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

(85)

DOCKET NUMBER
PROPOSED RULE PR 50 (44FR 75167)

Dear Mr. Chilk:

This letter serves to transmit our comments on Emergency Planning Proposed Rules issued in the Federal Register, Vol. 44, No. 245 on December 19, 1979, which would amend Title 10 of the Code of Federal Regulations "to provide an interim upgrade of NRC emergency planning regulations." We believe these comments to be valid and justifiable. Further, we also firmly endorse those comments developed and submitted to the NRC by the Edison Electric Institute and the Atomic Industrial Forum.

The proposed rules appear to be a convenient solution for the NRC to compel state and local governments to immediately tailor their emergency plans to obtain NRC concurrence. We believe that the NRC's solution which proposes affecting licensee's plant operation does not take into account the long-term effects on the well-being of the utility industry and indeed the Nation as a whole.

This comment letter is not the forum to test the legality of the proposed rule, however, we believe it subject to question. The proposed rule's lack of fairness is clear. The proposed rule lacks clarity and definition. But most importantly, it places nuclear power plants in an untenable position. Because the NRC lacks the authority to order states to prepare emergency plans, the staff will rely upon the threat of plant shutdown and loss of electricity to force states and local governments to prepare such plans which concur with NRC criteria. Nuclear plants, therefore, would be pawns in a game in which the owner-operators have little ability to shape the outcome. Utility licensees have no control over the actions of states and local governments; yet they, along with the plant's customers and investors (owners), are the losers if such entities cannot or will not comply with the proposed rule.

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In some states a threat of loss of electricity may have less impact than envisioned because the plant may not provide an identifiable amount of electricity to that state, i.e., the electricity may be fed into an interstate power grid. In such a case, the state may not feel the loss of such power and, therefore, may be less motivated to comply. In other states anti-nuclear forces may capitalize upon the proposed rule to bring about plant shutdowns. It is, therefore, conceivable that the NRC will be providing a means for some states, and even local governments, to do that which state or local governments could not do before.

In the middle are the plants' owners, customers, and investors who receive a return from plant operations and who are directly and substantially affected by plant shutdowns. They have little power to force the state and local governments to act; yet it is they who will lose in the event that emergency plans are not prepared or are not concurred in by the NRC. In addition, the Federal Register notice of January 21, 1980 containing the "Draft Negative Declaration for the Proposed Rule Changes" makes unsupported assumptions with regard to replacement power costs should a nuclear plant be shutdown due to the proposed rules. In each case, cost estimates developed assume replacement power is available. This may not be the case at the particular time a shutdown is ordered. Should this occur, customer loads would be curtailed. the ramifications of such events on the public have not been taken into consideration. Further, gross assumptions with regard to a replacement ratio which is coal-fired or oil-fired dependent (in a particular state where the nuclear plant is shutdown) do not recognize how power systems are configured, how they operate on a day-to-day basis, nor the interconnected network of transmission which is not constrained by state or other political boundaries. Thus, a shutdown in any given state could result in a severe shortage of electric power in the given state or in other states and localities remote from the plant site itself. Therefore, a fully detailed Environmental Impact Statement should be developed for each aspect of the proposed changes in emergency planning rules prior to further assessment of acceptability.

We are not arguing against having state and local emergency plans. There is a need for them. Emergency plans should not be tailored just to handle the unlikely event of an accident at a nuclear plant. Emergencies can result from various activities other than nuclear power generation with much greater frequency and severity in loss of life and property, e.g., floods, chemical explosions, and fire. If state and local governments are not sufficiently concerned with public health and safety in all these emergencies, they, not utility

licensees, should be brought to task. The President has directed FEMA to see that emergency plans are developed. In fact, the President has appointed FEMA as the lead agency to ensure the adequacy of state and local plans to mitigate radiological incidents. The proposed rules embody the concept of "concurrence," but "concurrence" is an undefined term and lacks the substantial character necessary in any regulation which is to be clear and specific. Thus, it may be difficult for state and local governments to obtain agreement with the NRC. In light of the Presidential directive to FEMA and the fact that both the Senate and House of Representatives have not accepted NRC's concept of "concurrence," the NRC should not attempt to circumvent congressional intent.

The NRC more properly has the authority and responsibility to assure that licensee plans adequately address the interfaces required with state and local authorities and their plans in order that a coordinated response to a radiological emergency at a nuclear power facility can be implemented, thus providing the best possible protection for the health and safety of the public.

In light of the above, we recommend certain specific actions be taken by the NRC to amend, revise and reissue the proposed rules for further public scrutiny and comment prior to the issuance of a rule to upgrade emergency planning in final "interim" form:

1. FEMA's role as lead agency with regard to development of state and local radiological emergency response plans and development of specific acceptance criteria, including appropriate public scrutiny of plans and criteria, must be recognized by the NRC.

2. The concept that where state and/or local governments are unable to obtain NRC concurrence of their emergency plans, power plants are shutdown is totally unacceptable and must be deleted from any further consideration on the part of the NRC.

3. Any consideration of time frames for plans to be developed by licensees must take into account the changes in interim guidance, criteria, and draft NUREG documents developed should be eliminated and a minimum of one year provided to licensees, the following issuance of the final rule as law, to upgrade or revise current plans as appropriate.

4. FEMA should consider a sliding schedule for the development of state and/or local emergency response plans because of the political intricacies involved in budgetary cycles and statutory and practical hiring constraints beyond the control of state and local government administrators.

5. The requirements for emergency planning within the ingestion pathway EPZ are extremely vague. Furthermore, they should not be applicable to licensee plans but rather to state plans only, and should be the subject of separate rulemaking consideration.

6. Any reference to submittal of state and local government plans [10 CFR 50.33(g)] to the NRC or FEMA by licensees should be deleted. Utilities should not be an intermediate transmittal party.

7. Rulemaking by way of footnotes is entirely unacceptable and all references if required by the body of a rule should include appropriate justification of the use therein of the reference.

8. Many terms used in the proposed rules lack bases and clear definitions; future changes to the proposes rules require definition of "governmental entities," "significant deficiencies," "independent review" and "EPZ's" (which should be the subject of a separate rulemaking).

9. No justification is provided in the proposed rule for the requirement of submittal of the licensee's plant-specific emergency plan implementing procedures required under the revised Appendix E(V) and its link to 50.54(v). This requirement serves no clear purpose, is make-work, and should be deleted.

ADDITIONAL COMMENTS ON THE PROPOSED CHANGES TO APPENDIX E TO 10 CFR PART 50

1. Reference to NUREG-0610 should be deleted. Neither NUREG-0610 nor the proposed rule provide a basis for developing Emergency Action Levels (EAL's) and their relationship to off-site dose projections.

2. In Section II, the level of detail required at the PSAR stage of the licensing process is unjustified. References to NUREG-0396 is unacceptable, because it should be subject to a separate rulemaking analysis by the NRC, and does not include considering other alternatives with respect to the protection of the public.

3. Section II(H) inappropriately places a burden on licensees. This should be a responsibility of state and/or local governments. In addition, the adequacy of evacuation and warning of the public should be determined by FEMA and the burden of proof should not be on the utility-licensee nor should the responsibility for review of FEMA's work be under the cognizance of the NRC.

4. Section IV reference to analyses also referenced in Section II(H) should be deleted from the licensee's responsibility and the burden placed on FEMA.

5. Section IV(B) requires agreement between state/local governments and the NRC on emergency action levels. State laws which have pre-determined action levels must be recognized by the NRC as the system which takes precedence in licensee planning until FEMA can coordinate any necessary or desired changes to provide a national system identification of emergency classes.

6. Reference in Section IV(D) to warning criteria should be deleted and be the subject of a separate rulemaking and environmental impact analysis. In addition, the warning method criteria is FEMA's responsibility and must be implemented and provided by state/local governments. The licensee should not have responsibility to verify the existence of warning methodology.

7. The specific performance criteria with regard to exercise of the emergency plans on all levels as stated in Section IV(F) should be deleted since this is a FEMA responsibility. In addition, there appears to be no justification for Alternative A with regard to joint exercises with Federal, State and local agencies.

8. Section IV(H) is vague and intangible; it should be deleted.

9. With regard to Implementing Procedures of Section V, it is not clear why they are needed by NRC's regional and Washington offices no less, ten copies. Since the procedures are site-specific and contain proprietary information which may be sensitive to security, they should not be subject to public disclosure, if required to be submitted at all.

Respectfully submitted,

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