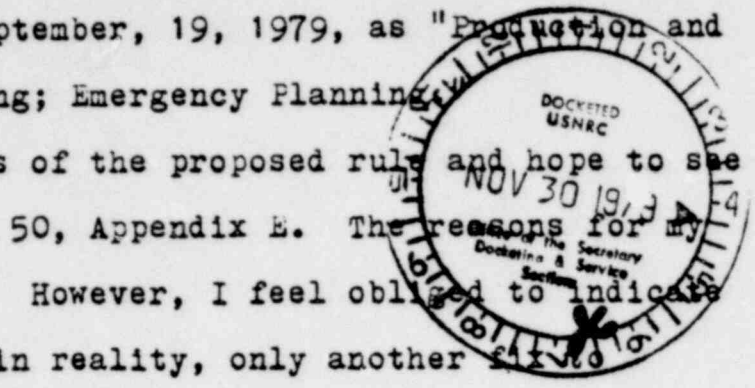
DOCKET NUMBER
PROPOSED RULE PR - 50.70 (44FR54308) (2)

These public comments are in reference to the proposed rule announced in 44 FR 54308, September, 19, 1979, as "Production and Utilization Facility Licensing; Emergency Planning;



I support both aspects of the proposed rule and hope to see it enacted as part of 10 CFR 50, Appendix E. The reasons for my position are included below. However, I feel obliged to indicate that this proposed rule is, in reality, only another [illegible] fundamentally flawed regulations which opens the Commission to further accusations of 'half-steps' and 'bandage cures'. I have taken the liberty to include a brief explanation of this charge.

The proposed action would, in part, eliminate what can only be described as a bureaucratic Catch-22. With the present situation, where requirements exist to keep emergency procedures up to date but not the plan itself, once the applicant receives an operating license and becomes a licensee, the committments of the plan need not be revised even if important factors change such as population density or total number, plant performance or design, or current information on the controlled risks of nuclear power. Yet the plan must gain approval during the operating license process. The staff has drawn attention to this contradiction and their lack of regulatory authority on page 3 of the value-impact assessment. The proposed rule would alleviate this problem.

To be effective, the rule must be applied to all operating facilities and not merely those that would begin operation subsequent to the final action on this rule. The proposed rule satisfies this need for backfitting. The minimal costs involved in implementing this rule should lessen the reflex outcry from the industry when any new backfitting is mentioned.

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Finally, the benefits to the public's safety and health will

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be greatly served by this proposed rule. Safety at nuclear facilities has been concentrated on the hardware of the plant itself--a philosophy embodied by the defense-in-depth structure. The inherent risks of nuclear power are such that they necessitate planning that goes beyond defense-in-depth, that extends past the plant and into the surrounding area in a more effective manner than past policy has dictated. The public's safety and health is severely threatened by the prospect of a nuclear accident being met with emergency plans that have grown lame with age. The likelihood of this happening would be lessened by maintaining emergency plans up to date.

My one suggestion to the rule as it appeared in the Federal Register is an explanation of how the Commission will insure that emergency plans are kept up to date after the initial NRC review and approval that the proposed rule would authorize. Will the Commission conduct periodic reviews of emergency plans and, if so, what will be the period of review? Or will the Commission rely on facility operators to decide if a change to approved plans has any impact on the effectiveness of the plans? I note that Regulatory Guide 1.101 requires that an annual review be made by the utility and yet the Commission's staff felt that this had been unsucessful in answering the need, as evidenced by this proposed rule. I submit that any changes in emergency plans be brought to the attention of the Commission for review and approval. Further, that the Commission conduct annual reviews of emergency plans to insure that they are, in fact, up to date and in compliance with requirements. Otherwise, it seems that the Commission, after assuring that all is well and instructing everyone to behave, turns its back on a recognised problem.

My other objections are familiar ones: that the rule does not

go far enough. For example, the Catch-22 that the proposed rule is designed to rectify has yet another side. I mean that while the emergency plan is subject to review during the operating license process, the actual procedures for implementing the plan are not examined during the licensing process. I realize that the implementing procedures are subject to examination by the Office of Inspection and Enforcement. Yet, since it is the procedures that determine the quality and ultimate effectiveness of an emergency plan, it would seem reasonable that the implementing procedures as well as the emergency plan be subject to review during the licensing process. To give an example, the Long Island Lighting Company's FSAR for the Shoreham Nuclear Power Station states that

> The detailed procedures implementing this plan will be set forth in the Emergency Plan Implementing Procedures which will be the document used by plant personnel in the event of an emergency. This manual will be completed and available for inspection at least 6 months prior to the scheduled fuel loading date. (SNPS-1 FSAR, 13.3.1.3)

However, by the time the manual is available, operating license hearings may well be completed thus eliminating the forum for analysis and questioning of the procedures.

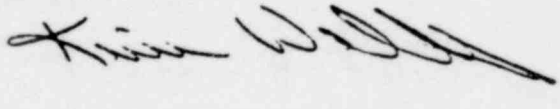
While Appendix E requires that procedures be maintained up to date, it specifically does not require that the procedures be included in the FSAR (10 CFR 50, Appendix E, pt. 1). I submit that the Commission require the applicant to include implementing procedures in the FSAR so that these procedures can be reviewed in the licensing process.

What I am pointing to, and I am not alone here, is the sheer inadequacy of Appendix E. Besides the two examples above, others include the scant requirements for emergency planning in the PSAR;(App.E,p the lack of emphasis on accident assessment capability such as radiation

monitoring both on-site and off-site (App. E, pt. IV, c); nothing on the quality of State and local plans and how this would affect the application for a license. Moreover, Appendix E has never been substantially altered since promulgated in 1970 in spite of the increased awareness of the need for emergency planning. The Regulatory Guide 1.101, which the staff needed because of the weaknesses of Appendix E, has not been adopted as a rule and thus is without legal force nor has it been applied retroactively. Finally, and by far the most glaring flaw, the Low Population Zone, that ancient "interim guide" for siting plants, by which the responsibility for and extent of emergency planning is determined is never mentioned in Appendix E except by the oblique reference at pt. II, c and pt. IV, c of an area "within and outside the site boundary." All of this points to the need to abolish Appendix E, replace the LPZ notion with the Emergency Planning Zones as proposed by the NRC/EPA Task Force, and initiate a rulemaking hearing with Regulatory Guide 1.101 as a starting point.

I am aware that the Commission has taken steps in this direction through the announcement in 44 FR 41483, July 17, 1979, of a proposed rulemaking hearing. Though many of the questions raised by the Commission in that notice have been considered by various groups (GAO, Critical Mass) since 1975, I am pleased with the Commission's action. I hope many of the concerns I have voiced here will be further explored and resolved through a rulemaking hearing.

I thank you for your patience,



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Dated: November 15, 1979