

YANKEE ATOMIC ELECTRIC COMPANY

DSI-14
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December 2, 1996
FYC 96-010



Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Chief, Docketing Service Branch

Subject: NRC Strategic Assessment and Rebaselining Initiative (61 FR 52475, dated October 7, 1996)

Dear Mr. Hoyle:

Yankee Atomic Electric Company (Yankee) appreciates the opportunity to comment on NRC's initiative to strategically assess and rebaseline its mission and goals. Yankee is the owner of the Yankee Nuclear Power Station, which is in the process of being decommissioned. Yankee is also the provider of engineering and licensing services to other nuclear power plants within the United States. Yankee's comments, which are attached, respond to the following direction-setting issue papers:

- low level waste (DSI 5)
- high level waste and spent fuel (DSI 6)
- operating reactor program oversight (DSI 11)
- risk-informed, performance-based regulation (DSI 12)
- public communications initiatives (DSI 14)
- fees (DSI 21)
- research (DSI 22)
- enhancing regulatory excellence (DSI 23)
- decommissioning of power reactors (DSI 24)

We would add that the Commission's periodic assessment of the NRC's direction and activities can be extremely beneficial. However, for such an important initiative, the Commission has not provided stakeholders with sufficient time for review and comment, even with the extension that was granted. The lack of review time was underscored by a number of NRC licensees and members of the general public at the first NRC workshop. Further, we are concerned that the overall process gives the appearance of stakeholder input, but the schedule for review of comments, if conducted over the short period of time originally proposed, is unlikely to be substantive in terms of any meaningful analysis of the stakeholders' comments. To ensure

Acknowledged by card 12/3/96 DMD

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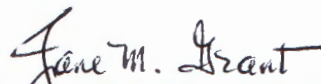
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*Letter, Yankee to U.S. NRC
December 2, 1996*

schedule for review of comments, if conducted over the short period of time originally proposed, is unlikely to be substantive in terms of any meaningful analysis of the stakeholders' comments. To ensure meaningful consideration of all comments on such a broad range of key issues, the Commission should consider a revised schedule that allows for sufficient NRC Staff and Commission evaluation and entertains the possible additional interaction with stakeholders prior to establishing a new direction.

We also would emphasize that the papers fail to highlight the significant improvements made by the NRC and the industry over the last 17 years since the TMI accident, and in doing so, continue to cultivate the idea that there is much need for improvement in terms of ensuring public health and safety. The Commission needs to seriously consider that a point might be reached where the costs of the regulator imposed "continual improvement" initiatives bring into question the economic viability of the nuclear option, and as a result of NRC policies and actions, society is effectively denied the benefits of this important energy source. We urge the Commission to commit to a concerted effort to develop an objective standard for adequate protection of the public health and safety, beyond which no additional, incremental efforts to reduce risk should be required. We believe that unless such an effort is completed, licensing, oversight, investigative, and rulemaking initiatives will continue to place undue weight on subjective judgements and non-quantitative criteria, thereby fueling the never-ending upward spiral of performance expectations for licensees.

Sincerely,
YANKEE ATOMIC ELECTRIC COMPANY



Jane M. Grant
Manager, Regulatory and Industry Affairs

Attachments

c: M. Fairtile, NRC, NRR
J. White, NRC, Region I

**COMMENTS ON DSI 14
PUBLIC COMMUNICATION INITIATIVES**

As NEI notes, the focus of DSI 14 is on improving the information exchange between the NRC and the public for the purpose of involving the public in the regulatory process. In that context, we support the comments offered by NEI, and would add the following.

Question 1. What, if any, important considerations may have been omitted from this issue paper?

In DSI 14, the NRC spends minimal time discussing the more formal forms of public communications, such as the hearing process, and the role that these kinds of communications should play in the future. It is these more formal communication mechanisms which cause NRC, licensees, and the public to expend an enormous amount of resources. The Commission talks about "declining resources" in DSI 14 and other DSI papers, and talks about the need for greater focus on achieving efficient use of resources and moving in a more risk-informed direction as a way of focusing available resources on what really matters. Yet, this paper fails to address as an option the application of the same risk-informed philosophy to NRC's approach on public communications. We agree that public health and safety is NRC's first priority. However, interaction with the public, while important, does not ensure safety. At most, public interaction (e.g., 2.206 petitions, hearings) can be viewed as providing one more layer to the many already existing layers of defense in depth. This DSI paper should consider the costs and benefits of the formal public communications mechanisms currently in place.

Question 2. How accurate are the NRC's assumptions and projections for internal and external factors discussed in the issue paper?

NRC seems to have identified the broad categories of internal and external factors that impact the public communications area. However, the discussions for each of the factors are generally vague, and therefore, it is difficult to determine how accurate NRC's projections really are.

Question 3. Do the Commission's preliminary views associated with this issue paper respond to the current environment and challenge?

The Commission's preliminary views are too narrowly focused to address the realities of the current environment which is one of restructuring, deregulation, and increased competition for the

electric power industry. There are many regulations that provide for public communication, but do not *directly* protect the public health and safety, such as the hearing process, and therefore, deserve particular attention in terms of their cost/benefit. Furthermore, the hearing process as implemented under 10 CFR Part 2, Subpart G focuses more on process than on safety significance (i.e., form appears to be accorded precedence over substance), and thus is the antithesis of what NRC seems to be striving for in the way of regulatory excellence as discussed in DSI 24.

Question 4. Which Option do you endorse?

We agree with NEI that elements of each option should be factored into a single comprehensive program. We would add that such integration should also consider the following.

Hearing Process

The Atomic Energy Act does not require that every contested issue related to a licensing action be addressed through a full adjudicatory hearing as delineated in 10 CFR Part 2, Subpart G or that a full adjudicatory process even be used. The Part 2 rule change as promulgated in 1989, which was intended to eliminate superfluous contentions by clarifying the requirements for admission, did nothing to improve upon what continues to be an extremely time-consuming and costly process. Given the contentions that are admitted for hearings, it is not surprising that at the conclusion of these hearings, ASLB rulings are generally in favor of the licensee. In our opinion the process demonstrates that NRC's focus is more on process than on the significance of the issue.

As the NRC proceeds towards a more risk-informed decision-making process, so too should the hearing process. For example, NRC should reconsider the use of Subpart G hearings for all Part 50 licensing actions. We note that the Commission recently decided that only a Subpart L hearing process was needed during decommissioning for approval of a License Termination Plan. Use of the Subpart L process was intended to reflect the lesser risk associated with decommissioning. Decommissioning contains another example of how some issues can be handled without the need for a hearing; that is, NRC concluded through rulemaking that future decommissioning plants need not submit a license amendment to revise the operating license to a possession only status. Instead NRC dealt with the issue of plant status generically by requiring the submittal of two certifications. In doing so, the NRC eliminated what really amounted to an administrative licensing action, but one which was unnecessarily subject to the hearing process.

We are not convinced that special interest groups are any happier about full adjudicatory hearings than licensees are. More informal processes, possibly using facilitators, that allow some discussion by interested parties on the issues of concern may be more appropriate in many cases.

Even Yankee's decommissioning hearing process, which was characterized by the Commission as an expedited hearing process, extended over a period of approximately 12 months, the subject of which had minimal potential impact on public health and safety. Alternative resolution techniques, more reflective of the potential safety significance, should be considered. The Subpart G hearing process that NRC uses is overly time-consuming and extremely expensive for the licensee, the intervenors, and the NRC.

The Commission preliminarily supports Option 2 which includes focus on alternative resolution techniques. As we note above, we agree that alternative techniques are sorely needed. However, we believe that the Commission should very *aggressively* review the hearing process, with early involvement by the stakeholders. While we note some reservation regarding business process re-engineering, we believe that the entire subject of issue resolution may in fact be a good choice for a pilot re-engineering effort, except that any such effort should be conducted on an aggressive schedule.

We believe that the Commission's view that priority should be placed on early identification of public concerns does not go far enough. While very important, such a focus must also deal with the issue of *how to resolve the issues in a timely manner*. There is no point in expending resources only on the front end, if no changes on the back end are effected. We re-emphasize that the methods used to resolve the issues in a timely manner should be commensurate with the safety significance, *not simply based on whether a regulatory decision is likely to generate substantial public interest or concern*. The Commission's practice to date seems to lean in the direction of providing due process via a full adjudicatory hearing process to the public regardless of the significance of the issue to public health and safety.

Dissemination of Information

On the issue of dissemination of information, NRC should ensure through periodic audits that all NRC local public document rooms contain information that is complete, timely, and easily retrievable. NRC should continue to make hard copies available to ensure that those individuals who do not have access to the PDR desk-top computer or their own computer can still obtain information. NRC should continue to offer instruction to individuals who choose to access available databases through the computer at the local PDR. NRC should maintain mailing lists for individuals requesting distribution of documents. While we believe that special issue workshops may be worthwhile, we can appreciate the public's concern that attendance at such workshops can be costly and time-consuming especially if they are not conducted within driving distance for a person who would like to attend. We would recommend more selective use of workshops, and more focus on providing all parties, including licensees, sufficient and early opportunity for involvement in resolution of issues.

Rulemaking Process

The rulemaking process is another forum for public communication. NRC has attempted to improve upon this process and obtain more meaningful input from groups such as special interest groups through negotiated and/or enhanced participatory rulemaking. However, while such processes may be a vehicle for obtaining input from stakeholders early on in the process, such processes do not seem to have resulted in improvements in the timeliness of the rulemaking process. The enhanced participatory rulemaking on the Part 20 "Radiological Criteria for Decommissioning of Nuclear Facilities" is an example. The process, which was initiated at least as early as January 1993 when the first of seven meetings throughout the country was conducted, has still not been completed as of December 2, 1996. The latest information on the rule suggests that the final rule will not be published until sometime in 1997. As a result, NRC and licensees must continue to deal with decommissioning release criteria on a case by case basis. The rulemaking process requires more aggressive focus by the NRC in order to ensure that it becomes an efficient process that is risk- and performance-based.

We would also add that the rulemaking process is often too late of a stage for input from stakeholders. For example, in the case of rulemakings based on research, industry input is usually sought after the research is conducted. This is too late in the process. As noted in our comments on DSI 22, whenever the industry is involved with NRC research, the results are more readily adopted in terms of improvements to the plants and to the regulations.

2.206 Process

At NRC's Strategic Assessment meeting on October 24, 1996, members of special interest groups expressed their unhappiness with the 2.206 process because: 1) the review of the issue is returned to the individuals who approved the decision in the first place; and 2) typically NRC denies the petitions. We would agree that review by the original reviewers may raise issues of objectivity. We have made a similar comment in the past with regard to review of licensee backfit claims. As such we would propose that NRC consider in its review of this DSI paper the expansion of CRGR's or the ACRS' scope to include review of 2.206 petitions and backfit claims in order to provide a more objective review.