

Comments on Draft Manual Chapter 0410A “Design Compliance Enforcement Discretion”

1. Page 13 of draft Manual Chapter 0410A stated that “The NRC expects to receive DCED requests infrequently.” Assuming this expectation is reasonably accurate, there seems no need to develop this DCED process. The NRC has used its exigent license amendment request process for many years to determine whether infrequently requested one-time amendments for low risk non-compliances can be approved. It would seem more efficient and prudent to continue using a process that has been successfully employed for decades than to waste time and effort developing an untried parallel process. What scenarios or situations could Manual Chapter 0410A address that could not be addressed by the NRC’s longstanding exigent license amendment process?
2. Section 03.01 of draft Manual Chapter 0410A indicates it is applicable to all operating power reactors except sites under Manual Chapter 0350 or 0375. UCS recommends that this exclusion be expanded to include reactors that are in Column 4 of the Reactor Oversight Process’ Action Matrix. The draft should also explicitly indicate that a reactor subsequently entering Manual Chapter 0350, Manual Chapter 0375, or Column 4 of the Action Matrix automatically causes a DCED to be immediately terminated.
3. Section 04.01 of draft Manual Chapter 0410A covers Compensatory Actions. UCS recently submitted a petition for rulemaking seeking to have the NRC issue regulations governing compensatory measures used during periods of non-compliance with fire protection regulations. This draft DCED process seeks to allow a DCED to remain in place for up to four years relying on compensatory measures during that period. Currently, the draft DCED process has the licensees and NRC staff secretly negotiating what constitutes “appropriate” compensatory measures and then lets the public read about this secret deal after the fact. UCS recommends that the NRC issue regulatory requirements for compensatory measures through an open, public process. The DCED requests could then cite one or more of these legally defined compensatory measures instead of having them established illegally through secret negotiations with the NRC staff.
4. Section 04.07 of draft Manual Chapter 0410A is essentially a mini-Standard Review Plan outlining what the NRC staff reviewers should consider en route to a decision on a DCED request. Item (c) covers consideration of any other DCEDs currently in effect at the reactor while item (f) covers current status of the reactor including equipment that is degraded or out of service. UCS recommends that the pre-existing factors considered by the NRC staff be explicitly expanded to include other issues known to be unresolved at the reactor. For example, a reactor in the transition period leading to compliance with the NFPA 805 fire protection regulations versus a reactor already in full compliance with all fire protection regulations should be viewed differently by the NRC staff. Similarly, a reactor still en route to implementation of post-Fukushima orders or requirements imposed by an NRC generic letter or bulletin should be viewed differently than a reactor without such mandated safety upgrades still in progress. This is not to suggest that such factors would automatically preclude the NRC staff from approving a DCED request, but risk-informed decision-making warrants that all known risk factors be considered.

The CRDM nozzle issue at Davis-Besse illustrated the need for more holistic consideration. In September 1996, the NRC approved GSI-191 as a high-priority generic safety issue. The NRC

staff allowed reactors affected by this unresolved safety concern, including Davis-Besse, to continue operating while the matter impairing ECCS capability was resolved based on the low risk of a loss of coolant accident that might exploit this known vulnerability. In 2001, the NRC issued a bulletin about CRDM nozzle cracking. Davis-Besse was among the reactors determined to be highly vulnerable to this safety issue. The NRC staff allowed the highly vulnerable reactors to continue operating until inspections could be conducted based on the high reliability of the ECCS should the cracking result in a loss of coolant accident. Each NRC staff decision was made in isolation. The 2001 decision by the NRC staff failed to consider the fact that GSI-191 was still unresolved at Davis-Besse and other reactors deemed highly vulnerable to CRDM cracking. Again, this does not suggest that the NRC staff's decisions would have been different had all the known risk factors been considered, but prudence dictates that all known risk factors be considered en route to purportedly risk-informed regulatory decisions.

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