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PROPOSED RULE PR-50 (9)
(45 FR 36082)

Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Dear Mr. Chilk:

By publication in the Federal Register, 45 Fed. Reg. 36082 (May 29, 1980), the Commission proposed for adoption as a final rule an amendment to 10 C.F.R. Part 50 entitled "Fire Protection Program for Nuclear Power Plants Operating Prior to January 1, 1979." The following comments on the proposed rule are offered on behalf of The Cincinnati Gas & Electric Company, Gulf States Utilities Company, Mississippi Power and Light Company, Philadelphia Electric Company, Public Service Electric and Gas Company and South Carolina Electric and Gas Company.

We oppose the adoption of the proposed rule in its present form. The deadline of November 1, 1980 for full implementation of the new fire protection requirements is wholly unreasonable and unrealistic. The proposed rule contains new requirements which are unwarranted and will, in some cases, necessitate substantial facility redesign and the installation of new components that simply cannot be accomplished within the short time permitted by the rule. This fact was established by the Staff prior to the Commission's action on the proposal.

Given the industry's commitment to implement changes under the TMI Action Plan and other new requirements, the November 1, 1980 deadline is simply unachievable. Also, the proposed rule calls for the licensee to implement "all fire protection modifications identified by the staff as necessary to satisfy criterion 3 of Appendix A" by November 1, 1980, even though there is no cut-off date for the Staff's identification of necessary modifications by a licensee. It has been recognized that under the standards of the Administrative Procedure Act, 5 U.S.C. §706, an agency's failure to allow sufficient lead time to carry out its order is arbitrary and capricious.

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determine whether the rule's multivarious requirements are, as a generic matter, reasonable and necessary for reactor safety.

It is also noted that the bases for the proposed Appendix provided to the public at the time the Commission voted to adopt the proposed regulations were set forth in the document entitled "Fire Protection Actions," SECY-80-88. However, the text of the proposed rule set forth therein differs substantially from the text of the rule published in the Federal Register on May 29, 1980, 45 Fed. Reg. 36082. (See "Motion to Produce Documents Forthwith and to Extend the Date for Submitting Comments" filed on behalf of MC, Inc. dated June 24, 1980 in this proceeding.) It is our position that adoption of the rule would be in violation of the Administrative Procedure Act under such circumstances.

As a final comment, the proposed rule cannot be adopted without the preparation of an environmental impact statement because the modifications required and the shutdown of facilities not in compliance with the proposed rule as of November 1, 1980 would constitute major federal actions significantly affecting the quality of the human environment. In order to meet load requirements, utilities relying upon nuclear-generated electricity will be forced to operate fossil-fuel plants with predictably adverse consequences to the environment by pollution. These consequences must be considered by the Commission pursuant to the mandate of the National Environmental Policy Act of 1969, 42 U.S.C. §4332.

Sincerely,

Troy B. Conner, Jr.

Troy B. Conner, Jr.

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of the specific requirements. However, we strongly believe that the Commission should initiate formal rulemaking by the designation of a Hearing Board to conduct an adjudicatory proceeding on the proposed rule. In our view, it is absolutely essential that interested parties be given an opportunity to cross-examine the Staff witnesses and/or consultants whose input resulted in the proposed rule to determine what if any experience supports a given proposal in a nuclear facility.

Further, in view of the position taken by Commissioners Hendrie and Kennedy in Petition for Emergency and Remedial Action, "Memorandum and Order," CLI-80-21 (May 23, 1980), that the November 1, 1980 deadline is unreasonable, 1/ we believe that an adjudicatory hearing is also needed to develop a reviewable record on the capacity of the licensees to implement the proposed rule's requirements.

In matters of such importance, the Commission has recognized that an adjudicatory-type hearing with the right of a party to cross-examine witnesses is appropriate. For example, in its Notice of Public Rule Making Hearing on Immediately Effective Interim Statement of Policy Establishing Interim Acceptance Criteria for Emergency Core Cooling Systems, 2/ the Commission made available "appropriate witnesses to explain the background, purpose and rationale" of its interim policy for cross-examination by persons admitted as participants. In other proceedings, the Commission has adopted hearing procedures which included at least the possibility of cross-examination. 3/ Inasmuch as the proposed rule involves a unique degree of specificity, it is crucial that the Commission develop a full factual record to

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1/ It is noted that the Commission itself took two and one-half years to act on the petition of the Union of Concerned Scientists for emergency action on fire protection and that review of fire protection by the Commission began in 1975.

2/ See 36 Fed. Reg. 22774 (November 30, 1971); 37 Fed. Reg. 288 (January 8, 1972).

3/ Notice of Scope, Procedures and Schedule for Generic Environmental Impact Statement on Use of Mixed Oxide Fuel and Criteria for Interim Licensing Actions, 40 Fed. Reg. 20142 (May 8, 1975); 40 Fed. Reg. 53056 (November 14, 1975); 41 Fed. Reg. 1133, 1135 (January 6, 1976); Notice of Proposed Rulemaking on the Storage and Disposal of Nuclear Wastes, 44 Fed. Reg. 61372, 61374 (October 25, 1979).

The proposed rule suffers from extraordinary over-specificity. In our view, fire protection regulations, like the other NRC safety regulations under Part 50, should merely set forth functional requirements and objectives, so that details as to design, system components and implementing procedures are left to the initiative of the licensee on the basis of regulatory guides and other Staff input. Such internal inconsistency as would result from overly specific fire protection requirements, in contrast to the other safety requirements of Part 50, is inherently arbitrary.

It may be difficult and technically unnecessary from a safety viewpoint to implement many of the specific requirements under the proposed rule in facilities which are under construction or substantially completed under the existing requirements where the Staff has already found the licensee's fire protection program to be acceptable. In such circumstances, there is simply no demonstrable need to rehash resolved issues under a new set of standards which fail to take into account the specific design and operation of a particular facility. Most significantly, the rule totally ignores the fact that the Staff technical reviews for each plant in recent years have already significantly upgraded fire protection.

In this regard, it is noted that more specific technical comments on behalf of reactor owners and operators are being filed by EEI, Northeast Utilities, KMC, Inc. and others. Some of our clients listed above are also submitting separate technical comments involving their facilities. We hereby incorporate these comments by reference to supplement the positions expressed herein.

In sum, we believe that it is arbitrary for the Commission to rachet its fire protection requirements upward again without regard to the site specific alternatives already adopted and in some cases implemented by the licensee upon agreement with the Staff in good faith and upon reasonable belief that fire protection issues had been resolved. By imposing yet additional requirements without due consideration of any incremental safety benefits, the proposed rule would cause many facilities to incur enormous backfitting expenses with little or no corresponding substantial, additional protection for the safe operation of the facility.

Given the time constraints imposed by the Commission's notice of its intention to adopt the proposed rule, we are not in a position to comment upon the deficiencies of each