

From: joebrady [mailto:joebrady@bellsouth.net]

Sent: Saturday, October 26, 2013 8:51 PM

To: Macfarlane, Allison

Cc: McCree, Victor

Subject: Flooding backfitting

Dear Chairman Macfarlane,

I have recently become aware that the NRC has issued flood protection feature violations against the requirements in 10CFR50 Appendix B. Appendix B is for safety-related SSCs only. Flood protection SSCs are not safety-related. They perform none of the functions defined as safety-related by 10CFR 50.2. Flood Protection SSCs protect safety-related SSCs from natural phenomena, just like fire protection SSCs protect safety-related SSCs from fire. Flood protection SSCs are addressed by 10CFR50 Appendix A, Criterion 2, Design Basis for Protection against Natural Phenomena. 10CFR50, Appendix A, General Design Criteria (GDC), is addressed in 50.34 as the minimum design criteria for nuclear power plants and that an applicants conformance to them should be addressed in the Safety Analysis Report that is submitted with the license application. However, I have been unable to find where Criterion 2 is invoked by any regulation. My understanding of the regulations is that an Appendix to 10CFR50 becomes a valid regulation to cite against when it is invoked by a regulation. Some of the General Design Criteria are invoked by individual regulations such as Criterion 3, Fire Protection, by 10CFR50.48. Some GDCs are design criteria for safety-related SSCs; and are therefore, invoked through Appendix B, Criterion 3, Design Control, based on the licensee's FSAR statements concerning conformance to the GDCs. Appendix B is invoked for operating plants through 10CFR50.54 by the approved Quality Assurance Plan.

Generic Letter 84-01 made clear the distinction between safety-related and important to safety. Flood protection SSCs, like fire protection SSCs are important to safety but not safety-related. Therefore, I don't understand how the NRC can issue citations for flood protection SSCs against any Appendix B criteria. The treating of important to safety SSCs as safety-related by citing flood protection SSCs against Appendix B appears to be a backfit under 50.109. 10CFR50.109 indicates that to impose these regulations in a new way or to use a regulatory staff position interpreting the regulations in either a new or different way from the previously applicable staff position, stated in GL 84-01, requires certain actions by the NRC and its staff. Consequently, I would expect that each of the flood protection violations that were issued by each of the Regions received an evaluation under 50.109, Backfitting. However, I have not found where that was done. It doesn't appear to me that the NRC complied with its own regulations. The below are only a quick list of NRC inspection report examples that I found, and in no way exhaustive. Examples that cited procedures under Regulatory Guide 1.33 Appendix A are not a concern to me. They are properly cited.

Examples: Fort Calhoun 2012002; Turkey Point several years ago (XVI); Point Beach 2013002, 2013011, 2013012; Watts Bar 2012009, 2013009; River Bend 2003004

My understanding of the Reactor Oversight Process (ROP) indicates that the significance color designation of the improperly cited or backfitted flood protection feature violations would not change if these errors were corrected. I understand that the fix would most likely be to identify these issues as findings instead of violations or to go through the required 50.109 process. Consequently, the action matrix would not change. However, inspectors are using these improperly cited violations as the example to follow. Consequently, it is important that the violations be corrected and that the managers and inspectors in the Regional Offices, and the Office of Enforcement, be trained on how to process flood protection performance deficiencies in accordance with the NRC's regulations, policies, and procedures.

Sincerely,

Joseph B. Brady
7726 Turnberry Lane
Stanley, NC 28164