February 4, 1986

Note to Suzie Black

From Joe Scinto

Re: Exemptions

Your prepared a list of questions (attached) for a meeting last week with the Division Directors. We suggested that we could answer those questions in writing. Our comments and answers follow:

General

The determination as to whether an exemption is required is legally simple -- it may be factually difficult in a particular case.

A. If the regulation requires a specific status and that status is not achieved, an exemption is required.

B. If the regulation requires a more general status and the staff determines that in the absence of some component, or information that it cannot conclude that the status has been achieved, an exemption is required.

C. If the item is necessary for the plant to meet the regulations when operating as designed (or as needed to prevent mitigate or control transients or design basis accidents), the particular requirements of the technical specifications do not govern the question of compliance with the regulation. The provisions of the regulations govern the question of compliance with the regulations not the provisions of plant technical specifications.

There may be some flexibility in determining whether a particular regulation is applicable to the operating condition being licensed; however, this requires careful case by case scrutiny of the regulation in question. It does not permit disregard of a requirement of a regulation on the grounds that other features of the facility offset the non complying feature at a particular power level. This condition would seem to clearly fit special circumstance 50.12(a)(2)(ii).

Answers to Specific Questions

1.a. With respect to non safety related equipment, one must first identify the regulation applicable to the item and determine that without the item the facility would not comply with Commission regulations. If that determination is made an exemption would be required.

1.b. If the regulation requires testing and the item has not been tested, an exemption is required.

If there is no explicit requirement in the regulation that the item be tested and if the staff is capable of determining that the item in fact satisfies the regulation without testing an exemption would not be required; but if the

staff is not able to determine that the item in fact satisfies the standard of the applicable regulation, an exemption would be required.

1.c. Same answer.

2. See General note C. above. However, with respect to the specific situation you pose, even under the staff's pre Shoreham position , it was the activities authorized by the license under consideration which were to be considered in determining the level of compliance required. Even under this position, the fact that an authorized activity might not in fact take place until after compliance was achieved did not permit a determination of compliance at the time of licensing. Thus, although a plant is ready for fuel loading and not yet ready for certain low power operation but will become ready later by the time criticality is expected, this would not appear to permit a finding of compliance now for a license which encompasses not only fuel loading but also covers criticality and low power operation (the traditional 5% license).

3. Same as 1.b.

4. See General Note C above. With respect to others issues raised by this question, see General Note B and answer 1.b.

5. See answer 1.a.

If these non safety related components are covered by a regulation does that regulation require redundancy ? Does any regulation require redundancy for this equipment ? If so an exemption may be required.

6. If the compensatory measure satisfies the rule, an exemption is not required (fire watch for GDC3). If not, an exemption would be required (fire watch for App.R)

7. See answer 1.b.

cc: E Christenbury
FCameron
LChandler
JGray
EReis
JRutberg
STreby

Are exemptions required:

1. For systems or equipment not safety related that are,

   a) not operational
   b) operational, but not tested
   c) tested but preoperational test not performed;

2. For systems or equipment explicitly identified in rules or regulations that will not be operational (functional and pre-op tested) at fuel load but will be operational (functional and pre-op tested) at time of need (i.e., prior to initial criticality);

3. If construction is complete but preoperational testing is incomplete (system functionally verified);

4. If system equipment is not explicitly identified in rules or regulations but is in the Technical Specifications and will be operational (functional and pre-op tested) at time of need;

5. If redundant trains of non-safety related systems are not operational and if plant is not operating above the capacity of these systems (i.e. liquid radwaste system trains);

6. If equivalent compensatory measures exist (i.e. fire watch); and

7. If system cannot be fully tested except under actual operating conditions (final balancing of HVAC systems).