

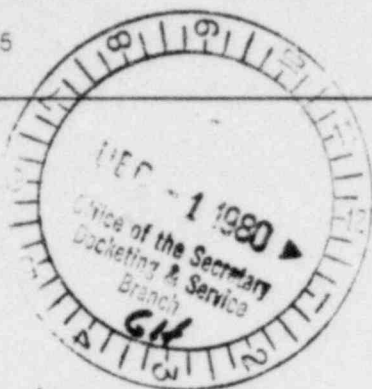
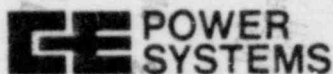
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COMMISSIONER  
PROPOSED RULE

PR 50  
45FR67099

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November 24, 1980  
LD-80-066

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

ATTN: Docketing and Service Branch

Subject: Notice of Proposed Rulemaking, 45 FR 67099, October 9, 1980.  
Re: Identification and Justification for Deviations from the  
Standard Review Plan.

Gentlemen:

Combustion Engineering has reviewed the subject Federal Register notice and has the following comments.

While we recognize the genesis of this program in the provisions of Section 110 of the 1980 NRC Authorization Act, we believe that the rule being proposed by the staff is unnecessary and carries the potential for severe disruption of the regulatory process just as it is beginning to recover from the post-TMI interregnum. Specifically, the proposed rule

- goes far beyond the requirements of Section 110 of the Authorization Act; (Pub.L. 96-295);
- is not necessary to substantiate the legal basis of the Commission's decisions;
- will divert large portions of both staff and industry resources from items of pressing importance and real potential for improving plant safety;
- will result in major revisions to various interpretive documents (such as Regulatory Guides and Standard Review Plans) without the benefit of review by the Regulatory Requirements Review Committee (R<sup>3</sup>C) or its equivalent;
- in effect, elevates Regulatory Guides and Standard Review Plans to a status equivalent to Regulations without the required public comment and procedural aspects of a rulemaking.

We take exception to the implication that this rule is necessary "in order to carry out the requirements of Pub.L. 96-295" (45 FR 67100). Section 110 of the

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Authorization Act is quite specific: it applies only to operating plants; requires identification of a subset of the Commission's rules and regulations which are of "particular significance"; a determination of the extent to which operating plants comply with that subset of rules and regulations; and, "an indication" of where such compliance was achieved by the use of Division 1 Regulatory Guides, staff technical positions, or equivalent means. The conference report is even more enlightening regarding the intent of these provisions. The original House provision which would have required an assessment of compliance with Regulatory Guides and staff technical positions was intentionally changed to focus on rules and regulations "in order to reduce the burden on the NRC" and to "acknowledge that licensees can meet safety requirements in many ways". Furthermore, "the conferees wanted to avoid imposing an undue burden upon the NRC as it carries out its other post-TMI responsibilities". In light of this legislative history and the expressed concerns of the Congress it is not clear why the staff is expanding the proposed plan far beyond the stated requirements.

With regard to the legal adequacy of the basis for past and present actions of the Commission, the General Counsel's memorandum of August 14, 1980 clearly states that "the review process does ... establish a legally adequate basis for a Commission finding of compliance with the regulations". It agrees with our understanding of the requirements of Section 110, and specifically notes "the subsidiary role of regulatory guides and other formal guidance". The General Counsel does recommend that the NRC staff more clearly document the relationship between its review process and a finding of compliance with the regulations. Such an improvement may well be desirable as a matter of Commission policy but can certainly be accomplished apart from any response to Section 110. It should also be recognized as an improvement which can be extended to future reviews but does not warrant reconsideration of completed reviews.

Prior to the Three Mile Island Accident, the NRC was beginning to make some progress in the evaluation of changes to various regulatory documents and of the need to apply them in a uniform and rational manner. The deliberations of the R3C were fundamental to this process. It now appears that this beneficial mechanism is to be dispensed with and that wholesale changes will be made in the standard review plans and other documents without such deliberate and open considerations.

One of the fundamental points that must not be overlooked is the relationship between the Commission's regulations (as embodied in Title 10 of the Code of Federal Regulations) and other regulatory documents. As noted above, the NRC's General Counsel acknowledges their subsidiary role. In particular, the SRP's were "prepared for the guidance of the staff reviewers in the Office of Nuclear Reactor Regulation in performing safety reviews...". They were intended to be internal NRC management documents, provided to the industry and public so that we could have knowledge of the staff's review mechanism and some assurance that uniform review criteria would be employed. To then take the SRP's and establish them as a standard against which the applicant (or Licensee) must evaluate himself is certainly a fundamental and significant change in policy. It appears to be nothing less than the imposition of new requirements without the opportunities for discussion and comment. We see no compelling reason for such a drastic revision of the Commission's long standing policy of public input.

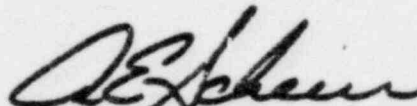
We cannot stress the point too strongly. The NRC is required to find, with reasonable assurance, that a facility has been constructed and will be operated in accordance with the Commission's regulations. All else, whether SRP's or regulatory guides, are just that: regulatory guidance. Apart from the specific Congressional requirements in Section 110, the other reasons advanced by the staff in support of the proposed rule are not convincing. "Enhancing the quality of the staff's review", "more clearly identifying the bases for the acceptability of plant designs", and the like are certainly admirable objectives and should be accomplished as part of the efficient administration of the Commission's duties and responsibilities. They do not, however, justify the currently proposed rule either on the basis of improved plant safety or by the virtue of a cost/benefit analysis, particularly when applied to a re-review of operating plants and those applications where the review is essentially complete.

Section 110 refers to the need to implement a "comprehensive plan for the systematic safety evaluation" of currently operating plants. We do not see that this massive paperwork program will materially contribute to that objective, but will rather obscure any potential items of significance. In fact, the many currently on-going NRC programs (such as the Systematic Evaluation Program, the Interim Reliability Evaluation Program, the TMI Action Plan and the development of a Safety Goal), if properly integrated, will produce more useful results.

We urge the Commission to concentrate on the effective implementation and integration of these already established programs (which may, in fact, lead to improvements in safety) and to reduce, insofar as possible, the effort needed to respond to the documentation requirements of Section 110.

Very truly yours,

COMBUSTION ENGINEERING, INC.



A. E. Scherer  
Director  
Nuclear Licensing

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