



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

July 19, 2012

Mr. Glenn Tracy
Director, Office of New Reactors
U.S. Nuclear Regulatory Commission
245 Peachtree Center Avenue NE, Suite 1200
Atlanta, GA 30303-1257

Dear Mr. Tracy:

By letter dated July 3, 2012 (ML12187A575), the Southern Nuclear Operating Company (SNC) responded to the Nuclear Regulatory Commission's (NRC) notice of violation 5200025/2012-008-02 involving revisions to the basement reinforcement design for Vogtle Unit 3 not meeting the Updated Final Safety Analysis Report (UFSAR). Southern Nuclear Operating Company informed the NRC:

SNC has determined that the revised design meets the requirements of ACI 349-01 as delineated in UFSAR Figure 3H.5-3; thus a license amendment request is not required.

By letter dated July 13, 2012 (ML12195A308), the NRC informed SNC:

Based on the information submitted and subsequent discussions held with Southern Nuclear Operating Company on July 10, 2012, the staff finds that the submitted design revision does not meet the current licensing basis as described in the Updated Final Safety Analysis Report (UFSAR). ... The justification provided in your letter for concluding that the submitted design revision is in compliance with ACI 349-01 appears to be based on a broad interpretation of paragraph 12.1.1 of the code. The staff finds, however, that this paragraph does not allow for the blanket use of alternate means of developing reinforcement not covered by, or meeting the minimum requirements, prescribed in the code.

As we understand the sequence of events in this matter

- SNC revised the containment basement reinforcement design for Vogtle Unit 3 and concluded it still conformed to the UFSAR
- NRC inspectors reviewed the design revision and determined that it did not conform to the UFSAR and was therefore a violation of NRC's regulations
- SNC re-reviewed the revised design, with full benefit of NRC's explicit opinion that it did not conform to the UFSAR, and again concluded that it was compliant with the UFSAR
- NRC re-reviewed SNC's position and again concluded that it was a violation.

Paragraph (a)(1) to §52.97 of Title 10 of the Code of Federal Regulations states that the NRC may issue a combined license (as it did for Vogtle Unit 3) after finding that:

(iii) There is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations.

(iv) The applicant is technically and financially qualified to engage in the activities authorized.

It is reasonable to assume that SNC's evaluation and decision-making applied to the NRC's notice of violation reflects the very best it can do. The company's initial assessment of the re-designed basemat reinforcement might be excused as less than its best. But once the NRC identifies a violation, the company has no excuse for not applying its best skills and judgment.

The NRC has found the company's best decision-making to be inadequate.

On its surface, this NRC finding seems to directly contradict its earlier findings in issuing the combined license. The NRC recently found that the company's best decision-making cannot detect violations of regulations, even with NRC's not-so-subtle and abundant clues. That clearly undermines both the "reasonable assurance" and "technically qualified" findings made before issuing the combined license.

Because this licensee's best decision-making cannot reasonably assure it complies with regulatory requirements absent NRC assistance, it would seem that NRC must formally inspect each and every decision and task performed by this licensee. Not just some, as in ITAAC's confined space, but every single one of them – at least until this licensee has demonstrated proficiency discerning the difference between conformance and non-conformance by itself without NRC's prodding.

Will the NRC significantly expand its inspection effort at Vogtle Unit 3 based on this licensee's poor performance?

Sincerely,

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

David Lochbaum
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