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February 19, 1980

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ADMITTED TO THE DISTRICT OF COLUMBIA BAR

U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Attention: Docketing and Services Branch

Re: Notice of Proposed Rulemaking on Emergency Planning, 44 Fed. Reg. 75167, December 19, 1979

Gentlemen:

As attorneys for The Detroit Edison Company, Niagara Mohawk Power Corporation, Omaha Public Power District, Public Service Company of Indiana, Inc. and Rochester Gas & Electric Corporation, we hereby submit a copy of the comments of the Edison Electric Institute, dated February 19, 1980, on the above-mentioned notice. The above-named companies endorse and adopt as their own the comments of the Edison Electric Institute.

Very truly yours,

LeBOEUF, LAMB, LEIBY & MacRAE

By Leonard

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Partner

Acknowledged by card ... 2122 E

Enclosure

### EDISON ELECTRIC INSTITUTE COMMENTS ON NRC PROPOSED EMERGENCY PLANNING RULE\*

The following comments and recommendations are offered by the Edison Electric Institute in response to the NRC's Notice of Proposed Rulemaking on Emergency Planning. This document elaborates on the comments previously submitted for the record at the NRC workshop held in Atlanta, Georgia on January 24, 1980.

#### I. General Comments

EEI supports upgrading of the radiological emergency preparedness capability of utilities, states and localities. The Three Mile Island accident lent urgency to the already ongoing efforts to improve emergency preparedness and underscored the need for all parties to devote greater attention to this subject. In the months following the Three Mile Island accident, the industry has worked diligently to bring on-site emergency plans, and to assist the states and local governments in bringing

\*\* 44 Fed. Reg. 75,167 (1979).

<sup>\*</sup> Edison Electric Institute (EEI) is the association of the nation's investor-owned electric utilities. Its members generate more than 77 percent of all of the electricity in the country and service more than 68 million customers. A number of Edison Electric Institute's members are the operators of nuclear power reactors and/or are responsible for the planning, design or construction of additional reactors.

off-site plans, up to higher standards.

EEI believes that many of the stringent provisions and sanctions contained in the proposed rule have been obviated by the demonstrated progress and cooperation with state and local governments displayed by utilities in the last few months. Rather than requiring concurrence as a condition of licensing, which tends to stress a negative and mechanical approach to the improve process, NRC should emphasize a positive role for the Federal Emergency Management Agency (FEMA) in support of state and local governments in their efforts to improve preparedness capability. The objective of this program should be enhanced emergency preparedness, not the shutdown of reactors. To this extent, the proposed rule is misdirected and could accomplish the wrong objective.

Another major conceptual problem associated with this rulemaking is that it addresses emergency planning as if this subject were not intimately related to power plant siting and design. In fact, emergency planning can only be considered rationally in a context which gives appropriate consideration to all three subjects. This deficiency is made much more serious by a major unexamined conclusion of the Commission, expressed in the Supplementary Information. The Commission states therein that viewing

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". . . emergency planning as equivalent to, rather than secondary to, siting and design in public protection . . ." is the best available choice among alternative courses of action.\* The Commission has not provided adequate support for this conclusion in the record of this rulemaking.

The problems associated with this rule are compounded by the unilateral attempt of the Commission's Regulatory Staff to incorporate into regulatory requirements many new, detailed elements of emergency planning. Detailed planning requirements are already being imposed on utilities by the Staff without the benefit of public comment and Commission review. For example, NRC and FEMA have published revised acceptance criteria for preparation and evaluation of emergency response plans.\*\* These are substantive requirements which are being imposed now as if they were contained in regulations, subject to subsequent review and comment. The comment period is largely ceremonial for those operators which are required presently to comply with its provisions. Because these detailed requirements directly affect the implementation of this proposed

\* 44 Fed. Reg. 75,169 (1979).

\*\* "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654, FEMA-REP-1.

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rule, the NRC should fully review and examine, with the benefit of public participation, the ramifications of these requirements. They are an important part of this rulemaking and should be addressed explicitly.

RECOMMENDATION: Recognizing this is an interim rule, the NRC should conduct a comprehensive rulemaking in the near future, to consider fully the detailed emergency planning requirements currently being imposed at the Staff level. The NRC should instruct its Staff not to impose on licensees sanctions for noncompliance with detailed requirements not contained in the interim rule, pending completion of a more definitive rulemaking.

The rulemaking on emergency planning should be one element of a broader rulemaking which explicitly recognizes the interrelationships among design, siting and emergency planning.

II. The Linkage Between Reactor Licensing and Concurrence in State and Local Emergency Preparedness Plans -§\$50.47, 50.54\*

The primary thrust of the proposed rule is to make Federal government concurrence in the adequacy of

<sup>\*</sup> Unless otherwise indicated section citations are to those sections in the proposed rule. 44 Fed. Reg. 75,167 et. seq. (1979).

state and local emergency plans a condition of reactor operating licenses. Although the Commission has recognized that it cannot direct any governmental unit to prepare adequate emergency plans, the Commission is in fact requiring States and localities to subject their local police power procedures to Federal approval. This is a device to accomplish indirectly what the Commission concedes it cannot do directly. Under our Federal system, such a procedure should not be undertaken by the NRC without explicit statutory authority.

Unlike other license conditions, the proposed rule gives concurrence a talismanic effect on the operators' licenses. Under either alternative offered in the proposed rule, non-concurrence may result in the shutdown of a reactor. Proposal of those alternatives indicates that the NRC is treating emergency preparedness differently from other safety considerations and license conditions, even those of more immediate importance, without good reason. That is not warranted given the ample authority that the NRC has historically exercised to order licensees to correct operating deficiencies. The NRC has used a range of sanctions including, but not limited to, shutdown, to accomplish its goals. The proposed rule creates a false dichotomy by posing a choice between shutdown or continued

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operation, ignoring many other alternative remedies commonly used to achieve compliance.

Emergency preparedness is an important part of the overall defense-in-depth strategy for nuclear power plant safety. Nevertheless, emergency preparedness is not as important as some other license conditions, and the NRC should take appropriate action as specific conditions warrant. The proposed special treatment accorded concurrence could exaggerate the impact of concurrence upon emergency preparedness plans to eclipse more important underlying safety considerations.

The NRC must consider all factors and not simply rely on a proxy when determining whether to take action against a licensee. Failure of States or localities to comply with details of changing Federal criteria for emergency plans may technically cause non-concurrence, but is not necessarily a true indicator of the extent of preparedness. Assessments of emergency plans are necessarily subjective and should not be the basis for automatic sanctions against utilities.

Under the proposed rule, concurrence is an undefined process, which needs guidelines to prevent an unnecessary reactor shutdown in instances where nonconcurrence does not really impair public protection.

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The nature of the concurrence process is not spelled out in the proposed regulations. As a result, it is difficult to predict the NRC Staff's interpretation of its responsibilities or FEMA's role in the process.\* Whereas under NUREG-75/111, concurrence meant something less than approval, it is not clear from the proposed rule if concurrence still connotes less than approval. The proposed rule does not determine whether FEMA has a dispositive or an advisory role and who finally determines whether there is concurrence. The proposed rule makes no reference to the specific criteria to be used in evaluating plans. Presumably NUREG 0654 will be used as the acceptance criteria, but NRC should clarify whether additional "guidance", such as Staff-issued letters will be part of the evaluation criteria. It is clear that presently occurring plan evaluations go well beyond the requirements of NUREG 75/111 and Supplement 1, which have been replaced by NUREG 0654. The NRC and FEMA should establish boundaries on the criteria the agencies will use for determining concurrence, particularly if the final rule links concurrence to licensing.

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<sup>\*</sup> Previous interagency responsibilities were described in 1975. 40 Fed. Reg. 59,494 (1975). As noted in the recent NRC-FEMA memo of understanding, these responsibilities have now been redefined and are continually being reevaluated. 45 Fed. Reg. 5847 (1980).

The rule does not adequately address itelf to the interrelationship between radiological emergency preparedness and other types of disaster planning. The President, through Executive Order 12148, charged the Director of FEMA with establishing policy for and coordinating all civil emergency planning functions. Inherent in this consolidation of functions is a recognition that emergency planning activity must be integrated and the components must be consistent. The NRC rule, however, isolates radiological planning elements and fails to incorporate radiological emergency needs into the existing context of emergency preparedness rationale and practice. Nor does the NRC/FEMA Memorandum of Understanding evidence a sufficient awareness of this need.\* The NRC and FEMA should specifically integrate radiological emergency planning requirements with other disaster planning elements.

An inherent flaw in the linkage between concurrence and licensing is NRC's apparent assignment of responsibility to the utilities for the adequacy of State and local plans. The utilities cannot compel State and local governments to take action if these governmental units are unwilling to

<sup>\* &</sup>quot;Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Planning and Preparedness", 45 Fed. Reg. 5847 (1980).

cooperate, nor can utilities require localities and States to improve emergency preparedness plans to meet NRC standards. This problem is particularly acute where the States and localities are outside a utility's service area and may be opposed to construction or operation of the plant in issue, for economic reasons or otherwise. This is not an abstract concern. An account about Trimble County, Kentucky officials (Attachment A) from the December 24, 1979 issue of the Louisville Times demonstrates that local officials (or state officials) in contiguous states may view the concurrence process as a weapon for blocking nuclear power plant construction or operation. These governments have sovereign authority and can be expected to protect their prerogatives.\* By conditioning reactor operation on the preparation of acceptable plans by local governmental bodies, the NRC is giving to each such local governmental unit a veto power over whether if wishes to have a reactor in its vicinity. This is incompatible with national energy policy.

<sup>\*</sup> This point has been explicitly recognized by the NRC Special Inquiry Group's Report to Commissioners and to the Public (Three Mile Island Volume I) in which it is stated (p. 132) "plant operation should not be made absolutely contingent on approved local plans, since this would give local government the power to close a plant." (emphasis in original)

FEMA appears to have the ability to encourage cooperation among the States and localities through use of their funding authority, for example, and that agency should be placed in the position of promoting state and local corrective action. The linkage between licensee responsibilities and governmental responsibilities found in the rule is illogical and neglects to recognize the legal and practical autonomy of State and local governments.

Another flaw in the concept of concurrence with State and local plans is that it is tied to specific deadlines. The January 1, 1981/six month deadline is unrealistically short, given the complexity of upgrading, the dependency on prompt action by State and local officials, the likely budgetary problems these officials face, and the constantly changing guidelines. The proposed rule contains the assumption that 'f concurrence is not established by a given date, there is a de jure emergency. This may cause unnecessary disruption of power plant operation and ignores the fact that State and local emergency preparedness plans are in constant evolution and apply to a broad range of emergencies, with continuing efforts to upgrade their effectiveness. Failure to meet every specific program requirement by a given date does not necessarily mean there is an absence of emergency preparedness.

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The deadline required for concurrence also ignores the dynamics of upgrading State and local plans. Many State and local governments are working diligently to upgrade their plans and to hire new personnel, but are unable fully to comply with all the regulatory requirements in the given time frame. The concurrence process must be flexible enough to recognize that State and local governments, like Federal government, are subject to budgetary cycles and statutory and practical hiring constraints which are largely beyond the control of administrators. The proposed rule should also accommodate the real possibility that some States and localities, particularly those adjacent to a State in which a reactor is located, may have little incentive to budget the resources necessary to upgrade their plans and may view the proposed rule as a weapon.\* The burden of resolving this problem should not fall on the utilities and their customers by virtue of the threat of reactor shutdown. It should be the role of FEMA and NRC

<sup>\*</sup> It is not reassuring to read the NRC's Draft Negative Declaration for Proposed Rule Changes which cites the prospect that States and localities will cooperate in this effort for plant operations within their jurisdiction, and which is conspiciously silent on anticipated cooperation among neighboring States without reactors within their jurisdiction. 45 Fed. Reg. 3914 (1980).

affirmatively to assist State and local governments in plan development.

Impediments to timely compliance such as those described above are beyond the control of the utilities, and it is unreasonable to expect that they will be able to force State and local governments to provide the necessary resources on such short notice to permit total compliance with numerous and continually changing Federal emergency planning preparedness requirements. The NRC and its predecessor, AEC, bear a major share of the responsibility for the failure of State and local plans to meet current standards. The emergency planning effort formalized on December 24, 1975\* fell short of its objective, and NRC has now attempted to shift the burden onto the utilities to enforce compliance with greatly enlarged new requirements within an unrealistic six month deadline, even though the utilities have no legal authority to do so.

In addition, these deadlines will also require intensive efforts by FEMA and NRC to conduct reviews of State and local plans. At a time when FEMA is being delegated new responsibilities and when NRC is conducting exhaustive reviews as a result of the Three Mile Island

\* 40 Fed. Reg. 59,494 (1975).

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accident, there is no assurance NRC will be able to meet its own deadlines.

The concurrence process has the potential to disrupt electric service to the public, while not offering any commensurate improvement in the protection of public health and safety. The ultimate difficulty lies in trying to use "concurrence in state and local plans" as a proxy for a realistic evaluation of emergency preparedness around a given reactor. Concurrence should be abandoned in favor of a more flexible approach which would permit the NRC and FEMA staffs to conduct thorough reviews of State and local preparedness, to form assessments about the potential danger posed to the public, and to make recommendations to the Commissioners for appropriate licensing action. By elevating concurrence to a unique position, with short deadlines and with a pre-determined sanction, the NRC runs the risk of creating an artificial emergency.

If concurrence remains in the rule as a condition of licensing, it must be refined, to avoid a wooden evaluation of preparedness plans. This would include a proper appreciation for the importance of those program elements that are vital to safety in contrast to those which are only marginally related to safety or technical in nature. Concurrence cannot be simply applied with equal weight to each program element. In addition, NRC should incorporate

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into the rule the concept of substantial compliance. NRC should not deny concurrence and risk reactor shutdown for <u>de</u> <u>minimis</u> deficiencies. Under NUREG-75/111, all of the 70 program elements are evaluated and placed in four categories ranging from "totally deficient (1)" to "satisfactory (4)". All program elements are required to be in categories (3) and (4) to obtain concurrence. Perhaps, if one of the program elements fell into category (2), concurrence would not be granted.\* Such a mechanistic approach should not be used, if concurrence in emergency preparedness plans is to be a condition of continued plant operation.

With respect to existing plants, proposed 10 C.F.R. §50.54, Alternative A, is far preferable to Alternative B. Although Alternative A strongly suggests shutdown as a sanction, it leaves NRC more flexibility in dealing with each reactor on a case-by-case basis. Alternative B requires immediate shutdown and places the burden on the licensees to obtain an exemption. Alternative B could be

\* See Beyond Defense In Depth, NUREG-0553, Appendix B.

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expected to precipitate possibly lengthy disruption of power service with no commensurate improvement of public safety, because of the legal and practical uncertainties associated with granting exemptions. This alternative is a'so legally objectionable in that it mandates an automatic shutdown of operating reactors without express provisions, including hearings, for protection of the rights of affected persons. Moreover, there can be no imminent public health and safety justification for eliminating a hearing requirement, because the circumstances triggering the automatic shutdown would have prevailed immediately prior to the deadline contemplated in Alternative B.

If Alternative A were retained, it should be amended by adding a new subjection requiring (a) that the Commission will follow the procedures specified in 10 C.F.R. §2.202 in determining whether a reactor shall be shut down; (b) that the Commission shall not delegate the responsibilities for making such determination to the Staff; and (c) that the Commission snall make its determination based upon its review of all the evidence.

With respect to proposed plants, it is unnecessary to adopt either Alternative A or B of proposed 10 C.F.R. §50.47. The NRC has ample authority to deny a license if the applicant has failed to demonstrate that

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adequate protection of public health and safety will be provided. It is sufficient to state that satisfactory emergency response plans must be in place before an operating license will be granted. As between the two alternatives, Alternative A is preferable since it does not require the added step of obtaining an exemption, which is unnecessary. The second and third modifications of Alternative A discussed above in connection with proposed 10 C.F.R. §50.54 are also applicable to §50.47.

RECOMMENDATION: Proposed 10 C.F.R. §50.47(a) should be revised to read: "No operating license for a nuclear power reactor will be granted until an emergency response plan in accordance with §50.33(g) has been submitted by the applicant and has been reviewed for sufficiency by the NRC and FEMA."

The rule should avoid selection of a specific sanction mechanism and should treat the emergency planning requirements as license conditions subject to NRC review and its discretionary exercise of appropriate remedies. Alternatives A and B should be deleted from proposed 10 C.F.R. §50.54(s). Proposed §50.54(t) should be deleted. NRC should periodically review the adequacy of plans and take corrective measures that are appropriate in light of all circumstances.

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If proposed §50.54 subsections (s) and (t), Alternative A, are retained, they should be amended as follows:

> If, during the operating license period of a nuclear power reactor, the Commission determines that the appropriate State and local government emergency response plans do not warrant NRC concurrence the Commission, applying the procedures specified in 10 C.F.R. §2.202, will make a determination whether the reactor shall be shut down until the plan is submitted and has received NRC review and concurrence. The Commission shall not delegate the responsibilities for making such determination. The reactor need not be shut down if the Commission determines that the deficiencies in the plan are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation. For the purposes of this section, the Commission's staff shall bear the initial burden of going forward with evidence and shall bear the ultimate burden of persuasion.\*

# III. The Emergency Planning Zones - §§50.33(g), 50.47(b) and 50.54(s)

The NRC and EPA have adopted the 10/50-mile emergency planning zones as a generic requirement for planning. These zones are being established as a matter of interim policy, on the basis of NUREG-0396. On balance

<sup>\*</sup> This allocation of burden of proof is consistent w the NRC Proposed Rule on Burden of Proof in Enforcement Proceedings. 42 Fed. Reg. 37,406 (1977).

these zones establish a more than adequate margin of safety. NRC has, however, apparently adopted the concept that within the 10-mile zone there is a uniform requirement for alert capability, evacuation, and protective action. This ignores, for instance, the fact that NUREG-0396 stated that beyond 5 miles, evacuation and shelter are comparable options for reducing exposure. Evacuation is but one action which may be appropriate in the event of an accident, not the objective of emergency planning. Other actions include sheltering. The NRC should use strategies which are designed to evoke the most effective response, not just those which evacuate people.

Uniform requirements and preparedness strategies within the 10-mile zone are not necessary and in some instances may be counterproductive. NRC must recognize the relationship between time and distance within the 10-mile zone. Distance from the center permits more time to react. As a consequence, the alert capability and the types of responses should be adjusted. For example, it would be counterproductive to initiate an immediate alert and evacuation throughout a ten-mile radius in a populous area. That could cause traffic jams and impede evacuation. The use of a phased approach would be far more effective. Quick alert capability close to the plant is necessary;

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there the need is for immediate public reaction. As one moves away from the plant the alert capability should be designed to evoke a more measured response.

NRC should also not require planning to be as detailed in the ingestion pathway as it is in the plume exposure pathway. More time is available to take action after an accident. Therefore, the amount of preplanning need not be as great or detailed as for the plume exposure pathway. While protection of individuals through alerting systems, protective action and evacuation is the focus within 10 miles, the thrust of preparedness within the 50 mile perimeter is protection of resources in the food chain. That type of planning should be distinguished from plume pathway planning, which is necessarily more detailed and precise.

The NRC should recognize that there are certain instances where the 10-mile radius is excessive because of local geography and topography, and the rule should provide that a utility may adopt a smaller zone to conform to local conditions. The purpose of emergency planning zones should be to foster preparedness, not simply to satisfy the mechanical requirements of a general policy.

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#### RECOMMENDATION: Proposed 10 C.F.R. §50.33(g)

should be revised to read:

"(g) If the application is for an operating license for a nuclear power reactor, the applicant shall submit radiological emergency response plans of State and local government entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone [EP2], as well as plans of State governments wholly or partially within the ingestion pathway EP2.\* Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles in radius and the ingestion pathway EPZ shall consist of an area about 50 miles in radius, provided that the applicant may demonstrate that a lesser area is appropriate based upon such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. The plans for the ingestion pathway shall focus on such less immediate actions as are appropriate to protect the food ingestion pathway."

\* Emergency Planning Zones are discussed in NUREG-0396, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Reactors."

Corresponding changes should be made in proposed 10 C.F.R. \$\$50.47(b) and 50.54(s).

In addition, the statement of considerations published with the interim rule should clarify the point that emergency measures taken within the 10 and 50-mile zones should be based upon both time and distance relationships with the power reactor in question rather than being taken uniformly within a zone.

# IV. Appendix E Requirements

#### A. Emergency Action Levels/NUREG-0610

The establishment of Emergency Action Levels (EALs) is a fundamental part of the NRC Staff's current campaign to upgrade emergency plans for operating nuclear power plants. The basic document, currently in draft form and designated as NUREG-0610, is referenced in a footnote in the proposed interim rule.\* These EALs are to be based on specific instrument readings and would be used to categorize accidents in defined classes. Notification of public officials and the public at large (for certain classes of events) would be initiated on the basis of these readings.

The concept of using readily available instrument readings as an aid in categorizing an event is a sound one. However, the correlation of specific instrument responses with accident categories assumes that a well defined methodology exists for analyzing all possible events and their consequences. Neither NUREG-0610 nor the proposed rule presents the methodological basis for developing the EALs and relating these EALs to off-site dose projections.

Because the EALs represent the cornerstone in the foundation of the NRC-proposed criteria for the emergency

\* 44 Fed. Reg. 75,171 (1979).

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plans, it is important carefully to consider how they should be derived. This is underscored by the fact that operating personnel are expected to take prompt and decisive action on the basis of EALs, including the recommendation of protective action to public officials.

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Such an important topic must be thoroughly examined. This examination should include the definition of the methodologies which are needed to go from events, through instrument response, to estimation of off-site consequences. It is only through a rigorous analysis that EALs will be developed with the degree of confidence which warrants their use to define an emergency category.

# B. Notification Time Requirements; Specifications for Notification Systems

This section of the rule is not specific as to the criteria which must be met in order to demonstrate compliance. It is not clear whether this is a uniform national standard or is a target that recognizes different local conditions; nor is it clear whether compliance is going to be measured in optimal, average or worst case conditions.

The language of the proposed rule is general, containing such undefined terms as "early warning" and "prompt instructions." A footnote states that it is

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expected that the capability will be provided "to essentially complete alerting of the public within the plume exposure pathway EPZ within 15 minutes of the notification by the licensee of local and state officials."\* Current NRC staff practice is to require as part of the overall program of upgrading emergency plans that responsible agencies can be notified within 15 minutes by the utility of an emergency condition and that the public within a 10-mile radius of the plant could be notified within a subsequent 15 minute time period. No justification has been presented in this rulemaking proceeding for such requirements and the Commission should conduct a separate rulemaking on notification time requirements before it imposes them on licensees and State and local governments.

It is also recommended that the actual specifications for notification systems ultimately be the subject of rulemaking rather than general language which is then implemented by the NRC staff in the course of the review of individual emergency plans.

There are inherent limitations in any system. Sirens may not be effective under all conditions, such as during storms or at night when people are asleep. So-called

\* 44 Fed. Reg. 75,173 (1974).

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weather boxes may not be reliable, especially in houses where people do not maintain them or use them properly. Questions exist whether an automatic telephone alert can be implemented. The NRC should recognize the problems associated with these systems and carefully weigh their cost-effectiveness. Since more time is needed to develop the specifications for notification systems, we recommend that the Commission initiate a separate rulemaking proceeding on this matter following completion of this interim emergency planning rulemaking.

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In establishing the notification requirements, NRC should consider whether time-distance considerations would call for quicker notification closer to the power plant with longer notification times at further distances. This approach would be more cost effective since those closer to the plant (where potential doses are higher and would be experienced more quickly) would be notified sooner than those at greater distances.

Another factor which NRC should consider in establishing required public notification time is the spectrum of accidents which should reasonably be considered in setting this requirement. If a worst-case approach is being followed, the low probability of the projected consequences should be balanced against the need for a 15 minute notification system.

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# C. Activation of Notification Systems

The proposed rule does not directly address the required response (with regard to public notification) in the event of an accident. While a <u>capability</u> to inform the public within a short time may be a requirement, it is an entirely different matter to program the emergency plan automatically to require that public notification be accomplished in the minimum time from detection of an accident situation. If one accepts the premise that public notification should be made for a particular class of emergencies, it must be acknowledged that there is a spectrum of possible consequences within that class depending, for example, on the actual meteorological conditions during a release as well as factors relating to plant systems, and that some potentially consequential situations would require more rapid notification than others.

Even within the most serious emergency category, the use of additional time during certain events to assess the situation more thoroughly, to allow offsite resources more time to prepare for the anticipated protective action and to enable more specific direction to be given to the public once the notification is made is a prudent course of action, rather than automatically to initiate public notification. The NRC should clearly

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delineate the difference between providing a capability and initiating its use. This distinction is not apparent in the proposed rule nor in the referenced documents. The publication of the interim rule should include a discussion of this point.

EEI has commissioned the Nuclear Safety Analysis Center (NSAC) to assist in a detailed evaluation of appropriate response times, taking into account actual plant conditions. A preliminary review by NSAC of "Example Initiating Conditions: Site Emergency" in NUREG-0610 reveals a set of plant deficiencies or adverse plant conditions which may eventually lead to a deteriorating situation. On the basis of NSAC's preliminary analysis, the 15-minute requirement for completion of public notification appears unnecessarily small; in fact, imposition of this brief time span could very well lead to hasty, disorganized efforts, resulting in confusion on the part of the public. Apparently the 15-minute requirement for completion of public notification is part of an underlying 30-minute "notification model" which relies in large part on the accident release categories of the Reactor Safety Study.\* Reliance on the Reactor Safety Study as a source for this model does not appear appropriate.

<sup>\*</sup> NUREG-75/014, October 1975, WASH-1400, U.S. Nuclear Regulatory Commission.

There is no value to transmitting information when no action is required of the recipient. This point was acknowledged during a recent meeting of the ACRS Subcommittee on Site Evaluation. In a discussion about public reaction to activation of alert systems, Dr. Martin Steindler categorized the notification of the public of the existence of a potential incident or an incident to which the public need not react as "a disaster".\* This discussion reaffirms the fears expressed by emergency planners that low thresholds of alert will result in erosion of public confidence in preparedness systems.\*\*

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A frequent criticism of the Action Level Criteria is that plant operators would be required to notify State agencies even when insignificant events have occurred. There is general concern that this would lead to a "cry wolf" syndrome, in which agencies would be contacted so often that they would not respond quickly if a major event did occur. Agencies in some States do not want to be notified of events of lesser significance; in other States,

<sup>\*</sup> Transcript of ACRS Subcommittee on Site Evaluation, Dec. 20, 1979, pp. 175-176.

<sup>\*\*</sup> See transcript of Emergency Preparedness Workshop, Chicago, Ill., Jan. 22, 1980, for comments of State and local planning officials.

agencies want to know everything. NRC should be careful not to design action levels that will overburden the overall system with non-essential information.

RECOMMENDATIONS: Reference to NUREG-0610 should be deleted from the interim rule. A full and thorough evaluation of the concepts of EALs and the methodologies which are required for their development should be undertaken. Detailed requirements such as the 15 minute alert capability\* referenced in Appendix E, IVD, should be deleted until a separate rulemaking can be conducted to explore fully emergency level action guidelines, as well the specific requirements for alert systems and activation practices.

# D. Timing of Notification System Installation

Notification and instruction of the public in an emergency is the responsibility of offsite authorities. It is unreasonable for the utilities to bear the cost of upgrading emergency response and alert capability; this is a public function and one which will be used for all ranges of emergencies, including natural and industrial disasters and nuclear attack. Placing the whole burden on the utility

\* 44 Fed. Reg. 75, 173, footnote 3.

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industry would ignore the multi-purpose nature of emergency preparedness.

Because of the typical funding cycle (often, once a year for the following year) local agencies may not be in a position to comply with requirements for installation of equipment which may be required within the time frame NRC contemplates for implementation of emergency plans in conformance with the Interim Rule. The implementation schedule should reflect this consideration and should also contain an allowance for an evaluation of systems and equipment to be employed for public notification.

RECOMMENDATION: In Section IVD(3) of Appendix E, the last sentence should read "The applicant shall work in conjunction with State and local governments in the development of notification procedures."

# E. Dissemination of Information to the Public

The interim rule should state that FEMA will have the primary responsibility to develop public information programs, as stated in the recently completed memorandum of understanding between NRC and FEMA.\* That memorandum also states that a separate memorandum of understanding on public information responsibilities will be developed between NRC and FEMA. No specific schedule has been announced, nor has

\* 44 Fed. Reg. 5847 (1980).

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the role of the licenses in providing information to the public been specified. The kind of information provided to the public should be subject to thorough analysis and tested to avoid misunderstanding by representatives of the affected public.

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RECOMMENDATION: Section IV.D.(2) of Appendix E should be deleted.

# F. Contents of Preliminary and Final Safety Analysis Reports; Contents of Emergency Plans

Sections II.C, III and IV.F. of proposed Appendix E each contain alternative provisions. With respect to Sections II.C. and III, Alternative A includes inappropriate references to prevention of damage to property. This rulemaking pertains to protection of public health and safety, and references to protection of property in this context are essentially meaningless. With respect to IV.F, there does not appear to be any identifiable need to increase the frequency of training exercises to once every three years.

RECOMMENDATION: EEI favors Alternative B in all cases.

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# VII. Preliminary Value/Impact Analysis and Draft Negative Declaration

The preliminary value/impact analysis is cursory and summary. Although it purports to be an analysis, much of it is mere assertion of the need for emergency planning preparedness, with which there is no quarrel. It is conclusory and seems only intended to provide justification for NRC's previously chosen course of action.

Instead of using this document as a basis for analyzing alternative methods of improving emergency preparedness, the Staff reaffirmed its conclusion and ignored the existence of the types of alternative strategies suggested in these comments.

There is an absence of meaningful analysis of the economic and other costs associated with the NRC proposal. Not only should the expenses of compliance by government and industry be examined, but the costs of shutdowns should be factored and weighed against other compliance strategies to determine the most effective regulatory approach. For example, the preliminary value/ impact analysis simply assumes that shutdowns to permit compliance with NRC requirements will be of short duration.

Not only is the analysis incomplete and conclusory on its face, but it falls short of the rigorous analysis of

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costs and benefits of alternative strategies which is called for by Executive Order 12044. The stated excuse for not dealing in substance with the proposed regulation and the alternative strategies is the alleged need to address the concerns of the NRC, the Congress and the President. The NRC has incorrectly assumed that the widespread concerns in the Legislative and Executive branches over the adequacy of NRC's emergency planning is synonymous with approval of the NRC's proposed course of action to address these concerns. It is also specious to assert that these concerns were so specific and imperative as to foreclose examination of alternatives. Executive Order 12044 does not relieve an agency from a rigorous and critical analysis of a proposal such as the one now made by the NRC and an examination of alternative methods of implementation.

The Draft Negative Declaration for Proposed Rule Changes purports to analyze in more detail the costs of shutdown.\* The fundamental flaw in the analysis is the assumption that shutdowns will be short in duration. Not only is there no basis for this assumption, but it appears the assumption is wholly invalid. If, for instance, there were a failure of a State or local government to meet

\* 45 Fed. Reg. 3913 (1980).

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NRC/FEMA concurrence criteria, it is possible that the deviations would remain and a utility would be unable to take compensating measures sufficient to satisfy NRC. There is, therefore, ample justification to fear that shutdowns could be prolonged.

....

This draft declaration cannot be considered adequate in its assessment of environmental impacts as long as continued plant operation is linked to concurrence. If the linkage were dropped, the likelihood of shutdowns would be reduced. In that case the present draft negative declaration would be adequate.

RECOMMENDATIONS: The NRC should fully comply with Executive Order 12044 by thoroughly examining alternative strategies, including the ones recommended in this statement, and by assessing the costs and benefits of various approaches.

This analysis should be incorporated into the Final Negative Declaration of Environmental Impact.

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# By DALE MCSS

BEDFORD, Ky. — Trimble County would have grave trouble evacuating its residents if a nuclear accident occurred at the Marble Hill nuclear power plant being built just across the Ohio River.

The county judge knows it, the mayor of the county seat knows it, a prominent attorney and a successful farmer know it.

They know it, and for now, ironically, they fairly relish the thought.

Not that they would want an accident to occur, obviously. But by not being prepared for an accident, they figure they can stop such a tragedy from occurring.

By not having a federally accepted disaster-preparedness plan. Trimble County might be able to stop the opening of Marble Hill.

The federal Nuclear Regulatory Commission, which licenses nuclear plants, is considering a rule that would prohibit nuclear plants from opening until there are idisaster-preparedness plans approved for all areas within 10 miles of that plant.

"We intend to fight this thing, and to stop it," Bedford Mayor James Black said of Marble Hill. He said the lack of a disaster plan "is the town's last hope. I hope that will do it. We've taken it to heart."

At least, farmer Robert Thoke said, Trimble County can "be in a position to create a great deal of interest," by balking at coming up with an emergency plan.

Thoke said most Trimble County residents would be willing to go a few rounds with Public Service Indiana, the utility building the plant. County Judge Clyde Greenwood said he'd resist implementing a disaster plan if the people of the county were behind him.

Black believes they are. Attorney Max Schwartz believes they are.

"A woman who had to evacuate from the Three Mile Island area came here, and she filled this town with some pretty good stories," Black said. "I'd say the majority are strictly opposed to Marble Hill."

Thoke added that the fight may be limited by money. "PSI has more money to spend than this county."

PSI. spokesman Robert Norris said the utility plans to work with Trimble County officials, hoping they'll agree to cooperate and institute a disaster plan.

Norris said PSI agrees with the proposed federal rule, but the utility isn't sure the power plant would be stopped if Trimble County refused to draw up a plan.

Trimble County is rural, and its population of about 5,700 makes it one of the least populous in Kentucky. Its people are spread out. Many of them farm.

Few are politically active. Schwartz said, and until recently, "people believed there was absolutely nothing a local government could do" to stop Marble Hill.

Trimble County has a chapter of Save the Valley, an environmental group opposed to Marble Hill. Other people in the county are active in opposition groups based in Madison, Ind.

Some county residents have jobs help-



Staff Mag by Bill Denevan

Map shows the proximity of the Marble Hill nuclear power plant to Trimble County.

ing build the power plant and have criticized public officials for in effect trying to take away their jobs.

But most people, seemingly, are ambivalent.

Schwartz and Black say a disaster plan would be hard to implement, even if the federal government forces Trimble County to come up with one.

The county has few good main roads. The population is so spread out that a warning siren would be hard for many to hear. Many people work outside, away from the telephones that could be used to warn them of an accident.

The county only has five local police officers. It has no hospital and only four ambulances.

Trimble County doesn't have a great deal, which is a big reason Thoke and Black like it so much. And it's a big reason why they fight Marble Hill and, for that matter, oppose a coal-fired power plant being built on their side of the river by Louisville Gas & Electric Co.

"A lot of us moved out here because it is rural," Thoke said. "We're just 5,700 people, but my life is worth as much to me as a person in Chicago, or New York, or Louisville."

# Trimble County, Ky., considers 'weapon' to stop nuclear plant POOR ORIGINAL December 24, 1979