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NUCLEAR ENERGY INSTITUTE

DSI-5

(28)

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SENIOR VICE PRESIDENT
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November 27, 1996

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

ATTENTION: Chief, Docketing and Service Branch

SUBJECT: NRC Strategic Assessment and Rebaselining
(61 *Federal Register* 195; October 7, 1996)
Request for Comments

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),[1] on behalf of the nuclear energy industry, has reviewed the Direction Setting Issue (DSI) papers which form a part of the NRC Strategic Assessment and Rebaselining Initiative. The purpose of these papers is to discuss key issues affecting the future strategic direction of NRC and provide options for selection by the Commission. The NRC has requested comments from all "stakeholders" to be considered as part of the Commission's decision making process. Our comments on each DSI paper are organized in the following format:

1. What, if any important considerations have been omitted?

2. How accurate are the NRC's assumptions and projections for internal and external factors?

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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ALL DSIs.

3. Do the Commission's preliminary views respond to the current environment and challenge?

4. NEI Recommendations

The NRC is to be commended for undertaking this effort. It is important to periodically review the overall direction of the agency, particularly given the dynamic circumstances in the nuclear industry today. The DSIs identified through the early phases of this assessment are reasonably complete, highlighting the areas in which strategic decisions are needed. Many of our comments highlight areas where the staff analysis of the issues does not include viewpoints significantly different from the status quo.

We are concerned that insufficient review time will reduce the effectiveness of the stakeholder comment process. The stakeholders had a very limited time to solicit and compile comments from their constituencies. We recognize that the public comment period was extended, but the two week extension was announced too late in the process to affect the collection of comments from NEI's members. It is likely that other "stakeholders" representing large constituencies, including licensees with multiple internal organizational groups, were similarly constrained.

Of greater significance is the amount of time the NRC has indicated will be used to assess the comments. NRC staff indicated during the workshops that "Stakeholder Interaction Reports," compiling the comments, would be forwarded to the Commission for consideration within three weeks after the comment deadline. This schedule would make it very difficult for NRC management to consider the variety and volume of public comments that are likely to be received. It could restrict the ability to revise the thinking that went into the initial papers, to define and flesh out new options which may be suggested by the comments, or to provide analysis of such new options for the Commission's consideration. We encourage NRC to take the time necessary to derive full benefit from this important endeavor.

A significant omission from this strategic assessment is the current enforcement policy. That policy has a pervasive effect on the relationship between the NRC and its licensees and on the message the public perceives regarding the safety significance of problems. Other federal agencies with safety mandates, and many foreign nuclear regulatory authorities, have different approaches to enforcement. Some of these are structured differently specifically to encourage compliance, rather than punish non-compliance. NEI strongly encourages the NRC to subject the enforcement policy to the same type of review, examining options different from the

agency's historical practice, as has been applied to other programs in many of the DSIs.

In many of the DSI papers, past actions of the agency are summarized, but often not critically evaluated. Instead, it appears to be accepted that past regulatory actions were necessary and remain appropriate as continuing regulatory requirements. In fact, many of these actions were in response to specific events and issues, may not have been the most effective means of dealing with the issue, and are inappropriate as continuing burdensome requirements since the causes of the events have been dealt with. A more thorough assessment of previous NRC actions could produce lessons on how the agency could have been, and could be, more effective in addressing issues. Today, the regulatory problems at the Millstone station are the issue of the moment. References to these problems permeate the DSI papers. The papers could well have had a different tone had they been prepared a year earlier. While it is necessary to deal with compliance problems when they are found, it seems inappropriate for individual situations such as Millstone to color so completely the strategic picture for a regulatory agency.

There is agreement between the NRC and industry that safety performance has improved over the last several years. Performance indicators monitored by NRC and industry both demonstrate such improvement. Nevertheless, the total burden imposed by regulatory requirements continues to increase. There is danger that this increasing burden will make it economically infeasible for some nuclear power plants to continue operation, thus depriving the nation of a reliable, clean source of electric power. Such an outcome is not in the public interest if safety is not in question. An improved focus is needed in the nuclear regulatory process on safety significance. We note that Chairman Jackson has often expressed her support for the concept of risk-informed, performance-based regulation. We agree that this is an excellent mechanism for providing the needed focus. It would allow issues to be addressed in their appropriate context, considering both their individual significance and the overall level of safety performance in the industry. It would lead to more efficient means to address those issues that require action. It would appropriately allow for individual variation in the response to an issue, as it is seldom the case that a single specific action is the appropriate, effective response for all members of a class of NRC licensees. The regulatory process needs to recognize this, and allow problems to be addressed in the manner which will be most effective given the circumstances of individual licensees. We encourage the NRC to utilize fully this strategic planning process to further the transition to this more effective and efficient regulatory regime.

Several of the DSIs would benefit from a practical definition of an adequate level of protection of public health and safety. It is difficult to discuss how to (1) improve public communication, (2) improve the efficiency and effectiveness of the regulator, and (3) properly focus a regulatory oversight program without defining the baseline against which effectiveness can be measured. Without a more objective definition of adequate safety levels, one cannot determine when programs are successful or address a perception that more needs to be done. The NRC needs to develop means for applying the safety goals in a practical manner in order to provide a benchmark that is useful for determining when and how much additional action is required to assure safety.

Significant management attention will be required to implement any changes that result from this strategic planning process. The experience with risk-informed performance-based regulation is instructive in that regard. The Commissioners and senior staff management repeatedly have made comments supportive of such approaches to regulation. There appears to be an understanding, at the policy level, that it is appropriate to deal with issues in their particular safety context. This policy has not been effectively transferred to the working level of the staff. Inspectors and reviewers, whose actions impact NRC licensees on a daily basis, remain focused on detailed, prescriptive approaches. They continue to be concerned with how the "requirements" of NRC guidance documents are met, regardless of the safety objective and inherent flexibility of guidance. It will be very important for the Commission and staff management to devote considerable effort to translating any policy changes resulting from this rebaselining to changes in practice at the working level, so that they may indeed improve the effectiveness of the regulatory process.

We appreciate the opportunity to comment on these issues. We are willing to meet with the Commission or staff to discuss our comments or the related broader issues. Please contact me at (202) 739-8013 if there are any questions regarding our comments.

Sincerely,

Thomas D. Ryan

TDR/RWH/ec
Enclosure

c: Hon. Shirley Ann Jackson, Chairman
Hon. Kenneth C. Rogers, Commissioner
Hon. Greta J. Dicus, Commissioner
Hon. Nils J. Diaz, Commissioner
Hon. Edward McGaffigan, Jr., Commissioner
Mr. James M. Taylor, EDO

Nuclear Energy Institute Comments

on

Direction Setting Issue Papers

from

NRC Strategic Assessment and Rebaselining Initiative

November 27, 1996

DSI 5 – LOW-LEVEL WASTE

1. What, if any, important considerations have been omitted?

   - An important consideration that was not fully developed is the dynamic, yet tenuous status of LLW treatment and disposal. The paper did not identify the potential that a simple, unilateral decision, such as the recent pricing structure change from a volume-based to a density- and curies-based system at the Barnwell facility, could completely re-direct waste management practices nationwide. In addition, the complete dependence of the Barnwell facility on a supportive General Assembly and Governor, which must be demonstrated annually, underscores the tenuous nature of disposal for 39 states, a reality that is not recognized in this paper. The forecast of the national LLW program paper developed in SECY-95-201, "Alternatives to Terminating the Nuclear Regulatory Commission Low-level Radioactive Waste Disposal Program," provides a better assessment of the dynamic nature of this issue.

   - The premise that the need for new disposal capacity is less pressing than 10 years ago assumes that disposal capacity at any cost is acceptable, which is certainly not true. Over $512 million has been spent to date developing new disposal capacity, without success. Much of this amount was funded by nuclear utilities and their rate-payers.

   - The impact on current disposal capacity and future facility development of waste generation rates and volumes related to decommissioning has not been adequately addressed. Decommissioning waste from one or two facilities now approaches the volume of operational wastes generated each year nationally. Competitive pressures could force early decommissioning or end life extension projects, resulting in major changes to the projections for capacity requirements. Disposal capacity can dictate decommissioning planning and scheduling. Lack of disposal capacity can virtually stop plant decommissioning activities.

   - Issues such as diminimus levels of radioactivity, clean-up standards and beneficial recycle of contaminated materials were not factored into the discussion. The resolution of these issues can have profound implications on the volume of disposal, particularly from decommissioning facilities.

   - The NRC should play an active roll in ensuring any Agreement State requirements related to manifesting and reporting of radioactive waste shipments remain uniform to a national standard. Non-uniform requirements could significantly burden interstate commerce and adversely affect availability of disposal sites for some licensees.

2. How accurate are the NRC's assumptions and projections for internal and external factors?

   - The assessment that most Stakeholder's favor a stronger centralized LLW regulatory program and that many would recommend that the NRC be more active in advocating LLW disposal policy, including interaction with DOI on Ward Valley concerns, is accurate.

   - The assumption that the need for new disposal capacity is less pressing than 10 years ago is inaccurate. The position that the Barnwell facility will be available for the next 10 years is based on capacity, and ignores the political reality of potential closure. The view that Envirocare of Utah "can accept and is now taking a larger share of the commercial LLW in the country" overstates the commercial disposal relief currently provided by the facility. Finally, to state that on-site LLW storage is a "viable interim solution" and that "interim storage appears to have presented few problems" completely ignores the tens of millions of dollars invested to provide that safe, but temporary, solution and the potential impact of deregulation on cost pressures. An example of the types of impacts associated with on-site storage was captured in the Organizations United report, "Lessons Learned from the Barnwell Closure to 31 States." The report identifies that of the companies interviewed: 15% had cut products or services in the first year and 31% expected additional cuts by the year 2000, 59% had incurred higher operating costs and 72% considered the loss of disposal capacity a major problem for the nation (See Attached Report).

   - The issue paper accurately reports that even with 12 compact- or State-directed disposal site development activities on-going, the privately developed Envirocare facility is the first new disposal capacity developed in this country in 25 years. However, the expectation that new facilities will be licensed and operational by the year 2000 and that the Ward Valley facility eventually will open may be overly optimistic.

   - The paper assumes interim storage can occur easily by stating, "interim storage appears to have presented few problems...it is considered a viable interim solution." This may be true for utilities that have already made the substantial capital additions necessary for interim storage. Interim storage is not necessarily considered to be an attractive option for utilities who have not yet been forced to store.

   - Option 1 has the NRC providing a "greater leadership role." The NRC would actively encourage disposal strategies. One of the primary problems with the current process of site development under the LLRWPA is the public's failure to understand and accept land burial of radwaste as a safe and permanent

solution. Addressing this problem would be an appropriate task under such a leadership role.

3. Do the Commission's preliminary views respond to the current environment and challenge?

   The Commission's preliminary view that Option 2 (Assume a Strong Regulatory Role in the National Program) is preferred is also the view of many in the industry. The actual implementation of that strong regulatory role will partly determine success in providing disposal capacity.

4. NEI Recommendation

   - The industry prefers a combination of Options 1 and 2. In particular, the disposal policy advocacy aspects of Option 1 should be incorporated into the regulatory aspects of Option 2. This preference is based on a conclusion that there is a critical shortfall of economical and stable disposal capacity, that large uncertainties exist regarding future availability of capacity, that on-site storage is not a desirable or appropriate solution, that coping with any shutdowns in disposal facilities is likely to be very costly, that transferring the LLW program to the EPA would introduce regulatory uncertainty and further delay the development of new facilities, and that with a future NRC role that does not exceed historic LLW policy involvement, the shortfall in disposal capacity will not be resolved before the year 2000.

   - In addition, Option 6 (Accept Assured Long-Term Storage) could be included under Option 1 or 2 and worked in parallel with disposal site development. However, recognize that this concept does not avoid many of the public perception issues which have slowed disposal site development. An additional option that should be recognized and supported for some nuclear power plants is a policy allowing on-site entombment of select LLW streams upon decommissioning.