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November 24, 1980

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

Re: Plan to Require Documentation of
Deviations from Standard Review Plan

Dear Mr. Chilk:

On October 9, 1980, the Commission published in the Federal Register a notice of proposed rulemaking. The notice states that the Commission is considering requiring all utilization facility licensees and applicants to identify and justify deviations from the acceptance criteria of a planned revision of the Standard Review Plan ("SRP") scheduled to be issued in April 1981. Public comment has been requested upon this proposal. On behalf of The Detroit Edison Company, Exxon Nuclear Corporation, Niagara Mohawk Power Corporation, Omaha Public Power District, Public Service Company of Indiana, Inc., and Rochester Gas and Electric Corporation, we offer the following comments.

As stated in the Supplementary Information in the notice, one basis for the Commission's proposal is §110 of P.L. 96-295, the Commission's authorization legislation for fiscal 1980. In that law, Congress has required the

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Commission to identify each current rule and regulation that the Commission specifically determines to be of particular significance to the protection of the public health and safety. The Commission is then required to determine the extent to which each operating facility complies with each rule and regulation so identified.

Paragraph 1 of the Commission's proposal is intended to implement the Congressional directive. It does not address the question of how current licensees shall identify and document deviations from those requirements that the Commission determines to be of particular safety significance. The procedure for licensee involvement in the Commission review required by §110 should be a part of any proposed rule.

There are two categories of operating plants subject to Commission review under §110: plants included in the Commission's systematic evaluation program ("SEP") and all other reactors with operating licenses issued on or before June 30, 1980. With respect to SEP plants, we suggest that the review required by §110 be incorporated in SEP. No separate submittal by SEP licensees should be required, and the Commission's findings as to compliance with regulations of particular safety significance should be made as a part of the SEP review.

Current operating plants not in SEP are required by 10 C.F.R. §50.71(e) to update their FSARs by 1982. Rather than requiring separate submittals by those licensees to assist the Commission in complying with §110, documentation of deviations should be included in the program for updating FSARs. The Commission can then evaluate the updated FSARs to make the findings required by §110.

Paragraph 2 of the Commission's proposal would extend the §110 requirements to near-term operating licensees. It likewise could be effectively implemented by requiring an integrated submittal under 10 C.F.R. §50.71(e).

Paragraph 3, 4, and 5 of the Commission's proposal require an analysis expanded far beyond that specified by Congress and incorporated in paragraphs 1 and 2. Under the latter paragraphs, applicants would be required to justify "all deviations from all acceptance criteria", as opposed to the more limited requirement to justify deviations from "those regulations which the Commission determines to be of particular significance to the protection of the public health and safety." We submit that the expanded requirement

is unnecessary. Public acceptance of the safety of nuclear power plants does not rest upon the documentation of every possible deviation. What the public wants to know is whether the plants are in compliance with significant requirements. Section 110 of P.L. 96-295 recognizes this. We submit that the requirement to document deviations should, in all cases, be limited to those rules and regulations concerning which the Commission makes the determination required by §110.

The proposal noticed by the Commission would use the revised SRP as the baseline document against which deviations must be determined and justified. The SRP is not a Commission regulation; it is intended and written as guidance for the Commission's staff, not for applicants. Under §110, the Commission will be required to determine what regulations are significant. We believe that the Commission's determination should be the baseline document. For implementation purposes, we would suggest that the regulations so identified thereafter be incorporated in the Commission's standard format for safety evaluation reports. There would, of course, be no objection to also incorporating the list in the SRP. However, the SRP should remain in its present status as a guidance document, rather than being elevated, in whole or in part, to the status of a regulation. (It should also be noted that if the Commission seeks to apply the revised SRP as a regulation, the new SRP itself must be the subject of a rulemaking.)

The Commission has indicated that it is considering several possible methods of implementing the proposed requirement to document deviations. Among the alternatives specified is a rulemaking. Under §110, the Commission is required to provide notice and the opportunity for public comment before it determines which current rules and regulations are of particular significance to the protection of the public health and safety. Thus a rulemaking is expressly contemplated by Congress. We submit that the sensible course for the Commission to follow is to hold one rulemaking that will embrace both the identification of the rules and regulations of particular significance and the ways in which licensees and applicants are thereafter to address those rules. Holding a single rulemaking has the advantage of administrative simplicity. Promulgation of all related requirements in the form of a rule has the advantage that the rule will thereafter be binding in individual licensing proceedings.

The Commission's proposal contemplates different treatment for those applicants for whom a Safety Evaluation Report ("SER") is issued before January 1, 1982 and those whose SER is issued later. The selection of the January 1, 1982 dividing line is apparently premised upon the planned SRP revision being issued in April 1981. There are three difficulties with this approach. First, the SRP revision date may slip. As explained above, we do not believe that the revised SRP should be the baseline document. Our point here, however, is that whatever the Commission determines to be the baseline document, the dates for further actions should not be fixed until the baseline document is actually issued.

Second, an applicant's right to receive an operating license without delay should not turn on when an SER is issued. Until binding timetables for the completion of staff review are made a part of the Commission's licensing process, the timing of an SER is within the unfettered discretion of the staff. The public's right promptly to receive the economic benefits of power production from a constructed nuclear plant should not depend on whether or not an SER is issued before an arbitrary cutoff date.

Third, the proposal as offered would require certain applicants to identify and justify all deviations within a period of approximately eight months after issuance of the baseline document, at the risk of having their operating licenses delayed if they fail to do so. We submit that eight months is not a realistic allowance of time for compliance. Depending on how extensive the requirements of the baseline document are, compliance could well require the reexamination of most of an applicant's safety analysis report. Our own experience suggests that such a task is likely to consume approximately 18 months.

It is not feasible to determine how much time should be allowed for compliance until the Commission has determined which regulations must be addressed and how. The schedule for compliance should be considered as part of the rulemaking required by §110 and specified as part of the Commission's final rule.

The most important goal for the Commission in 1981 is the prompt resumption of review of a large number of operating license applications. The instant proposal, unless appropriately modified and thoughtfully implemented, promises to interfere with the issuance of new licenses by establishing unnecessary requirements and unrealistic

deadlines and by diverting applicant and staff resources. To be sure, compliance with §110 within a reasonable time is required. Actions beyond those required to meet §110, however, should be eliminated, modified, or deferred as much as possible.

Sincerely,

LeBoeuf, Lamb, Leiby & MacRae