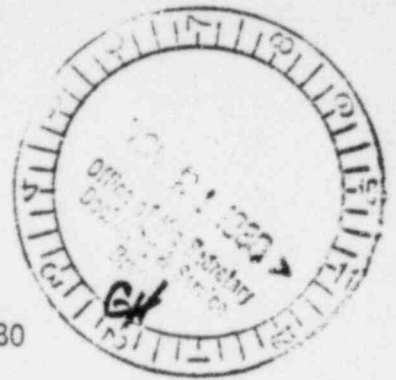


DOCKET NUMBER PR 50 (8)
PROPOSED RULE 45 FR 65247

BOSTON EDISON COMPANY
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J. EDWARD HOWARD
VICE PRESIDENT
NUCLEAR

SERVICES

November 17, 1980

Mr. Samuel H. Chilk, Secretary
Attention: Docketing & Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Notice of Proposed Rulemaking Concerning "Proposed Licensing Requirements for Pending Construction Permit and Manufacturing License Applications" (45 Fed. Reg. 65247, October 2, 1980)

Dear Mr. Secretary:

By the captioned notice, the Nuclear Regulatory Commission published and sought comment on a "notice of proposed rulemaking." This notice delineated the Commission's plan to take into account lessons learned in connection with the Three Mile Island Unit 2 (TMI) accident in the design of nuclear power plants which are the subject of pending construction permit applications.

The proposed rulemaking represents the first action by NRC to establish post-TMI licensing requirements for construction permit applications frozen since TMI and, if approved by the Commission, would authorize the resumption of NRC action on the Pilgrim Unit 2 application. The original Pilgrim Unit 2 PSAR was docketed in December 1973 and had undergone approximately six (6) years of NRC Staff review when TMI occurred. Pilgrim Unit 2 has been the subject of five (5) years of hearings; the hearing record has been closed on all issues other than TMI; and, we are awaiting a partial initial decision from the presiding Atomic Safety & Licensing Board. The design of Pilgrim Unit 2 is approximately 63% complete. Over \$250,000,000 has been expended, over \$100,000,000 of which is represented by equipment presently completed and in storage. In the 20 months since TMI, the delay associated with the regulatory hiatus coupled with the inflationary economic environment has resulted in an estimated increase in the cost to complete Pilgrim 2 in excess of \$325 million. The current rate of cost increase due to delay is in excess of \$30 million per month.

Acknowledged by card... 11/21/80

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The Commission has undertaken to develop a position with respect to the set of necessary and sufficient TMI-related requirements that should be applied in the review of applications for construction permits and manufacturing licenses for nuclear power plants. In development of its current position, three options were considered:

1. Resume licensing using the pre-TMI CP requirements augmented by the applicable requirements identified in NUREG-0660.
2. Take no further action on the pending applications until the rulemaking actions described in the Action Plan have been completed.
3. Resume licensing using the pre-TMI CP requirements augmented by the applicable requirements identified in NUREG-0660 and require certain additional measures or commitments in selected areas (e.g., those that will be the subject of rulemaking).

The Commission observes that Option 1 would minimize the review and construction impact, thereby minimizing delays in reaching regulatory decisions for the planned facilities; and that Option 2 would maximize the safety improvements but would result in extensive delays and that it believes the cost of such delays are not justified provided that design flexibility can be demonstrated. The Commission elected Option 3 as "a suitable compromise between the extremes of Options 1 and 2."

Boston Edison Company believes that the "additional measures" that would be required by the Commission's proposed plan under Option 3 with respect to siting, degraded core, and standard review plan conformance are inordinately costly, and thus inconsistent with the stated goal of the plan. We believe that these "additional measures" would result in only a marginal increase in the level of safety for Pilgrim Unit 2. We estimate that the delay engendered by the preparation, review, and adjudication of the documentation required to substantiate these "additional measures" is likely to be on the order of 1 to 1½ years with a resulting increase in the cost of Pilgrim Unit 2 in excess of \$360 million. We believe that it is essential that these "additional measures" be deleted from the Commission's plan for the resumption of construction permit licensing, and that the Commission proceed on the basis of the Option 1 that was discussed in the captioned notice.

Option 1 would impose all the pre-TMI construction permit requirements augmented by the "applicable requirements" of NUREG-0660. These "applicable requirements" are delineated in NUREG-0718. In order to make NUREG-0718 consistent with the goal of "establishing a clear statement of requirements," Boston Edison believes that it is essential that the following modifications be made to NUREG-0718:

THE APPLICABLE ACTION PLAN ITEMS - NUREG-0718I.D.4 Control Room Design Standard

Since it does not appear that IEEE-566 will be amended in the near future, please change the category for the portion of this item that deals with IEEE-566 to Category 3. Delay of a pending CP while waiting for this IEEE standard to be amended is inordinately costly.

II.A.2 Siting

Pending Construction Permit applicants should not be required to make any commitment in the area covered by the Siting Rule-making. Policy expressed by Congress appears to be inconsistent with the policy contained in NUREG-0718. Congress obviously deemed it counterproductive for the Commission to apply new siting regulations to Construction Permit Applications docketed before October 1, 1979. The instructions of Congress and the NRC's implementation of those instructions by the captioned notice appear to be inconsistent. It is clear that Congress did not intend that the Commission apply these new siting regulations to Construction Permit Applications docketed before October 1, 1979; Congress intended that the Commission only apply the new siting regulations prospectively. It is requested that the category for Paragraph II.A.2 in NUREG-0718 be changed to Category IE, not applicable to plants of the type now in review.

II.B.8 "Degraded Core Rulemaking"

Pending Construction Permit applicants should not be required to make any commitment in the area covered by the Degraded Core Rulemaking. The Commission has published advanced notice of proposed rulemaking on this subject and it would be inappropriate to attempt to resolve this complex matter in an individual licensing proceeding. We believe that gross modifications in the station design that could be associated with the "molten core retention device" should be excluded from consideration. During the comment period, Boston Edison reviewed recently funded NRC projects related to these features. The results of this review indicate that "better informed decisions" cannot be made until some key research results are produced, at the earliest, two years from now. Delaying issuance of near term construction permits until these "key research results" are available would be inordinately costly and is unnecessary. After the construction permit is issued, when the Degraded Core Rulemaking has been completed, Boston Edison could be required to assess potential

backfits of Pilgrim Unit 2 in accordance with 10CFR50.109 in the same manner as other licensed facilities. Since the content of the proposed rule concerning "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations" (45 Fed. Reg. 65466, October 2, 1980) is already covered by other paragraphs of NUREG-0718 (I.C.1, II.B.1, II.B.2, II.B.3, II.E.4, II.F.2, III.D.1.1 & III.D.3.3), the first sentence of paragraph II.B.8 is unnecessary. Therefore, it is requested that the category for Paragraph II.B.8 in NUREG-0718 be changed to Category IE, not applicable to plants of the type now under review.

II.D.2 Research on Relief and Safety Valve Test Requirements

The two entries in Appendix D for this item should either be combined or one entry deleted.

II.F.3 Instrumentation for Monitoring Accident Conditions (RG 1.97, Rev. 2)

Please change the category for this item to Category 3. Revision 2 of RG 1.97 was not issued in August 1980; and, furthermore, it does not appear that Revision 2 of RG 1.97 will be issued in the near future. Delay of a pending CP while waiting for this Regulatory Guide to be revised is inordinately costly.

III.A.1.1 Emergency Preparedness & Emergency Support Facilities
& III.A.1.2

Two entries are in Appendix D for each of these items. They should either be combined or one entry deleted so only one set of requirements appear for each item.

We believe that Option 1, as represented by NUREG-0718 modified by the above comments, would assure that the safety lessons learned from TMI are adequately considered in the design and construction of the reactor facilities for which construction permit applications were pending prior to TMI.

The requirement that the applicant document and justify deviations from the standard review plan should be deleted from the licensing requirements for the pending CP applicants. Delay associated with this exercise would be inordinately costly, and compliance with the Standard Review Plan is not necessary, nor it is sufficient, to establish compliance with the regulations. It is settled law that an applicant need only satisfy the Commission's regulations to obtain a permit: Maine Yankee Atomic Power Co. (Maine Yankee Atomic Station), ALAB-161, 6 AEC 1003 (1973), affirmed subnom., Citizens for Safe Power V. NRC, 524 F. 2d 1291 (D.C. cir. 1975). Furthermore a staff position paper, such as a Regulatory Guide or SRP, is not a regulation and

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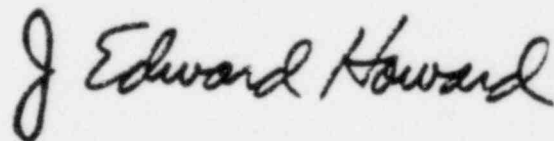
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cannot be treated as such; Gulf State's Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 772 (1977). In a memorandum(1) dated January 31, 1977, the Director of Nuclear Reactor Regulation specifically exempted the pending CP and ML applications from the Plan because resource expenditure could not be justified since there was no concern as to safety level established by the existing staff review. It should also be noted that, despite the fact that previous applications did not document and justify deviations from the standard review plan, the Staff has been generally successful in establishing compliance with regulations in adjudicatory proceedings. The NRC General Counsel's memorandum(2) of August 14, 1980 clearly states: "citation of a particular NRC regulation in the SRP as a support for the review requirement does not in itself show that the review requirement establishes compliance with the regulations." This memorandum further states: "the citation and cross-referencing do not show that the regulation is fully implemented. If a regulation is applicable to two different systems dealt with in two different sections of the SRP the fact that the regulation is cited in one section does not show that the regulation formed the basis for the review requirement in the SRP on the second system." The NRC General Counsel concluded that the current review procedures for determining compliance of applications with NRC regulations are legally adequate for issuance of licenses.

In conclusion Boston Edison recommends that the requirements with respect to site evaluation, degraded core rulemaking, and Standard Review Plan Conformance be deleted and that the resulting plan, Option 1, be utilized to expedite the licensing process of the remaining few NTCP plants. To facilitate expediting the licensing process it is further recommended that Licensing boards be instructed that the requirements in NUREG-0718 may be litigated only to a limited extent. Specifically, boards may entertain a contention that the requirements are unnecessary, in full or in part, and they may entertain a contention that one or more of the requirements are not complied with. They may not entertain a contention asserting that requirements beyond these are necessary. The boards' authority to raise issues sua sponte should be subject to the same limitations. Contentions relating to NUREG-0718 shall be limited to those items assigned to Category 4 and Category 5, as set forth in Section III of NUREG-0718. Finally, we urge you to issue this policy expeditiously, commit appropriate Staff resources and expedite Staff review of pending construction permit and manufacturing license applications.

Very truly yours,



- (1) Memo: B. C. Rusche, Director, NRR, to NRR Division Directors: "Deviations from the Standard Review Plan." Dated: January 31, 1977.
- (2) Memo: L. Bickwit, General Counsel, to the Commissioners: "Compliance with Commission Regulation." Dated: August 14, 1980.