DSI-23
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U.S. Nuclear Regulatory Commission

Strategic Assessment and Re-baselining Project

Comments of Public Citizen's Critical Mass Energy Project

Introduction:

Public Citizen welcomes the opportunity to participate in the Nuclear Regulatory Commission's strategic assessment and re-baselining project. We believe a re-baselining of the Nuclear Regulatory Commission is long over due. In 1987, the Subcommittee on Oversight and Investigations of the House Committee on Interior and Insular Affairs characterized the NRC as being "too cozy with industry". It concluded that "first, the Nuclear Regulatory Commission has not maintained an arms length posture with the commercial nuclear power industry. Second, the NRC has, in some critical areas, abdicated its role as a regulator all together." (U.S. Congress, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs NRC Coziness with Industry: An Investigative Report, 100th Cong., 1st Sess., December, 1987) This characterization is as true today as it was nearly ten years ago. As a result, NRC has failed to adequately protect the public health and safety.

Since the NRC first announced its intention to under take this project in August 1995 , the need for such an assessment has become even more readily apparent.

Acknowledged by card 12/31/96

In October 1995, the U.S. General Accounting Office reported weakness in the NRC Inspection program at the South Texas nuclear power plant. The GAO found that equipment outages at South Texas "violated several NRC requirements for the safe operation of the reactor and substantially increased the likelihood that the reactor's core could be damaged in an emergency." (U.S. GAO, Weakness in NRC Inspection Program at the South Texas Nuclear Power Plant, GAO/RCED-96-10, p.2.) Furthermore the GAO found that NRC failed to identify the underlying safety problems until after South Texas was forced to shut down. By then, the problems had become so bad that it took the licensee more than a year to address them.

On March 5, 1996, Time ran a cover story on Connecticut's Millstone reactors that detailed significant nuclear safety violations which endangered the public health and safety. The Time story revealed a legacy of neglect by the NRC which allowed Millstone to operate outside of its design basis for decades.

On May 8, 1996, the NRC Inspector General (IG) released a report entitled NRC Staff's Actions Related To Regulation At Maine Yankee. The report determined that until allegations arose, the NRC staff was unaware that Maine Yankee was not in compliance with its Safety Evaluation Report and had not been in compliance since the SER was issued in 1989. The IG found several examples where the staff had relied upon the licensee to follow NRC requirements and regulations; however, the licensee did not in fact comply. Most disturbing of all, the IG found that NRC project managers, technical staff managers and senior officials had several opportunities to resolve the problem but failed to do so. (U.S. Nuclear Regulatory Commission, Office of Inspector General, NRC Staff's Actions Related To Regulation At Maine Yankee, Case No. 96-04S, May 8, 1996, p. 4)

On May 31, 1996 the NRC IG found that despite a declining level of performance at Millstone since 1991, NRC had not placed Millstone on the Watch List. The NRC's Executive Director for Operations James Taylor, Region I Administrator Tim Martin and Mr. William Russell Director of Reactor Regulation all told the IG "that given the indicators of poor performance at Millstone, the NRC should have taken more aggressive action including placing Millstone on the NRC watch list as early as 1993." (U.S. Nuclear Regulatory Commission, Office of Inspector General, NRC Staff's Actions to Address Northeast Utilities System (NU) 1991 Self Assessments, Case No. 96-02S, May 31, 1996, p. 3.)

In July 1996 NRC Inspector General found that the NRC inspection reports failed to address the problems at Millstone and that NRC would have closed the issue if the whistleblower had not filed a 2.206 petition. (U.S. Nuclear Regulatory Commission, Office of Inspector General, NRC Handling of Issues Related to Refueling Operations at Millstone Unit 1, Case No. 96-05S, July 23, 1996) It was later revealed that at least 15 nuclear reactors were operating in the same unsafe manner as Millstone 1.

NRC needs to re-establish its credibility as a regulator. Unless this is recognized and

acted upon this current re-baselining effort is bound to fail.

PUBLIC CITIZEN COMMENTS ON NRC'S STRATEGIC ASSESSMENT ISSUE PAPER DSI 11: OPERATING REACTOR PROGRAM OVERSIGHT

The failure of the NRC to identify the safety problems at Millstone Haddam neck and Maine Yankee reactors has severely damaged the agency's credibility. The NRC has long been accused of being too cozy with the nuclear industry and many of the proposals considered in this initiative will further blur the lines between the regulated and the regulator. In all three areas under consideration: licensing, inspection, & performance assessment, the nuclear industry has proven that it can not be trusted to regulate itself and unfortunately NRC has not been doing the job.

The NRC has put forth three options:

Option 1: Review the reactor oversight processes in the context of lessons learned from current issues and develop processes and mechanisms to provide for systematic reexamination of reactor oversight activities to ensure their continued effectiveness

Option 2: Seek new approaches to improve effectiveness, work with the industry to foster an environment that is conducive to continued improvements in performance, and provide increased opportunities for public involvement in the regulatory process.

Option 3: Perform a Business Process Reengineering

Public Citizen supports option one.

The NRC has lost its credibility as a regulator and needs to re-establish that its licensees meet all NRC requirements. The NRC's 50.54 letter regarding the adequacy and availability of design basis information is long over due. The NRC has known since 1980 that licensees were failing to maintain the documentation upon which the NRC based the issuance of a license. In a memo to the Commissioners, the Director of Nuclear Reactor Regulation stated that "(t)he problem of documentation of conformance with the Commission's regulations is a vexing, manpower intensive effort to which the staff, due to time and man power limitations, has been forced to give inadequate attention." (Memo from Harold Denton, Director, Nuclear Reactor Regulation, to the Commissioners, RE: Compliance of NRC Licenses with NRC Regulations, Regulatory Guides, Branch Technical Positions, And Licensee Commitments, July 23, 1980, p. 5.) The staff's inattention to this problem has become evident in the shut downs of the Millstone and Haddam Neck reactors.

Unfortunately Millstone is not unique. The NRC staff has found that many licensees have failed to appropriately maintain or adhere to plant design bases, appropriately maintain or adhere to the plant licensing basis, comply with the terms and conditions of licenses and NRC regulations and assure that final safety analysis reports properly reflect the actual design and configuration of the reactor. Since all NRC safety determinations are premised upon compliance with the design basis, NRC does not know if any these nuclear reactors are operating safely Since the NRC has been forced to address this issue, dozens of reactors have reported that they have been operating in unanalyzed conditions and/or outside of the design basis. (U.S. Nuclear Regulatory Commission, Daily Event Reports) Unfortunately, the ieniency that the NRC has shown toward licensee's who report this problem fails to send the appropriate message to the nuclear industry.

The recent revelations regarding the regulation of Maine Yankee is even more disconcerting. Not only has the staff failed to identify problems but once identified the NRC has failed to enforce it own regulations. The recent NRC IG reports reveal a pattern of NRC neglect that has threatened the public health and safety. Option one would help NRC re-establish a modicum of credibility in the wake of recent revelations of incompetence, complacency and corruption n the part of the NRC staff.

Public Citizen opposes options two and three

The staff should not undertake activities to increase the role of industry in the oversight of licensing. This industry has proven that it can not be trusted to regulate itself. Any further delegation of the NRC's regulatory responsibility to industry will only strengthen the perception that the regulator has been captured by the regulated. Expanding the opportunities for public involvement, while necessary, is no substitute for strong regulation.

Public Citizen also opposes a Business Process Re-engineering. As the NRC acknowledges , a BPR will be costly in terms of NRC time and resources. Instead of re-tooling the process NRC should enforce the regulations that are on the books and hold the staff accountable.

Although NRC is conducting a review of its existing regulatory processes, including licensing and inspection, in response to issues raised at Millstone and related underlying issues at Haddam Neck and Maine Yankee, the problem is one of attitude not process. NRC has been unwilling or unable to enforce its own regulations.

In June 1996, the Christian Science Monitor ran a four part series on the NRC and the nuclear industry. In the series, an NRC inspector with 20 years of experience summed it up this way: "If you polled every senior resident inspector out there, they will tell you the same thing: (NRC) management won't let us do our job." (Spotts, Peter, "Walking the Beat With a Nuclear Patrolman", Christian Science Monitor, June 18, 1996, p.10.)

PUBLIC CITIZEN COMMENTS ON NRC'S STRATEGIC ASSESSMENT ISSUE PAPER DSI 13: THE ROLE OF INDUSTRY

The NRC has put forth a series of options regarding the role of the nuclear industry in its own regulation:

Option 1: Continue Current Program
Option 2: Expand Role of Industry
Option 3: Increase Accreditation and Certification of Licensee Activities
Option 4: Increase Interaction With Industry and Professional Groups
Option 5: Use a "Designated Industry Representative

Public Citizen supports Option 1 in so much as the other options are totally inappropriate. The NRC should take no actions to either substantively increase the role of industry or expand the scope or pace of current NRC and industry initiatives to further rely on industry activities.

Public Citizen is aware of the financial constraints of the NRC. However, NRC's credibility as an effective industry regulator is already in question. Any further reliance upon the industry will only foster the impression that the NRC has abdicated its regulatory role.

The amount of safety information available to the public has already been reduced through reliance upon groups like the Institute of Nuclear Power Operations (INPO). Any reliance by the NRC on industry groups must not lead to a further diminution of the information that is publicly available. As the NRC attempts to implement its risk based regulatory approach, the reliability and availability data upon which this regulatory philosophy is based must be made publicly available. To quote Commissioner Rogers, " the industry would simply have to live with the down side consequences of having plant specific reliability data available to both the NRC and the public." (Commissioner Kenneth C. Rogers, U.S. Nuclear Regulatory Commission, Risk Based Regulation And The Need For Reliability Data Collection, May 16, 1995, p. 6.)

PUBLIC CITIZEN'S COMMENTS ON NRC'S STRATEGIC ASSESSMENT ISSUE PAPER DSI 12: RISK-INFORMED, PERFORMANCE-BASED REGULATION

Public Citizen believes that the NRC should move more cautiously regarding the implementation of risk-based regulation. The NRC programs to date have been more concerned with the nuclear industry's financial interests than the public health and safety. The Illinois Department of Nuclear Safety has stated that performance based regulation could not be "implemented in today's environment without a loss of emphasis on safety, an emphasis that has taken many years to establish."(U.S. Nuclear Regulatory Commission, Framework For A Performance Based Regulatory

Approach, NUREG/CP-0129, September 1993, p.30.) Public Citizen is convinced that safety has already been and will continue to be sacrificed as NRC shifts its regulatory philosophy.

The Commission's decision on "how fast" and "how far" the agency will go in implementing risk-informed, performance-based regulatory approaches must also be made in light of the recent NRC IG report The IG concludes that the NRC and the nuclear industry hold significantly different perceptions regarding performance based regulation and enforcement. The IG report states:

> Recent events at the Millstone nuclear power station have caused NRC to refocus its emphasis on ensuring licensees strictly comply with regulatory requirements, such as adhering to the Final Safety Analysis Report (FSAR), for all nuclear power plants. However, industry representatives we spoke with are concerned that this re-emphasis on compliance threatens the viability of the effort to develop risk-informed, performance based regulation.

(U.S. Nuclear Regulatory Commission, Office of Inspector General, NRC's Transition to a Risk - Informed, Performance Based Regulatory System, OIG/96E-18, October 4, 1996, p.5.)

So long as the nuclear industry views risk - informed, performance based regulation as synonymous with non-enforcement , any move toward accelerating the transition will likely result in reducing the margin of safety at operating reactors across the country.

The NRC provides four options for moving toward more risk-informed, performance-based regulatory approaches.

Option 1: Continue Current Process
Option 2: More Rigorously Assess Relationship to Public Health and Safety
Option 3: Perform a Comprehensive Assessment of NRC Regulatory Approaches
Option 4: Consider Risk-Informed, Performance-Based Approaches Primarily in Response to Stakeholder Initiatives

Public Citizen supports Option 2. The NRC should require a substantial increase in overall protection to public health and safety that would justify the level resources necessary to pursue additional risk-informed, performance based regulatory initiatives. Many of the initiatives undertaken thus far have been geared toward saving the nuclear industry money rather than protecting the public health and safety. In some instances, the NRC even told the utilities how much money they were saving by deregulating certain requirements. Whether safety has been

compromised or not remains to be seen. The impression is that the NRC has been deregulating safety requirements on the basis of how burdensome the regulation was to the licensee.

PUBLIC CITIZEN'S COMMENTS ON NRC'S STRATEGIC ASSESSMENT ISSUE PAPER DSI 23: ENHANCING REGULATORY EXCELLENCE

The NRC has asked how it can enhance regulatory excellence through maintenance of regulatory standards, rules, and requirements. The NRC provides two options:

Option 1: Continue Current Approach
Option 2: Initiate a More Proactive Approach to Improvement

During the past several years, the NRC has initiated a number of programs to evaluate its rules and regulations. The NRC continues to implement a program begun in 1984 to eliminate or modify regulations that supposedly provide incrementally small safety benefits but impose a substantial regulatory burden on licensees. The main focus of the Marginal to Safety Program is on rulemaking and regulatory guidance identified by industry as being costly to implement and only marginally effective in enhancing safety.

In January 1993, the Executive Director for Operations (EDO) established a regulatory review group (RRG) to conduct a review of power reactor regulations placing special attention on the feasibility of substituting performance-based requirements and guidance for prescriptive requirements and guidance. The RRG recommended specialized areas where NRC regulations might be changed, leading to burden reduction with little or no adverse impact on safety.

However, regulations NRC's own review considered significant to safety were being deregulated in the NRC's Marginal to Safety Program. Requirements that have already been eliminated or revised or are being reviewed include those pertaining to containment leakage rate testing, main steam isolation valve leakage control systems in boiling-water reactors, post-accident sampling systems, and combustible gas control systems.

Yet in NRC Regulatory Review, combustible gas control regulations were judged to have a substantial impact on safety. Environmental Qualification of Electrical Equipment was also judged by the NRC' s regulatory review as having a substantial impact on safety yet it is covered by the Marginal to Safety program. Before NRC moves ahead with risk informed, performance based regulation it should explain how a regulation can have a substantial impact on safety and yet be considered marginal to safety.

If this is the NRC idea of enhancing regulatory excellence, the public should be

wary of any further "enhancements". The resulting double talk has left the public with the impression that NRC is more concerned with the financial health of the nuclear industry than the health and safety of the public. The NRC can best enhance regulatory excellence by enforcing the regulations that are on the books and holding licensee's accountable when regulations are violated.
Furthermore, the NRC should adjust the system of fines so as to provide a major penalty for violating regulations. So long as fines are less expensive than the cost of shutdown, utilities will have little incentive to comply with regulations

CONCLUSIONS AND RECCOMENDATIONS:

The NRC and its licensees have failed to heed the warnings of the President's Commission on the Accident at Three Mile Island and have seriously compromised both the public health and safety and their own credibility.

The Kemeny Commission recognized that "fundamental changes must occur in the organizations, procedures, and, above all in the attitudes of people. No amount of technical "fixes" will cure this underlying problem." (President's Commission on the Accident at Three Mile Island, Report of the President's Commission on the Accident at Three Mile Island, The Need for Change: The Legacy of TMI, Washington, 1979, pp. 24 & 25). Unfortunately, the NRC and the nuclear industry have forgotten the lessons of Three Mile Island. They have grow complacent with this most unforgiving of technologies. Strict compliance with regulation has given way to non-enforcement, deregulation, and cost-beneficial licensing actions. Public confidence in the NRC's ability to regulate the nuclear industry has not been this low since the meltdown at Three Mile Island.

The NRC must re-establish its credibility as a strong regulator and protector of the public health and safety. The Chairman and the Commission have taken steps that have helped in this regard such as the curtailment of the enforcement discretion program and the use of specific criteria in assessing which plants are placed on the NRC's "watch list." .

The recent NRC IG reports have revealed a need for additional oversight not only of the nuclear industry but also of the NRC. In light of this, Pubic Citizen would like to make several recommendations:

First, NRC should promulgate regulations that allow for 2.206 type petitions that question not only at the licensee but also the NRC staff actions.

Second, NRC should undertake legislation that will allow citizens, states or municipalities to sue the NRC to enforcement regulations.

Third, The NRC should increase the level of fines levied on NRC licensees so as to provide a greater incentive for complying with regulations.

Fourth, NRC should make the protection of whistleblowers a top priority. Those individuals who have harassed whistleblowers should be prohibited from working in the nuclear industry.

The Kemeny Commission concluded that, "unless portions of the industry and its regulatory agency undergo fundamental changes, they will over time totally destroy public confidence and, hence, they will be responsible for the elimination of nuclear power as a viable source of energy." (President's Commission on the Accident at Three Mile Island, Report of the President's Commission on the Accident at Three Mile Island, The Need for Change: The Legacy of TMI, Washington, 1979, pp. 24 & 25) The need for fundamental change is as evident today as it was in the wake of the TMI meltdown. If the industry and this agency ignore it, the Kemeny Commission's admonition will become a reality.

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