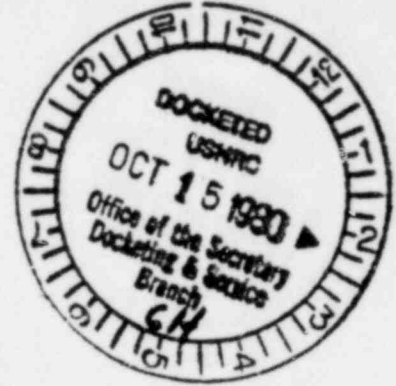


# EDISON ELECTRIC INSTITUTE

The association of electric companies

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DOCKET NUMBER  
PROPOSED RULE PR 50,70  
(45 FR 55402)

October 10, 1980

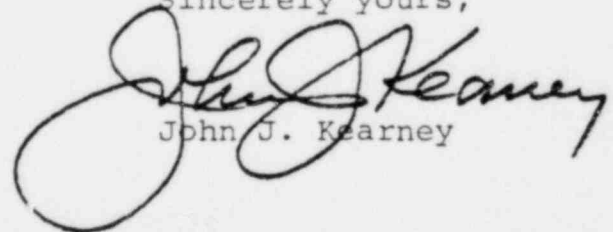
The Honorable John F. Ahearne  
Chairman  
Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

SUBJECT: NRC and FEMA Review of Radiological  
Emergency Plans

Dear Mr. Chairman:

The Edison Electric Institute believes the enclosed copy of a letter sent by EEI to the Director of the Federal Emergency Management Agency will be of interest to the Commission. A copy of the letter has also been sent to the Secretary of the NRC.

Sincerely yours,

  
John J. Kearney

JJK:jsd  
Enclosure

Acknowledged by card... 10/16/80

L-4-1, Pt. 50

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October 10, 1980

Mr. John W. Macy, Jr.  
Director  
Federal Emergency Management Agency  
1725 Eye Street, N.W.  
Washington, D.C. 20472

RE: Proposed Rule for Review and Approval of State  
and Local Radiological Emergency Plans and  
Preparedness. (45 Fed. Reg. 42341, June 24,  
1980)

Dear Mr. Macy:

The Edison Electric Institute (EEI) is the national association of the investor-owned electric utility industry. The EEI member companies serve 99 percent of all customers of the investor-owned segment of the industry and 77.5 percent of all users of electricity in the United States. Many of the Institute's member companies generate a portion of their customers' needs with nuclear power facilities, and therefore are involved in revising emergency preparedness plans in conjunction with State and local governments. On June 24, 1980, the Federal Emergency Management Agency (FEMA), published the above-referenced proposed rule for public comment. On August 25, 1980, EEI submitted comments which address the proposed rules in their entirety.

EEI is especially concerned with one section of the proposed rule. According to proposed section 350.7(d), "Only a State may request FEMA review of a State or local radiological emergency plan." (45 Fed. Reg. 42345) (emphasis added). Therefore, as currently drafted, section 350.7(d) appears to allow a State to thwart the procedure Congress has instituted in section 109 of P.L. 96-295 June 30, 1980, "Nuclear Regulatory Commission Appropriation Authorization" (The Act). Pursuant to section 109(a)(1) the Nuclear Regulatory Commission (NRC), in issuing operating licenses, consults with FEMA in reviewing State or local emergency preparedness plans. The Act in section 109(a)(2) provides an alternative procedure whereby NRC may issue an operating license in the absence of a plan which satisfies the requirement of section 109(a)(1) where "there exists a State, local or utility plan which provides reasonable assurance that public

Mr. John W. Macy, Jr.

October 10, 1980

Page Two

health and safety is not endangered by operation of the facility concerned." That provision was enacted to prevent a State from effectively exercising veto power over issuance of a license through failure or refusal to submit appropriate emergency plans.

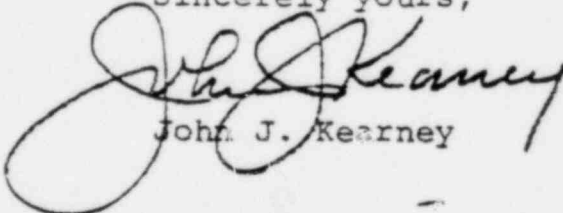
Section 350.7(d) is a potential obstacle to the NRC and FEMA carrying out their interrelated responsibilities reflected in their Memorandum of Understanding (MOU) signed January 14, 1980. If left unchanged, section 350.7(d) would institute an overly narrow procedure that is inconsistent with the NRC authority to consult with FEMA in determining the adequacy of "a State or local emergency preparedness plan" before issuing an operating license. Section 109(a)(1) P.L. 96-295 (emphasis added). Also, if left unchanged, the proposed rule could facilitate a States exercising of a veto power as described above.

EI respectfully submits the final regulations must also provide other mechanisms for a State or local plan to be brought before the FEMA for review. For example, the final rule should provide that the NRC may request FEMA review of State or local plans. The NRC will have this information readily available. The NRC's final rule on Emergency Planning, 45 Fed. Reg. 55402 August 19, 1980, effective November 3, 1980, directs an applicant for an operating license (§50.33(g)) and current licensees (50.54(s)), to submit to the NRC their plant, State and local emergency plans. The final rule should also provide that a local government or utility may request FEMA review of State or local emergency plans.

In sum, by promulgating section 350.7(d) of the proposed rule as it is presently drafted, FEMA will be acting inconsistently with the Act. FEMA will also place an unnecessary and unsupportable obstacle between the coordinated effort of the FEMA and NRC in the area of emergency planning as reflected in the Memorandum of Understanding and NRC rules on emergency planning.

Whatever mechanism for requesting FEMA review is expressly included in the final rule, it must be one which insures that a State is not the sole entity for requesting review of State or local plans.

Sincerely yours,



John J. Kearney

JJK:jsd

cc: The Honorable John F. Ahearne  
Chairman, NRC

Mr. Samuel J. Chilk  
Secretary, NRC

Mr. John W. McConnell  
Assistant Associate Director, FEMA