBLIC SERVICE CORPORATION

P.O. Box 1200, Green Bay, Wisconsin 54305

September 27, 1982

Mr. Samuel Chilk, Secretary
U. S. Nuclear Regulatory Commission
1717 H. Street, NW
Washington, D.C. 20555

Gentlemen:

Docket 50-305
Operating License DPR-43
Kewaunee Nuclear Power Plant
Comments on Proposed Rule Requiring Increased Shift Staffing

Reference: 47 FR 168, pp 38135-38137 proposed 10CFR50.54 (m)(2); published August 30, 1982

This provides Wisconsin Public Service Corporation's (WPSC) comments on the above referenced proposed rule. The proposed 10CFR50.54 (m)(2) would require WPSC to provide a licensed Senior Reactor Operator in the control room of the Kewaunee Nuclear Power Plant when the plant is operating. For the purposes of this rule, operating is defined as any condition in which the average coolant temperature is above 200°F. The proposed rule also requires the minimum shift size to include two Senior Reactor Operators, which would require WPSC to add an additional SRO on each shift.

These comments are divided into two categories--administrative and technical. They deal with the proposed schedule as well as the substantive requirement which would require WPSC to increase our on-shift staff.

Administrative Comments

WPSC notes that the proposed rule was published in the Federal Register on August 30, 1982 with the comment period ending September 27, 1982. This amounts to a 28-day comment period during which there is a national holiday--Labor Day. The statutory minimum comment period for notice and comment rule-making is 30 days, under 5 U.S.C. section 553(d) (1976). It concerns WPSC that the NRC is apparently violating the Administrative Procedure Act on such an important subject. Indeed, in WPSC's opinion, this proposed rule deserves an even longer comment period to allow for full and proper public participation. In light of the passage of time during which this subject has been discussed, the unseemly haste in so short a comment period and allowing so little time for implementation seem unjustifiable.

The Preliminary Value/Impact Statement supporting this rule notes that the decision to use the rulemaking process as the procedure for promulgating this requirement was made

> ...Since a regulation is the most appropriate way of establishing a requirement for a large group of licensees (i.e., all operating nuclear power plants), and because it provides a better way for the public and industry to participate in the Commission's imposition of requirements. (Section 3.3 of Preliminary Value/Impact Statement).

Further, in light of the recent statements by the United States Court of Appeals for the D.C. Circuit concerning the NRC's rulemaking procedures, the Commission's good faith in seeking and considering public comments may be doubted.

"The process of notice and comment rulemaking is not to be an empty charade. It is to be a process of reasoned decisionmaking. One particularly important component of the reasoning process is the opportunity for interested parties to participate in a meaningful way in the discussion and final formulation of rules." Connecticut Light & Power Co. v. NRC, CCH Nuc. Reg. Rptr. pp. 20,216 (1982).

The NRC's actions in this matter can only encourage the court's suspicion that the Commission considers the rulemaking process to be nothing more than a charade, making arbitrary imposition of unjustifiable regulatory requirements.

Schedule

The proposed effective date of this rule is January 1, 1983. This effective date appears to be purely arbitrary, with no correlation to safety. Commissioner Asselstine requested comments on the schedule: WPSC refers him to our docket, on which we have informed you on numerous occasions of our reluctant commitment to this requirement, but also to our proposed schedule for implementation. Specifically, in letters dated April 13, 1981, September 10, 1981 and June 7, 1982, WPSC informed you that we could not commit to providing a second SRO on shift until January 2, 1984. Additionally, WPSC met with members of your staff on November 23, 1981 to discuss our schedule and the justifications for it. To date, WPSC has not had a response. The staff's indifferent approach to this subject, exemplified by its failure to respond, also belies the need for haste incorporated in the rule.

WPSC's reasons for a longer rational implementation schedule are based on the time it takes to hire, train and license operators. To maintain fairness and consistency in our promotional policies, WPSC established a program which will ultimately allow our most experienced operators to become the second SRO on shift. In order to do this and develop licensed personnel for a sixth shift, WPSC had to first hire and train many new potential reactor operators to allow them in turn to relieve existing operators for SRO training. This process has certain necessary administrative time limits, due to WPSC's established policies for determining the readiness of operators to assume shift-responsibility. There are further restraints due to the NRC's requirements for experience prior to licensing.

WPSC strongly encourages the Commission to reconsider the effective date of this rule. Imposing an arbitrary date has the potential for serious safety consequences. It is most important to assure that operators of nuclear power plants are fully qualified to assume the responsibility of operating the plant. An arbitrary date forces the utility to expedite all phases of achieving this goal, including hiring, training and gaining operational experience. This has the effect of diluting the overall

experience level of the operating staff, as well as creating the possibility of a flawed training and hiring program. If a utility is forced to license a certain number of operators by an arbitrary date, the temptation exists for the license candidate to study to "pass the exam", and not necessarily to operate the plant. Additionally, if the candidate is not allowed an adequate amount of time to absorb the information he is learning, his retention of that material may be decreased. Both of these possibilities have obvious safety consequences. WPSC has tried to minimize these concerns by establishing a rational schedule which allows an adequate amount of time to train license candidates.

The dilution of the overall experience level is of great concern to us. Prior to this requirement, WPSC's operational staff consisted of five shifts, with one SRO (the shift supervisor) and two RO's per shift. (WPSC also maintains an STA on site when the unit is above cold shutdown.) The experience level of these personnel was excellent, due to the extremely low rate of attrition which we have been able to maintain. For example, in March of 1979, every shift supervisor and licensed operator on shift had pre-operational experience at the Kewaunee Plant, even though we had been operating for five years at that time. The value of this experience cannot be over-emphasized. The control room operators are, in part, the first to respond to alarms and abnormal conditions in the control room. The insight into the workings of the plant that these personnel have gained from pre-operational experience is extremely valuable.

However, as a result of the proposed requirement for a second SRO, WPSC has been forced to take steps which will virtually eliminate all pre-operational experience "on the panels". WPSC acknowledges that this experience cannot be maintained throughout the life of the plant, however, under normal conditions the turnover of personnel would be much slower, allowing for a timely and more complete transfer of information and experience among the operators.

WPSC also acknowledges that this experience will not be totally lost, since present operators that will be upgraded to SRO's will be acting supervisors in the control room. Keep in mind, however, that the actual manipulation of controls rests with the control room operators (RO's), and these operators will be the first to respond to abnormal conditions.

Another negative aspect of the proposed effective date is the potential it creates for "pirating" of operators in the industry. An arbitrary shift manning requirement, with an arbitrary effective date, will increase the temptation for utilities to recruit qualified operators from operating power plants, causing a further reduction in overall experience levels.

Finally, with respect to an arbitrary completion date, WPSC would like you to realize the potential it would create for a contradiction with another one of your guidelines. Generic Letter 82-12 (June 15, 1982) informed all utilities of your guidelines concerning working hours for nuclear plant operating staffs. These guidelines limit the amount of overtime and consecutive days that operators should be allowed to work. The imposition of an arbitrary date when an increased staff size would be required could result in a forced overtime situation which in turn would result in the violation of your working-hour guidelines at those facilities which have traditionally operated successfully with small operating staffs. This would unreasonably place the utility in a "no-win" situation.

Technical Justification for Increased Staff Size

As justification for the increase in operating staff size which would be required by the proposed 10CFR50.54 (m)(2), the NRC has stated that ".... studies and investigations have recommended changes in the numbers, qualifications, and organization of nuclear power plant personnel. .... These studies concluded that, among other things, current shift staffing requirements should be upgraded." Here, once again, WPSC finds history repeating itself. The NRC has not given any justification for the requirement with this statement, but has referred the reader to a set of other documents. This is exactly the practice for which the NRC was admonished by the Court of Appeals for the District of Columbia in their decision on the Fire Protection Requirements (Docket 81-1050, March 16, 1982).

WPSC feels that this continuing disregard for the requirements of the Administrative Procedure Act only serves to undermine NRC licensee's and the public's confidence in the rulemaking process.

WPSC has reviewed several of the reports and documents referenced in the proposed rule. Unlike the Commission, WPSC does not feel that these reports recommend an increase in the staff size of operating plants, as discussed below.

Kemeny Report

The report of the President's Commission on Three Mile Island (The Kemeny Report) includes recommendations for improvements in several areas, ranging from the NRC itself to Emergency Planning and Response. In reviewing these recommendations, WPSC has not been able to identify any that specifically recommend an increase in the on-shift staff at nuclear power plants. Perhaps the recommendations of the President's Commission that come the closest to this proposed requirement are those regarding training. However, these recommendations do not require an increase in the number of operators, but an upgrade in the training of operators. In WPSC's opinion, this proposed rule runs exactly counter to these recommendations by imposing an arbitrary date of implementation, thus undermining the objective of improved training (as discussed above).

WPSC's conclusion that the Kemeny Report does not recommend an increase in operating staff size is supported by Volume 2 of NUREG 0660, NRC Action Plan Developed as a Result of the TMI-2 Accident. Pages 3 through 26 of Volume 2 provide a cross reference of the President's Commission's recommendations to the Action Plan items. Item 1.A.1.3, Shift Manning, does not appear on this cross reference.

Bulletins and Orders Task Force

The report of the Bulletins and Orders Task Force is also referenced in the proposed rule as justification for increased staffing. Again, WPSC's review of this report has been unsuccessful in providing technical justification for this proposed rule. In fact, footnote (1) of the proposed rule suggests that NUREG 0660 be used to glean further technical information on this requirement. WPSC has found that the Bulletin and Orders Task Force report is not even referenced in Volume 2 of NUREG 0660 (see above).

NRC Special Inquiry Group (SIG)

WPSC's review of the report of the Special Inquiry Group (Rogovin Report) provided a repeat of our other reviews. Again, the report recommends an "upgraded set of requirements" concerning shift staffing, but falls short of suggesting an increase in the number of licensed senior reactor operators on site until appropriate analyses

are completed. The Rogovin report suggests that the qualifications of the utility's staff be certified to insure the management and technical qualifications of utility personnel. (pp 106-107 of the Rogovin Report)

In reviewing the recommendations of the SIG as summarized in NUREG 0660 WPSC could only identify a weak link between the SIG's recommendations and the actual requirement to increase the staff size. For example, recommendation 9 (page 75, volume 2 NUREG 0660) suggests that:

> Until recommendation 8 can be implemented, the NRC should require that all hot operations shifts be manned by a minimum of one SRO, two CRO's and one additional individual with demonstrated and tested capabilities in abnormal system diagnosis. Two of these individuals should be required in the plant control room at all times (C.2.a, C.3.a).

Recommendation 8 suggests that research be performed to determine what an appropriate staff size should be. WPS has met the requirements of recommendation 9. It is our understanding that task analyses are being performed by INPO, among others; while this work is continuing our shift staff is made up of one SRO (Shift Supervisor), two RO's, one Shift Technical Advisor, one equipment operator and one auxiliary operator.

Similarly, recommendation 2 (page 76, Volume 2, NUREG 0660) suggests that "on-shift manning levels be increased to levels determined to be needed by the results of accident response task analyses." Again, it is premature to proceed with rulemaking on this topic until the appropriate research is completed.

Referring finally to NUREG 0737 and the preliminary value impact statement associated with this proposed rule, WPSC at last discovered an attempt to justify this requirement. The latter document states that this requirement is necessary (1) to ensure the presence of a person with a senior operator license in the control room at all times that a nuclear power unit is operating; and (2) to provide a minimum number of licensed personnel on each shift at all times.

NUREG 0737 states essentially the same purposes for this rule, with the justification that it would allow for the movement of key individuals (presumably, the shift supervisor) about the plant.

While WPSC agrees with the concept of mobility for the shift supervisor, we do not understand the reasoning that there should always be an SRO in the control room. WPSC's experience has shown that current staffing levels are adequate to provide for the health and safety of the public. In our off-normal experiences at the Kewaunee Plant, WPSC has shown that two qualified RO's, under the direction of the shift supervisor, can adequately handle the plant. Furthermore, since serious accidents at nuclear power plants are slow developing (e.g.: TMI-2), the shift supervisor can be allowed to move about the plant with assurance that he can return to the control room within minutes, if necessary.

WPSC has not been able to determine adequate technical justification in the referenced documents to require that an SRO be in the control room at all times. This requirement appears to have been assumed by the NRC, thus providing the basis for increasing the staff at nuclear power plants. Based on our eight years of operational experience, it is WPSC's opinion that such a requirement is not necessary.

In fact, WPSC feels that there are potential safety concerns in increasing staff sizes to a level where individuals become nonproductive. If the staff level is raised to such a point, the nonproductivity of the personnel will breed inattentiveness, which in turn can have serious safety consequences. WPSC recommends that this proposed rule be delayed to allow for the completion of appropriate research which will define the need for such a rule.

In WPSC's opinion, the safety of nuclear power plants is best served by highly qualified personnel. The number of personnel on shift will add little or nothing to safety if those personnel are not adequately prepared for their job responsibilities. WPSC feels that the NRC should not concentrate on numbers as much as on the proper selection, qualification and continual requalification of personnel. By imposing arbitrary completion dates for a rule such as this, the NRC is only undermining the key component in the safety of a nuclear power plant.

Such a generalized statement of purpose, unsupported by specific technical justification, is an insufficient basis for imposition of a costly, inefficient and potentially counterproductive staffing requirement. The method of proposed implementation and lack of expressed justification suggest that the rule is being proposed more for its appearance of increasing safety than for its substance.

In summary, WPSC recommends that the commission not adopt the proposed rule for the following reasons:

1. The proposed rule violates the procedures and intent of the Administrative Procedure Act.

2. The proposed effective date is arbitrary; impositions of this arbitrary date could have severe safety consequences.

3. The commission has not provided adequate technical justification for the rule.

4. WPSC's experience at the Kewaunee Nuclear Power Plant has demonstrated the acceptability of our existing staff size.

5. The rulemaking should, at a minimum, be postponed until the appropriate analyses considering shift manning are completed. Paraphrasing the words of the Court of Appeals, the NRC has treated the safeguards of the administrative process too cavalierly, making it impossible for the public (or a reviewing court) to discern that the agency action has indeed furthered the public safety.

As always, WPSC would be happy to discuss these comments with you, and would appreciate your reply.

Very truly yours,

C R Giesler for

C. W. Giesler
Vice President - Nuclear Power

js
cc - Mr. Robert Nelson, US NRC
Mr. David Baker, Foley & Lardner