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JOURNAL NUMBER
PROPOSED RULE PR 50
45 FR 67099

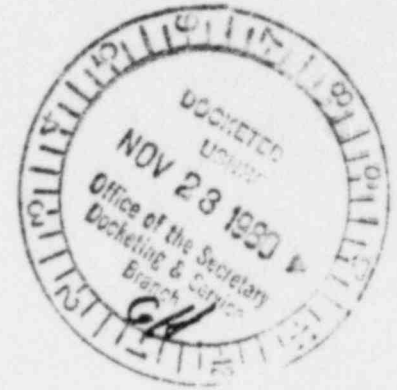


November 24, 1980
L-80-387

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

Dear Mr. Chilk:

Re: 10 CFR Part 50; Plan to
Require Licensees and
Applicants to Document
Deviations from the
Standard Review Plan



These comments are being filed on behalf of Florida Power & Light Company (FPL) in response to the notice of proposed rulemaking concerning the above-referenced subject published in the Federal Register on October 9, 1980 (45 F.R. 67099). The notice addresses two matters which the Nuclear Regulatory Commission appears to regard as interrelated. The first is the imposition of a requirement upon all licensees "to identify and justify deviations from the acceptance criteria of the applicable revision of the Standard Review Plan, NUREG-75/087." The second is to provide the Commission with information which will permit it to comply with Section 110 of Public Law 96-295 (NRC FY 80 Authorization Bill). That section requires the Commission to identify each of its current rules and regulations compliance with which it believes "to be of particular significance for the protection of the public health and safety..." It also requires the Commission to determine "the extent to which each operating facility complies with each rule and regulation..." so identified.

The notice indicates that the Commission contemplates effecting the two objectives by requiring, with respect to each currently operating reactor, i.e., each reactor for which an operating license was issued on or before June 30, 1980, identification of

all deviations from the acceptance criteria of the SRP revision scheduled to be issued in April, 1981 that relate to regulations which the Commission determines to be of particular significance to the protection of the public health and safety.

The requirements with respect to reactors which receive operating license after June 30, 1982, would vary significantly, depending upon whether the Staff Safety Evaluation Report (SER) is issued before or after January 1, 1982. If the SER is issued before the latter date, the requirements for identification and justification of deviations would be the same as those quoted above; and such identification and justification could be completed after issuance of the

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operating license. However, if the SER is issued after January 1, 1982, the applicant

would be required to identify and justify, prior to the issuance of the operating license, all deviation from all acceptance criteria of the SRP revision scheduled to be issued in April, 1981.*

Consequently, if the SER is issued after January 1, 1982, identification and justification would not be limited to those parts of the SRP identified by the Commission as related to health and safety; and the operating license would not be issued until after the process of identification and justification will have been completed.

The proposals contained in the notice have significant impact upon FPL, which now operates three nuclear reactors. All the licenses for these were, of course, issued prior to June 30, 1980. FPL is also constructing and has submitted an application for an operating license for a fourth reactor. In preliminary discussions, the NRC Staff has indicated the SER for that unit will not issue before February 1, 1983.

While FPL believes the SER could and should be issued at an earlier date, for present purposes it is assumed that, in any event, the SER will be issued after January 1, 1982.

FPL submits that, insofar as the proposals would affect it and others similarly situated, they are unnecessarily burdensome, could have significant retroactive aspects, could involve significant inequities and do not efficiently serve the purpose of Section 110.

To the extent relevant, Section 110 requires the Commission to develop and submit to the Congress "a comprehensive plan for the systematic safety evaluation of all currently operating . . ." nuclear reactors. It requires "identification of each current rule and regulation, compliance with which the Commission specifically determines to be of particular significance for the protection of the public health and safety . . ." It also requires the Commission to determine the extent to which each operating reactor complies with the rules and regulations identified by the Commission as well as the means by which compliance was achieved, i.e., "by use of Division 1 regulatory guides and staff technical positions and where compliance was achieved by equivalent means...."

If we understand the notice correctly, the Commission apparently intends to make the required determination concerning which rules and regulations are of

* The notice also suggests that similar requirements be imposed upon applicants for construction permits and manufacturing licenses. FPL is not an applicant for any such authorization. Therefore, these comments do not discuss those proposals.

particular significance to public health and safety. However, the next contemplated step does not appear to be what Section 110 requires - a determination of the extent to which each operating facility complies with the identified rules and regulations. Rather it will be to require, with respect to all operating reactors, an identification and justification of all deviations from the acceptance criteria of an as yet unissued SRP that relate to those rules and regulations. Obviously still another step will be necessary to determine whether the reactors comply with the identified safety rules and regulations, but this step is not discussed in the notice.

With respect to currently operating reactors, we believe a more straightforward, potentially less confusing and certainly less burdensome method of compliance with Section 110 could be developed. This would involve publication by the Commission, together with a request for comment, of a tentative list of rules and regulations of particular health and safety significance. After the receipt of comment, the Commission could publish its final list.

That having been done, the licensees would then attempt to provide information concerning whether "compliance was achieved by use of Division 1 regulatory guides and staff technical positions and where compliance was achieved by equivalent means." This is by no means to say that the task would be simple. However, it would be a far more direct and less burdensome way of complying with Section 110 than what is now contemplated.

Compliance with an SRP is, of course, no more than one means of demonstrating compliance with the Commission's rules and regulations. It is therefore inappropriate to make the terms of an SRP, rather than the regulations themselves, the criteria against which identification and justification will be required. This is particularly so since the regulation of nuclear reactor safety has developed and evolved over the years. In fact, when the first two of FPL's reactors were licensed, the SRP's were not even in existence.

Because of these considerations, the task of showing compliance with criteria contained in an SRP can be extremely difficult and involve thousands of man-years. Moreover, experience demonstrates that the process of justifying a deviation from a new policy, guide or other particular method of demonstrating compliance with a rule or regulation frequently degenerates into a backfitting exercise in which criteria established pursuant to the backfitting regulation, 10 CFR 50.109, are not followed.

The proposals contained in the notice are perhaps even more inequitable and burdensome as they impact upon reactors now under construction. Such reactors received construction permits after long and arduous periods of review of the application pursuant to regulatory guides, staff policies and versions of the SRP then in effect. Construction was subsequently undertaken, commitments entered into and substantial expenditures incurred upon the basis of the criteria earlier established.

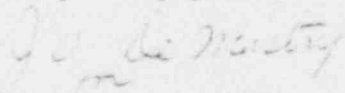
Under the system established by Action 185 of the Atomic Energy Act (42 U.S.C. § 2235), an operating license is to issue upon completion of the construction

"in conformity with the application as amended." Now to require an identification and justification of deviation from criteria contained in an SRP revision yet to be issued involves all of the problems of wasted manpower and the possibility of unjustified backfitting which are inherent in the proposals relating to reactors which are now operating. In addition, it cannot even be said that the proposals contained in the notice relate to Section 110. That section applies only to operating reactors.

Finally, one of the proposals relating to reactors now under construction seems glaringly unjustified. If the Staff issues its SER on or before January 1, 1982, the plant may go into operation and thereafter identify and justify deviations from acceptance criteria that relate only to regulations of particular health and safety significance. However, if the SER is issued on January 2, 1982 or thereafter, the plant may not go into operation until it identifies and justifies deviations from "all acceptance criteria" contained in the scheduled 1981 SRP revision. FPL perceives no justification for the distinction.

Following the Three Mile Island event, the Commission and many others exhaustively reexamined existing safety protections and regulatory procedures. FPL recognizes the propriety of now requiring additional protections for both operating reactors and those under construction. It objects strongly, however, to a system under which scarce manpower is likely to be engaged in the production of documents rather than the real enhancement of safety and in which the documentation process is likely to become the vehicle for unnecessary backfitting. Regrettably, we believe the current proposals fall into that category. We submit that these results could be avoided, or at least minimized, if the Commission would identify whatever regulations or requirements, existing or new, it believes to be of particular safety significance and then permit its Staff and those who construct and operate the reactors to enter into a meaningful and flexible dialogue concerning whether and how those requirements are being met.

Very truly yours,



Robert E. Uhrig
Vice President
Advanced Systems & Technology

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