

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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 PUBLIC MEETING - :
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 REVISED ENFORCEMENT POLICY :
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Flying Aces Hall
 Holiday Inn South
 4440 West Airport Freeway
 Irving, Texas

Tuesday,
 December 9, 1980

Convened, pursuant to notice, at 1:00 p.m.

NRC PANEL:

- KARL V. SEYFRIT
 Director
 Region IV (Dallas)
 Office of Inspection & Enforcement

- DUDLEY THOMPSON
 Director
 Enforcement and Investigation Staff
 Office of Inspection & Enforcement

- JAMES LIEBERMAN
 Deputy Chief Counsel for Rulemaking
 and Enforcement
 Office of the Executive Legal Director

- CHARLES E. NORELIUS
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 Region III (Chicago)
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<u>STATEMENT BY</u>	<u>PAGE NO.</u>
Dr. John D. Lauer St. Joseph Hospital/DePaul Community Health Center	36
Rick Jacobi Houston Lighting & Power Company	38
Glenn L. Koester Kansas Gas & Electric Company	41
Walter Traxler Sierra Club	46
B. R. Clements Texas Utilities Generating Co.	55
Steve L. Riggs Arkansas Power & Light Company	62
Larry Brae Public Service Company of Colorado	67
Steve Collins Louisiana Nuclear Energy Division	69
William Head Plateau Resources Limited	71

P R O C E E D I N G S

1:00 a.m.

MR. SEYFRIT:

Good afternoon, ladies and gentlemen.

We have come to the appointed hour, and I think we will begin.

I'm Karl Seyfrit, Director of the Nuclear Regulatory Commission's Region IV Office. I would like to welcome you to the Dallas/Fort Worth area and to this meeting.

We appreciate the opportunity to meet with you here today in this fourth of five regional conferences that are being held to explain and discuss the proposed revision to the Nuclear Regulatory Commission's enforcement policy.

Before we get into the briefing, there are a few administrative matters that I'd like to call to your attention. The ladies back at the table there from my office will be here throughout the afternoon session and will handle any messages of incoming calls. These will be posted on the bulletin board -- or in this case, the blackboard ... green-board ... chalkboard, whatever one wants to call that thing. You can check that during the break.

If you need any assistance in placing any telephone calls, please feel free to call on them; and they'll give you a hand.

1 The meeting is scheduled to run from
2 1:00 p.m. to 10:00 p.m., with a break from 5:00 to 7:00 p.m.
3 for dinner.

4 We have a prepared presentation and
5 would like to give it in its entirety before we honor any
6 questions or requests to comment. We believe this approach
7 will answer a number of questions ahead of time.

8 Copies of the prepared presentations,
9 including the slides, will be made available during the break.

10 We have received advance requests from
11 several individuals for opportunities to comment. These comments
12 are expected to take something on the order of an hour and a
13 half. We don't have exact times, but we'll work with that as
14 these people make their comments.

15 If there is anyone here who wishes to
16 make a comment and who has not yet registered, you can register
17 at the table and indicate your desire to comment; and these
18 will be taken after those folks who have already made advance
19 requests to speak.

20 This meeting is being transcribed, and
21 a copy of the transcript will be filed in the NRC Public Document
22 Room in Washington, D. C. A copy will also be on file in our
23 Regional Office, once it's completed.

24 To help make the record clearer, it's
25 requested that those asking questions or making comments identify

3
1 themselves and the organization that they represent.

2 I hope that each person attending the
3 meeting has received a copy of an inquiry card from the re-
4 ceptionist as you came in. If you didn't get a copy of this
5 card as you entered, please pick one up as you leave.

6 We've tried a broad outreach program to
7 inform citizens and organizations and licensees of this series
8 of meetings on the enforcement policy. We're interested in
9 learning which of the methods reached you. We would appreciate
10 your filling out the card and tell us whether your interest in
11 this meeting was piqued by a letter mailed directly to you, by
12 a newspaper ad, or by other means.

13 You need not sign the card if you don't
14 want to. But please leave the card at the reception desk when
15 you leave the meeting today.

16 Finally, we will have some coffee and
17 soda made available at the afternoon break, which we've
18 scheduled for about 3:00 o'clock.

19 For the past year an effort has been
20 underway to revise the NRC's Enforcement Policy to reflect the
21 Congress and the Commission's mandate to be firmer regulators of
22 the nuclear industry and to incorporate legislation passed by
23 the Congress and signed by the President last summer providing
24 the NRC with increased civil penalty authority.

25 An important milestone was reached on

4
1 September 4, 1980, when the Commission approved the issuance
2 of a policy for public comment and interim use of the policy by
3 the staff during the comment period.

4 The policy was published in the FEDERAL
5 REGISTER on October 7, 1980, and is presently being used by the
6 NRC staff. This series of regional conferences is being held
7 with licensees and the general public to explain how we are
8 implementing the policy so that you will be in a better position
9 to comment on the policy.

10 Comments may be provided orally at this
11 meeting or in writing to the Secretary of the Commission,
12 Attention: Docketing and Service Branch, by no later than
13 December 31, 1980.

14 It is the intent of the Commission that
15 the disposition of public comments be made a matter of record.
16 It is also the intent that this policy, as finally adopted by
17 the Commission, will be codified in the Code of Federal Regula-
18 tions.

19 With me today to explain the revised
20 Enforcement Policy are the NRC officials selected by Vic
21 Stello, Director of the Office of Inspection and Enforcement, to
22 accomplish this effort:

23 Starting at the far left, Charles
24 Norelius, the Assistant to the Director and Enforcement
25 Coordinator from Region III in Glenellen -- Chicago, Illinois.

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Next to him, James Lieberman, the Deputy Chief Counsel for Enforcement and Rulemaking of the NRC's Legal Staff; and

To my immediate left, Dudley Thompson, Director of the Enforcement and Investigation Staff in the NRC's Office of Inspection and Enforcement in Headquarters.

In discussing the revised Enforcement Policy today, we thought it would be helpful to briefly summarize the background relative to the NRC's Enforcement Program.

Prior to 1969, our Enforcement Program did not include civil penalties. Enforcement actions in that era were primarily Notices of Violations supplemented by the occasional use of Orders for the more serious safety and chronic noncompliance cases.

In 1969 Congress granted the NRC, then the AEC, authority to levy civil penalties for items of non-compliance. Civil penalties of up to \$5000 per item of non-compliance with a maximum civil penalty of \$25,000 for all violations occurring within a monthly period were permitted.

In August 1971 a rule was published to implement the statute and in October 1972 the Commission first published its Enforcement Policy in the FEDERAL REGISTER.

The next important milestone was December 31, 1974, when the staff provided all licensees an

1 update and further clarification of its enforcement criteria.

2 Another key milestone occurred in early
3 1979 when the Commission, recognizing that the \$5000 civil
4 penalties did not represent a serious financial disincentive to
5 larger licensees, submitted a request to Congress to increase
6 the maximum civil penalty from \$5000 per item of noncompliance
7 to \$100,000 per item. Congress enacted legislation, and it
8 was signed into law on June 30, 1980.

9 While civil penalties and other escalated
10 enforcement actions were used cautiously during the early and
11 middle seventies, there has been increasing emphasis on enforce-
12 ment actions over the past few years, with a significant increase
13 in the number and severity of enforcement actions since Three
14 Mile Island.

15 As I stated earlier, this increase is a
16 clear reflection of the mandate given to the NRC to be strong
17 regulators. In December 1979, NRC further visibly displayed
18 this posture when it published tough enforcement criteria for
19 noncompliances associated with the transportation of nuclear
20 materials.

21 During the past year the staff has been
22 working to revise its Enforcement Policy to implement the new
23 civil penalty authority. In this regard, the goals of the NRC's
24 revised Enforcement Program can be stated to be as follows --
25 and we have a slide here.

1 To ensure compliance with the NRC
2 regulations and license conditions;

3 To obtain prompt correction of licensee
4 weaknesses;

5 To deter future noncompliance through
6 strong enforcement measures; and

7 To encourage improvements of licensee
8 performance, thus enhancing the degree of protection of public
9 health and safety, common defense and security, and the
10 environment.

11 Mr. Norelius next will be providing a
12 description of the revised Enforcement Program. Before he does,
13 I would like to briefly repeat what the NRC hopes to get from
14 these meetings, and we would urge you to focus on these matters
15 in providing comments.

16 Specifically, as we see in the next
17 slide, we are seeking comments on:

- 18 1. Is the policy fair and equitable?
- 19 2. Is the policy understandable?
- 20 3. Are the severity levels appropriate?
- 21 4. Are the different types of activities
22 well enough defined? Should there be others?
- 23 5. Are the distinctions among various
24 types of licensees shown in Table 1 appropriate?
- 25 6. Are the factors for determining the

1 level of enforcement actions appropriate? Should there be
2 others?

3 7. Is the degree of discretion allowed
4 to Office Directors appropriate? Should there be more
5 flexibility permitted or less?

6 8. Are the levels of civil penalties
7 that require Commission involvement appropriate? Should they
8 be higher or lower?

9 9. Are the provisions for escalated
10 action, set forth in Table 2, appropriate?

11 These tables, of course, refer to
12 published policy.

13 We would, of course, also welcome
14 questions and comments on any other aspect of the Enforcement
15 Program which may be of interest to you.

16 However, as I mentioned earlier, we
17 would like to complete our presentation before we take those
18 questions.

19 At this point I would like to turn the
20 meeting over to Mr. Norelius who will describe the basic elements
21 of the revised Enforcement Policy.

22 MR. NORELIUS:

23 Thank you, Karl.

24 In revising the NRC Enforcement Policy
25 we established six specific objectives.

1 First, we wanted to establish criteria
2 for utilizing the increased civil penalty authority.

3 Second, we wanted to make the Enforcement
4 Program tough, yet fair.

5 Third, we wanted to achieve greater uni-
6 formity in the treatment of licensees by taking equivalent actions
7 against similar licensees having similar problems.

8 Fourth, we wanted to better define our
9 enforcement capabilities with respect to NRC licensed activities
10 other than operating reactors. In particular, we wanted to give
11 more definitive guidance concerning enforcement in the areas of
12 construction and safeguards and for taking enforcement actions
13 against licensed operators.

14 Fifth, we wanted to focus escalated
15 enforcement actions on the specific event or problems which led
16 to the decision to take escalated action, rather than focus on
17 the total number of noncompliance items identified.

18 Lastly, we wanted to articulate clearly
19 our enforcement policy and define more clearly the criteria for
20 taking various enforcement actions, particularly civil penalties
21 and orders.

22 To further explain how these objectives
23 were incorporated into the revised enforcement policy, I intend
24 to discuss the new severity categories, including their
25 application to the different functional areas regulated by the

1 NRC; Notices of Violation; enforcement actions against licensed
2 operators; civil penalties; Orders; and the combination of
3 enforcement sanctions for recurring significant noncompliance.

4 Let me begin with the severity categories.
5 For the past several years we have had three categories of non-
6 compliances: violations, infractions and deficiencies.

7 While we have found that having different
8 severity categories is beneficial in judging the significance of
9 noncompliances, our experience has shown that more categories
10 were needed to capture the differing thresholds of noncompliance.

11 In defining severity categories, we wanted
12 to relate them to the fundamental problem or event involved,
13 rather than solely to the items of noncompliance themselves. We
14 decided on six severity categories.

15 Let me explain these categories in the
16 context of reactor operations.

17 We considered the worst type of situa-
18 tion as one where safety systems are called upon to work and
19 are not operable, for example, Three Mile Island. We classified
20 this as a Severity Level I.

21 The next worse situation, Severity Level
22 II, was perceived to be one where a safety system is not capable
23 of performing its intended safety function, but fortuitously
24 it is not called upon to work.

25 An example might be a loss of containment

1 integrity without a concurrent accident.

2 Severity Level III violations were
3 established to cover situations where a safety system is not
4 capable of performing its intended safety function under
5 certain conditions. An example might be where the high pressure
6 emergency core cooling system was inoperative under the loss of
7 offsite power conditions.

8 The next lower severity level, Severity
9 Level IV, involves a condition where a safety system is operational,
10 but degraded. An example might be a situation where the sodium
11 hydroxide additive was valved out of the containment spray system
12 in the PWR; yet the containment spray system itself was otherwise
13 fully operable.

14 Severity Level V violations involve other
15 procedural items which have other than minor safety significance.
16 An example might be the failure to perform a requested test on a
17 timely basis.

18 Lastly, Severity Level VI violations in-
19 volve items of minor safety significance, such as documentation
20 inadequacies.

21 The same general principles that I have
22 just described for operating reactors were applied to the other
23 licensed activities as well.

24 The next slide shows for us the relative
25 ranking of the new severity levels as compared with the ones that

1 we have been using: violations, infractions and deficiencies.
2 You will see that the old violations may now be categorized as
3 Severity Levels I, II or III.

4 The old infractions may now be cate-
5 gorized as Severity Level III in some cases, IV or V.

6 The old deficiencies will be equivalent
7 to the new Severity Level VI violations.

8 In general, we believe the Severity
9 Levels I, II and III are serious violations that should occur
10 infrequently, if appropriate attention is being given to NRC
11 requirements.

12 We believe the Severity Level IV viola-
13 tions also should not occur often, and we view the Severity Level
14 V violations to be equivalent to most of the infractions that
15 have occurred in the past.

16 The different severity levels are de-
17 fined separately for each of seven different programs which we
18 regulate. These program areas are shown in the next slide.

19 While the severity levels show the rela-
20 tive importance of violations within the same program area, it
21 is important to recognize that the severity levels are not
22 equatable in terms of safety importance from one program area
23 to another.

24 Said another way, Severity Level I is
25 the most significant violation in each of the seven different

1 program areas shown. But a Severity Level I violation in the
2 area of facility construction obviously does not have the same
3 safety significance as a Severity Level I in reactor operations,
4 for example.

5 As I mentioned earlier, the determina-
6 tion of severity categories is event oriented. By that, I mean
7 that any particular violation may, in one instance, be a Severity
8 Level II violation, while in another instance the same violation
9 may be of a lower severity level.

10 Two examples will help explain this.
11 At a reactor construction site, if numerous violations of the
12 quality assurance criteria in Appendix B of 10 CFR 50 are found,
13 and there are multiple examples of these violations in several
14 different construction areas, the items collectively would demon-
15 strate that there has been a breakdown in quality assurance.

16 Based on such a determination, all of
17 the violations related to that particular situation would be
18 categorized as Severity Level II violations. On the other hand,
19 any one of these violations identified separately in a more
20 isolated sense would probably be a lower severity level violation.

21 A second example is in the area of
22 radiation safety. If an overexposure occurs which exceeds five
23 rems, and there are other violations, such as the failure to
24 conduct surveys, the failure to follow procedures and the
25 failure to properly control access to an area (all of which

1 contributed to the overexposure), all of these violations would
2 be categorized as Severity Level II violations.

3 An isolated occurrence of failure to
4 follow a procedure or failure to conduct a survey or failure to
5 adequately control access would likely be a lower severity level.

6 The revised policy also stresses the
7 importance that the Commission attaches to the accurate and timely
8 reporting of events. In this regard material false statements
9 made to the Commission will be categorized as Severity Level I,
10 II or III violations, depending on their relative safety
11 significance.

12 Also, the failure to make the required
13 report, unless otherwise specified in one of the supplements,
14 will normally be classified at the severity level of the event
15 which has not been reported.

16 The failure to make a required report
17 will be classified as a separate event, in addition to the event
18 not reported.

19 At this point it is probably appropriate
20 to address a comment that we have heard that this Enforcement
21 Policy may result in required information not being provided
22 to the NRC.

23 We hope such a concern is not real.
24 At any rate, let me confront it by saying that NRC will consider
25 the conscious failure to provide required information to the

1 NRC a willful act that may result in not only civil penalties,
2 but also referral to the Department of Justice for consideration
3 of criminal prosecution.

4 One last point concerning the severity
5 categories. Due to the general nature of the policy guidance,
6 we recognize that it may be difficult to apply the policy to
7 certain specific situations which arise, and judgment will have
8 to be exercised in selecting the proper severity category.
9 We would especially welcome any comments you may have on clarify-
10 ing the guidance in this particular area.

11 Next, let me make a couple of comments
12 concerning Notices of Violation. It is expected that Notices of
13 Violation will continue to be sufficient enforcement action
14 for greater than 90 percent of the violations which are identified
15 during inspections.

16 Two changes to the Notice of Violation
17 should be noted. First, the Notices now reflect the new severity
18 categories. Secondly, they will now normally require that
19 responses be submitted under oath or affirmation as provided for
20 in Section 182 of the Atomic Energy Act.

21 This latter step was instituted by the
22 Commission as an additional assurance of the accuracy of informa-
23 tion provided in response to written Notices of Violation.

24 With respect to licensed operators, as
25 you may be aware, the previous Enforcement Policy was silent on

1 enforcement actions against licensed operators. The present
2 policy provides that Notices of Violation will normally be
3 issued to operators licensed under the provisions of 10 CFR
4 Part 55, for Severity Level I, II or III violations.

5 For such serious violations which are
6 recurrent, the probable course of escalated action against
7 licensed operators will be license suspension or revocation.
8 It is also possible that civil penalties may be issued to
9 licensed operators. We wish to emphasize that the policy does
10 not preclude such action.

11 It should also be noted that enforcement
12 action against a licensed operator will likely also result in
13 escalated action against the facility at which the particular
14 violation occurred.

15 Let me now turn to a discussion of
16 civil penalties.

17 As shown in the next slide, there are
18 four general areas that are likely to lead to the assessment of
19 a civil penalty. The first is for a Severity Level I, II or
20 III violation which has occurred.

21 Secondly, it is possible to assess civil
22 penalties for recurring Severity Level IV and V violations.

23 Thirdly, the knowing and conscious
24 failure to report a defect by a responsible official of a
25 licensee or vendor organization may result in the assessment of a

1 civil penalty against that particular individual as provided for
2 in Section 206 of the Energy Reorganization Act.

3 Fourthly, willful violations may result
4 in civil penalties.

5 I want to go back and make some additional
6 comments on the first two items shown on this slide. We recognize
7 that some technical judgment will enter into the categorization
8 of Severity Levels I, II and III, and whether they warrant a
9 civil penalty.

10 Normally, however, if it has been deter-
11 mined that a Severity Level I, II or III violation existed, it
12 is the Commission's intent to issue a civil penalty.

13 Civil penalties will generally be
14 assessed for recurring Severity Level IV and V violations which
15 are similar in nature to those which were the subject of an
16 enforcement conference and which occurred within two years
17 following the enforcement conference.

18 An enforcement conference is a meeting
19 specifically designated as such, between NRC and licensee
20 management, for the purpose of discussing specific violations,
21 the planned corrective action and the enforcement options
22 available to the NRC.

23 If similar violations occur after such
24 an enforcement conference, and it is concluded that their
25 occurrence resulted from ineffective licensee action, a civil

1 penalty will generally be assessed.

2 The next slide shows a table of base
3 civil penalties for different types of licensed programs and for
4 different severity levels of noncompliance.

5 In determining the civil penalty values,
6 primary consideration was given to the severity level of the
7 violation and potential hazard involved with the licensed opera-
8 tion, and to a lesser degree, the general ability to pay.

9 In general, those programs which present
10 a greater potential hazard and those where licensees have a
11 greater ability to pay are toward the top of the table.

12 Let me stress that this is generally the
13 case. We recognize that isolated instances may not fit the
14 general pattern. If a large disparity occurs, adjustments may be
15 made on a case-by-case basis. Again, we would welcome your
16 comments on the equitable distribution of civil penalties.

17 You will note from the table that the
18 base civil penalty values for Severity Levels I and II are the
19 same. This is because generally the same basic noncompliance
20 act has occurred.

21 However, as you will see later in our
22 discussion, if a Severity Level I violation occurs, the licensee
23 will normally be subject to an Order in addition to a civil
24 penalty, such that the total enforcement sanction will
25 generally be more severe for a Severity Level I than for a

1 Severity Level II violation.

2 It is also noteworthy that, while the
3 law provides that a civil penalty of \$100,000 may be assessed for
4 each violation, the policy provides that for Severity Level I,
5 II and III violations, the civil penalty will be assessed for
6 each event irrespective of the number of violations associated
7 with the event.

8 Whether more than one event arises out
9 of a series of violations will be determined on a case-by-case
10 basis. Let me elaborate.

11 Referring back to an example I gave
12 earlier, if several violations were identified at a reactor
13 construction site which led to the conclusion that a breakdown
14 in quality assurance occurred in multiple phases of construction,
15 each of the violations would be categorized as Severity Level II.

16 However, the civil penalty would be
17 assessed for the event; that is, a cumulative base civil penalty
18 of \$80,000 would be assessed for all the violations which con-
19 stituted the event, regardless of the number of specific viola-
20 tions.

21 We believe that such an approach will
22 help to focus licensee and public attention on the significance
23 of events, as opposed to the individual violations which may be
24 identified.

25 The mechanics for assessing civil

1 penalties remain the same; that is, the proposed Notice of
2 Imposition of Civil Penalties and Notice of Violation must
3 clearly state which violation occurred and which violations
4 civil penalties are being assessed for.

5 For example, if eight violations con-
6 stitute a Severity Level II event, the \$80,000 base civil penalty
7 may be equally assessed for all eight items which make up the
8 event, or the entire civil penalty may be assessed against only
9 one violation. The actual distribution will be determined on a
10 case-by-case basis.

11 There are several factors which enter
12 into the determination of the final civil penalty, some of which
13 I have already touched on. These factors are shown on the next
14 slide.

15 The first factor is the gravity or
16 severity of the violation. This factor is taken into considera-
17 tion in the structure of the table itself, in that more serious
18 violations get higher civil penalties. Also, those licensees
19 whose programs present a greater potential health and safety
20 risk are toward the top of the table, and will be assessed the
21 higher civil penalties.

22 The next factor is financial impact.
23 This also is taken into consideration in the structure of the
24 table in that generally, those licensees who have a greater
25 ability to pay are in the groups near the top of the table, and

1 smaller licensees with lesser ability to pay are generally near
2 the bottom of the table.

3 As mentioned earlier, however, there
4 are recognized inconsistencies in this area.

5 Next, the duration of the violation
6 will also have an impact upon the civil penalty which is assessed.
7 Each day that a violation continues may be considered as a sepa-
8 rate violation, and therefore subject to a separate civil
9 penalty. We expect to utilize that provision as a general
10 practice.

11 It is not possible to define beforehand
12 how this will be applied because the requirements and situations
13 differ greatly. As an example, if a required safety system is
14 valved out so that it cannot perform its function, the Commission
15 will likely issue a civil penalty for each day such a condition
16 occurs.

17 On the other hand, if an overexposure
18 has occurred, that will be considered a single event where the
19 duration of the violation does not come directly into play.

20 The policy provides that civil penalties
21 may be reduced by up to 50 percent of the base value if the
22 noncompliance which led to the civil penalty was identified by
23 the licensee, reported if required, and corrective action
24 promptly initiated.

25 This self-identification does not apply,

1 however, to noncompliance disclosed by incidents, such as over-
2 exposures or accidents. The policy also provides that if the
3 licensee has acted in good faith, an additional 25 percent
4 reduction in addition to that already provided for self-
5 identification may be applied.

6 "Good faith" is not precisely defined
7 in the policy. But a reduction for good faith will be considered
8 in those cases where the licensee has taken extraordinarily
9 prompt and comprehensive corrective action.

10 On the other hand, the policy provides
11 that if the licensee could reasonably have been expected to have
12 taken preventive action, or if the violations are particularly
13 serious, including cases involving willfulness, the civil penalty
14 may be increased up to 25 percent over that shown as the base
15 value in the table.

16 We plan to review some specific cases
17 in a little while to better demonstrate how these factors would
18 influence the determination of actual civil penalty values.

19 The next slide shows the types of orders
20 which may be issued by the Commission. There are orders to
21 modify, suspend or revoke a license, and orders to cease and
22 desist any particular operation. These orders may affect all or
23 part of a licensed activity.

24 Normally, orders for modification,
25 suspension or revocation will be issued with the show cause

1 provision. That is, they will require a licensee to show cause
2 why such action as proposed should not be taken.

3 Such orders always provide a licensee
4 opportunity for a hearing on the issues. However, if a determina-
5 tion is made by the Director of the Office of Inspection and
6 Enforcement that the public health and safety, common defense and
7 security, or public interest so demands, the order may be made
8 effective immediately.

9 It is possible for orders to be issued
10 which combine these provisions; that is, an order may require
11 the immediate suspension of a particular operation, and may at
12 the same time include a show cause provision as to why the
13 license should not be revoked.

14 The last slide in this segment of the
15 presentation shows a progression of escalated enforcement action
16 which may be taken for repetitive serious violations. This table
17 is not intended to prohibit the NRC from taking a different
18 action if the case warrants.

19 However, the degree to which this pro-
20 gression should be followed in practice is a subject on which
21 the Commission has explicitly sought comment. Let me run through
22 an example of how this table might be applied.

23 If a Severity Level II violation
24 occurred, its first occurrence would result in a civil penalty.
25 A second similar violation within a two-year period would result

1 in a civil penalty and an order to either suspend affected
2 operations until the Office Director is satisfied that there is
3 reasonable assurance that the licensee can operate in compliance,
4 or to modify the license to impose additional requirements to
5 provide equivalent assurance.

6 If a third similar violation occurred
7 within the two-year period, then in addition to the actions taken
8 the previous time, additional action to show cause for further
9 license modification or for license revocation would be the next
10 step.

11 You will note that the table applies to
12 violations in the same activity area. This means that if a
13 Severity I, II or III event occurs in the area of safeguards, for
14 example, a subsequent significant event in the area of radiation
15 safety would not be considered the same activity area and this
16 table would not be followed.

17 On the other hand, a personnel error
18 leading to the misvalving of a safety system at a reactor on one
19 occasion followed by a personnel error which misvalved out
20 another safety system would be considered as the same activity
21 area, and this table would normally be followed.

22 While we have been discussing the
23 enforcement actions normally taken by the NRC, it should be
24 noted that the policy also provides for criminal sanctions.
25 We don't plan to spend a great deal of time in this area, but let

1 me say that Chapter 18 of the Atomic Energy Act provides that
2 certain violations of regulatory requirements may be criminal
3 offenses.

4 All alleged or suspected criminal viola-
5 tions are required to be referred to the Department of Justice
6 for possible investigation and prosecution.

7 At this time I will turn the meeting over
8 to Mr. Thompson, who will present a few sample cases demonstrat-
9 ing how the policy will be applied.

10 MR. THOMPSON:

11 Thank you, Chuck.

12 To illustrate application of the revised
13 enforcement criteria, we have prepared a few hypothetical enforce-
14 ment cases, based somewhat on actual experience. The examples
15 are intended to demonstrate how the criteria might be applied,
16 so some of the factual material has been altered from actual
17 cases.

18 The first case involves a situation in
19 which a power reactor licensee legitimately removed an emergency
20 core cooling system from service to perform maintenance. When
21 the maintenance was completed, a procedural error coupled with a
22 personnel error, led to the system remaining inoperable by virtue
23 of valves remaining in the closed position.

24 Four days later routine surveillance
25 on the system disclosed the inoperable condition which was

1 immediately corrected by the licensee and reported to NRC as
2 required.

3 The enforcement action is calculated as
4 shown on the slide. This is a Severity Level II violation
5 taken from Supplement I of the Policy Statement, in that a
6 safety system was incapable of performing its intended safety
7 function.

8 A base civil penalty of \$80,000 as
9 shown in Table 1 is reduced by 50 percent because the licensee
10 identified the condition, promptly corrected it and reported it
11 in a timely fashion.

12 Since the violation continued for four
13 days, however, the resulting adjusted \$40,000 civil penalty is
14 multiplied by four, resulting in a cumulative civil penalty of
15 \$160,000.

16 The second case as shown on this slide
17 also involves a power reactor licensee who shipped radioactive
18 waste to a burial ground. On arrival at the burial site, a
19 state inspector surveyed the truck and found radiation levels at
20 the surface of the truck substantially in excess of Department of
21 Transportation limits.

22 The NRC inspector inspection confirmed
23 the results of the state inspection.

24 The appropriate supplement is Supplement
25 V. The Severity Level is II because the radiation level exceeded

1 three times the DOT limits without a breach in containment. Since
2 this involved a power reactor, the base civil penalty is \$80,000.
3 No adjustments upward or downward are appropriate.

4 Case number three, as shown on this
5 slide, is an example of a situation for which a civil penalty is
6 of limited value because of the nature of the problem. Instead,
7 more severe sanctions are called for.

8 Over a two-year period, technicians at
9 a hospital routinely administered double the prescribed doses
10 of radioisotopes to patients undergoing diagnostic procedures.
11 Their motivation was apparently based on a desire to reduce the
12 amount of time required for scanning, thus reducing the discomfort
13 and inconvenience of the patients, most of whom were elderly and
14 very ill.

15 When it was proposed to follow the same
16 improper dosage procedure for a teenage patient, one of the
17 technicians involved became sufficiently concerned that he "blew
18 the whistle" to the NRC. Our investigation confirmed the facts
19 of the case and the actions shown on this slide ensued.

20 We immediately suspended the license
21 and issued a show cause revocation order. In addition, the
22 willfulness aspects of the case dictated that the matter be
23 referred to the Department of Justice for a determination of the
24 desirability of criminal prosecution.

25 The final case as shown in this slide

1 is one that occurs not infrequently among radiography licensees;
2 a "classic" radiography overexposure. Following a routine field
3 shot, the radiographer failed to retract the source before
4 entering the area to set up film for the next shot. No surveys
5 were made; personnel dosimetry was not carried; and the area of
6 the shot had not been properly posted.

7 The radiographer and his helper both
8 received overexposures; the radiographer's whole-body exposure,
9 based on reenactments, was estimated to have been 12 Rem; the
10 helper's was 7 Rem. This was a Severity Level II event under
11 Supplement IV because of the amount of the exposures. This calls
12 for a base civil penalty under Table 1 of \$8000.

13 There have been numerous notifications
14 to radiographers concerning similar previous events like this
15 one. Thus, there is a basis for concluding that the licensee
16 could reasonably have been expected to have had prior knowledge
17 and have instituted preventive measures. This means that the
18 base civil penalty for this Severity Level II violation is
19 increased by 25 percent, leading to a cumulative civil penalty
20 of \$10,000.

21 That concludes the slides. If you
22 really want the lights back again, you can have them now.

23 Considerable flexibility is required
24 and provided in implementation of the revised Enforcement Policy.
25 Responsibility for this exercise of technical judgment is vested

1 in Office Directors, who are senior managers in the Nuclear
2 Regulatory Commission.

3 For most cases the principal enforcement
4 officer of the NRC is the Director of the Office of Inspection
5 and Enforcement, although other Office Directors may, and in some
6 cases do, issue enforcement actions in their own spheres of
7 responsibility.

8 For example, the Directors of the Offices
9 of Nuclear Reactor Regulation or Nuclear Materials Safety and
10 Safeguards issue license modification orders which restrict
11 operation fairly often.

12 Similarly, the Director of the Office of
13 Administration is authorized to issue license revocation orders
14 for nonpayment of required fees.

15 Fundamentally, however, we find that
16 public interest and licensee concern focuses most strongly on
17 those retrospective enforcement actions associated with non-
18 compliance with regulatory requirements.

19 Enforcement actions associated with such
20 noncompliance are taken almost exclusively by the Director of
21 Inspection and Enforcement and the discussion which follows is
22 based on those cases.

23 The Director's discretion is exercised
24 both in his decision regarding which type of enforcement action
25 to take; that is, a notice of violation, a civil penalty or an

1 order; and in the case of a civil penalty, the determination of an
2 appropriate amount to be assessed.

3 Furthermore, as noted in the previous
4 presentation, combinations of enforcement sanctions may be used
5 for higher severity level matters or for repetitive noncompliance.
6 The choice of enforcement sanctions in such cases is a
7 responsibility of the Director of I&E, based, of course, on staff
8 recommendations and consistent with the general principles in
9 the revised Enforcement Policy and the technical merits of each
10 case.

11 The factors considered in reaching these
12 decisions are those presented earlier, and repeated here,
13 associated with determining the amount of a civil penalty to be
14 applied; that is,

15 The gravity of the violation;
16 The duration of noncompliance;
17 The method of identification;
18 The financial impact on a licensee;
19 The good faith;
20 The prior enforcement history; and
21 The willfulness.

22 The Director notifies the Commission
23 in writing of each application of elevated enforcement sanctions,
24 such as civil penalties or orders. In addition, for certain
25 especially significant actions, the Commission is consulted

1 prior to taking the action, unless the urgency of the situation
2 requires immediate action to prevent or mitigate an imminent
3 threat to public health or safety.

4 Prior consultation with the Commission is
5 required for four types of situations:

6 1. When the action requires a balancing
7 of the implications of not taking the action against the hazards
8 to be eliminated by taking it.

9 2. All proposed impositions of civil
10 penalties exceeding either

11 a. Three times the value of a
12 Severity Level I violation; or

13 b. The maximum civil penalty for
14 the next higher severity level for the type of licensee involved.

15 3. Actions for which the Commission
16 has required prior consultation, and

17 4. Any action the Director believes to
18 warrant Commission attention.

19 An example of the first type of situa-
20 tion involving the question of not taking the action versus
21 taking it, might involve a contemplated license suspension order
22 for a facility providing products or services crucial to national
23 defense and security.

24 If the staff determines that shutdown
25 of the facility might deny the needed product or service and

1 thus adversely affect the nation's interests, prior consultation
2 with the Commission would be required.

3 A second example, which I cited earlier
4 in my sample cases, is the case of a hospital where there was
5 serious noncompliance involving patient care. You'll recall that
6 that case dictated the issuance of a license suspension order.
7 Basically the case we discussed before.

8 Before we took that suspension action,
9 however, the staff made an explicit determination that needed
10 health services to the community would not be denied by that
11 order, since a neighboring hospital was also licensed to perform
12 the same procedure. However, had such a loss of services been a
13 possibility, prior Commission approval would have been required
14 for the suspension.

15 The dollar limits on civil penalties
16 requiring prior consultation with the Commission can be reached
17 by either a continuing violation or by a combination of events.
18 For example, the inability of a reactor safety system to perform
19 its intended safety function -- a Severity Level II event --
20 that continues over a period of a week might lead to a civil
21 penalty of from \$210,000 to \$700,000, depending on the extent
22 to which adjustments were applied to the base values of Table 1.
23 If the adjusted figure exceeds \$300,000 in such a case, prior
24 Commission consultation is required.

25 In the case of a continuing Severity

1 Level III violation, for example, unavailability of a reactor
2 safety system if offsite power were lost -- the civil penalty
3 for a week-long violation might vary from \$105,000 to \$350,000.
4 Any such civil penalty proposal would require prior Commission
5 consultation, since the maximum civil penalty for the next
6 higher severity level violation (a II) at a power reactor is
7 \$100,000.

8 The Commission has already identified
9 one aspect of implementation of the revised enforcement policy
10 on which it wishes to be consulted, under the third criterion
11 I discussed; that is, the Commission desires to be consulted
12 prior to implementation of the first few cases for which the
13 staff proposes to apply good faith as a basis for reduction of a
14 civil penalty.

15 Finally, the fourth criterion for prior
16 Commission consultation provides the mechanism by which the
17 Director may solicit Commission guidance on new or unique
18 applications of the policy, particularly for cases the Director
19 believes to be watershed decisions establishing precedent.

20 This concludes the prepared presentation.
21 As Mr. Seyfrit mentioned earlier, copies of these prepared re-
22 marks will be available at the back of the room at the break,
23 which should occur in about an hour and five minutes or so.

24 MR. SEYFRIT:

25 At this time we will take some of the

1 prepared comments. We indicated earlier that we would take those
2 that had applied, or had notified us of their intent to comment,
3 first.

4 However, we do have two individuals who
5 came in today and wish to comment and have some time restrictions --
6 flights to catch and so forth. Unless there's an objection, I
7 would like to go ahead and take those two individuals first.

8 Is there any objection?

9 (No response.)

10 Okay. Dr. John D. Lauer has indicated
11 that he wishes to make a statement.

12
13 STATEMENT

14 BY

15 DR. JOHN D. LAUER

16 DR. LAUER:

17 I'm Dr. Lauer from St. Louis, Missouri.
18 I represent St. Joseph Hospital and DePaul Community Health
19 Center in that area, with about 750 to 800 beds.

20 I'm Board-certified in radiology and
21 Board-certified in nuclear medicine. I have practiced nuclear
22 medicine for approximately the last 20-some years.

23 I strongly oppose the NRC action that's
24 stated in FR 66754. I oppose the, quote, urgency, that is being
25 applied to pushing the policy forward with little time for the

1 licensees to study and adequately respond. Nuclear medicine
2 would fall into the wastebasket category of "all other licensees
3 and persons subject to civil penalties."

4 And I feel that usually our severity
5 level would probably be Level VI, or perhaps Level V; i.e.,
6 minor significances, violations that have minor safety or environ-
7 mental significance.

8 I feel that you have adequate means to
9 enforce the policies as is. Although it seems that it would be
10 rather innocuous, as you state it today, I question very seriously
11 what is down the line for tomorrow and the following days.

12 In the 20 years that I have been in
13 nuclear medicine, I have spoken to many individuals across the
14 country who are practicing nuclear medicine. I find that we're
15 seriously interested in the safety of our patients and the safe-
16 guarding of our employees.

17 I believe that the civil penalties are
18 unnecessary and unjustified. I think a good example is the
19 example that you gave in reference to nuclear medicine. You
20 have technologists who were giving, quote, double the dosage to
21 patients who were, I think you said, elderly and sick.

22 For that you suspended their license.
23 You said you adequately studied the case and found that there
24 were similar facilities available in a community hospital. I
25 wonder how the Commission considered the expense to these patients

1 to have to be maintained in their own hospital perhaps a day or
2 two longer before they could be transported by ambulance to the
3 other facility; keeping in mind that most of these patients
4 probably had cancer, as we see in bone scans and brain scans --
5 the tremendous discomfort that they would undergo.

6 I also question how seriously their
7 health was affected by giving a double dose, if they in truth
8 were elderly and sick patients. I'm not justifying the technolo-
9 gists doing this. But I am questioning the action that the
10 Agency took in that case.

11 Thank you.

12 MR. SEYFRIT:

13 Thank you, Dr. Lauer.

14 Mr. Jacobi from Houston Lighting &
15 Power wishes to make a statement earlier this afternoon.

16
17 STATEMENT
18 OF
19 RICK JACOBI
20

21 MR. JACOBI:

22 I'm Rick Jacobi of Houston Lighting &
23 Power Company, Houston, Texas.

24 Houston Lighting & Power Company, recog-
25 nizing the importance of the objectives of the proposed enforcement

1 policy and appreciating the Commission's concern for high stand-
2 ards of compliance to assure the protection of the public health
3 and safety, endorses the concept of a well-structured and
4 well-understood enforcement policy.

5 We are concerned, however, that the
6 implementation of this structured response to the different
7 categories of severity may lead to penalties much more harsh
8 than is the intent of the Commission.

9 Furthermore, this structured response
10 might lead to an inflexible situation wherein enforcement
11 personnel could not exercise discretion in their enforcement
12 action. Such discretion is a critical element of a meaningful
13 enforcement program and must be retained in any new policy.

14 Finally, the concept of an enforcement
15 policy needs to be reviewed from its motivational aspects.
16 There's a well-known psychological premise that people respond
17 greater to positive reinforcement than negative.

18 Therefore, it is suggested that the
19 proposed policy should be positively oriented and provide
20 positive incentives.

21 A policy such as reduction in the
22 annual license fees for top performing utilities may be more
23 beneficial and result in more positive attitudes than the threat
24 of significant fines or shutdowns.

25 There are other aspects of the proposed

1 policy which cause serious concern, and it is hoped that the full
2 implications of the entire proposal will receive appropriate
3 evaluation before implementation.

4 It is the intention of the Houston
5 Lighting & Power Company to submit more detailed written comments
6 on the proposed enforcement policy prior to the Commission's
7 December 31, 1980 deadline.

8 Our mutual goal is an enforcement policy
9 that results in a well run and well constructed nuclear power
10 plant. It is submitted that this goal can be best achieved
11 through a positive policy, and that, in fact, a negative policy
12 may prove to be self-defeating.

13 Thank you for this opportunity to
14 comment.

15 MR. SEYFRIT:

16 Those are the only ones that had indi-
17 cated a time crunch. We'll continue now with the listing of
18 those who had requested permission to speak prior to the meeting
19 today. These are taken in the order in which they were
20 received. The first one is Mr. John Rumsey, Security Supervisor
21 for Texas Utilities Service. Mr. Rumsey.

22 A VOICE:

23 I think he has withdrawn, Karl.

24 MR. SEYFRIT:

25 He has withdrawn. Okay.

1 The next one then is Glenn Koester,
2 Kansas Gas and Electric, Wichita, Kansas. Glenn.

3
4 STATEMENT
5 OF
6 GLENN L. KOESTER

7
8 MR. KOESTER:

9 I am Glenn L. Koester, Vice President -
10 Nuclear, for Kansas Gas and Electric Company with corporate
11 offices in Wichita, Kansas.

12 Our project is the Wolf Creek Generating
13 Station located near Burlington, Kansas. It is being constructed
14 in partnership with Kansas City Power & Light Company and the
15 Kansas Electric Power Cooperative, a group of electric coopera-
16 tives located in Kansas. KG&E is the lead company during
17 construction and will also be the operating company.

18 I want to thank the NRC for this op-
19 portunity to make some brief comments on the Proposed General
20 Statement of Policy and Procedures for Enforcement Action.

21 We started construction on Wolf Creek
22 in mid-1977 and it is now 68 percent complete. We, KG&E, are
23 dedicated to building and operating Wolf Creek to protect the
24 public health and safety, the common defense and security, and
25 the environment.

1 and encourage licensee cooperation rather than to discourage it.
2 To me it provides exactly the wrong kind of incentive for a good
3 relationship between the licensee and the NRC.

4 The proposed changes in penalties leads
5 to a deeper problem that has to do with the federal role in in-
6 forming the public about its energy options. We still depend
7 greatly on imported oil.

8 And we have the 1978 federal mandate
9 for utilities like our own to phase out the use of natural gas.
10 This leaves the nuclear and coal options as the only two which
11 now are realistic alternative generating fuels for most utilities.

12 Those of us who build and will operate
13 nuclear facilities are subject to strict enforcement of standards
14 and, as a result, considerable public interest and scrutiny.

15 No comparable federal safeguard, in-
16 spection and publicity program affecting other energy resources --
17 coal, solar and so forth -- exists. Thus, the nation hears almost
18 exclusively about problems with only nuclear fuel and its
19 decision and policies will accordingly be colored.

20 This is not to suggest that the nuclear
21 standards be changed, but only that it should be a federal policy
22 to maintain a national perspective so sound overall analyses can
23 be made.

24 It is true that much of the coloring
25 of public opinion about nuclear might be laid at the feet of the

1 news media who do not fully cover the available information about
2 energy, and to the aggressiveness of anti-nuclear organizations.

3 But, again, there is no reason to adopt
4 enforcement policies that will further distort the public view
5 of the nuclear option and ultimately deny the nation its use at
6 a time of need. This is another way in which unwarranted enforce-
7 ment procedures can defeat the public good.

8 To summarize, we believe the NRC already
9 has ample tools available to govern the licensee during con-
10 struction and operation. However, since it appears that a new
11 enforcement program, which we believe carries excessive civil
12 penalties, will be put in place, then we would ask that
13 penalties proposed against the licensee, whenever he reports
14 himself and corrects the problem, be reviewed and completely
15 dropped from the program. We believe that by doing this, it will
16 enhance the quality program which the NRC and the licensee are
17 working to achieve.

18 There are a couple of questions which I
19 would like to have answered. I think that they have already been
20 answered, but I'm going to restate them anyway. On Table 1 the
21 fourth category of licensee is listed as "All other licensees
22 and persons subject to civil penalties."

23 It was earlier stated that this does
24 mean mine employees. If it does, I have great problems with the
25 NRC assessing civil penalties against my employees for non

1 doing his or her job properly.

2 I believe the licensee should be the
3 responsible party and the licensee should take appropriate
4 action against the employee -- not the NRC. The prospect of NRC
5 being able to levy fines against individual employees can only
6 harm employee morale.

7 Furthermore, it will reduce the incentive
8 for qualified individuals to join the industry's nuclear program
9 and thus make our recruiting effort even still more difficult.

10 One other item of concern is what if the
11 NRC is wrong in a finding as well as assessing a civil penalty
12 against a licensee? I see nothing in the program on how the NRC
13 will let the world know that the NRC was wrong and the licensee
14 was right.

15 I am sure this won't happen often. But
16 it could, and the licensee needs to be assured that proper treat-
17 ment of this issue will be made by the NRC.

18 Thank you again for this opportunity to
19 appear, and I would be willing to answer any of your questions
20 concerning my remarks.

21 MR. SEYFRIT:

22 The next request came from Mr. Walter
23 Traxler of the Sierra Club. Is Mr. Traxler here?

24 ///

25 ///

1 STATEMENT
2 OF
3 WALTER TRAXLER

4 MR. TRAXLER:

5 My name is Walt Traxler. I live in
6 Dallas. I am affiliated with the Lone Star Chapter of the Sierra
7 Club.

8 Our presentation today includes a
9 summary of comments and suggestions to be submitted to the
10 Secretary of the Nuclear Regulatory Commission.

11 And we have some brief answers to the
12 nine specific comments that we've already seen.

13 Before attempting to examine a proposal
14 for policy and enforcement actions, one must be given, or
15 formulate for himself, some evaluation guidelines. Is its
16 purpose okay? Does it effectively match up safety goals with
17 criteria for identification of violations and assessment of
18 penalties? Is it understandably formulated and flawlessly com-
19 municated to the Nuclear Regulatory staff, licensees and the
20 public? Is it complete? Will it work? If the policy is unwork-
21 able, how can it be perfected?

22 We go into considerable extent in
23 answering or explaining further some of these questions in our
24 main comments and suggestions.

25 Let's look at purpose. The purpose of

1 the proposed policy and actions is "to foster improvement in
2 licensee performance." How much improvement is expected how
3 soon? What remedial action is proposed? Are your staff,
4 licensees and the public to believe that somehow "improve per-
5 formance" really means no more accidents, risk- and hazard-free
6 nuclear operations, or simply less downtime?

7 This purpose then we see has four stated
8 goals. How much more compliance is expected? How much faster
9 is prompt correction? Is deterred noncompliance more, less or
10 about the same as more compliance? How much improvement will the
11 Nuclear Regulatory Commission encourage?

12 Let's grant that somehow these goals can
13 be measured. How can they be achieved? Four broad means or
14 action criteria list more undefined terms of measurement. These
15 actions are intended to assure three poorly specified licensee
16 actions.

17 So far as the purpose is stated, the
18 public will be cheated again. The Nuclear Regulatory Commission
19 is not getting to the root of the nuclear safety regulation.
20 The NRC must regulate nuclear safety. The purpose of the policy
21 and actions as stated in Part I, "Introduction and Purpose" is
22 not okay.

23 To have an okay purpose for policy and
24 actions, the NRC should develop a set of measurement guidelines
25 and clearly defined safety goals. Then internal staff actions

1 and effects of interactions with licensed operator should be
2 examined, clearly defined and be made part of the policy.

3 This need was identified at TMI-2,
4 public safety and health demand that the Nuclear Regulatory
5 Commission address it effectively.

6 Now, let's look at the legal aspects.
7 Everyone grants that the NRC has jurisdiction to set enforcement
8 policy and actions, but the proposal does not aggressively or
9 clearly define severity of violations, does not consider factors
10 of risk-hazard-profit, and does not allow blame-fault-cause to
11 fall on the Nuclear Regulatory Commission.

12 Almost anyone can understand a gradient
13 scale of levels valued 1 to 10. Many of these same people can
14 understand a thing called semantic differentials; for instance,
15 acceptable, low, medium, high and unacceptable as applied to
16 risks or hazards.

17 Gradient values 1 and 2 could correspond
18 to acceptable risk and so on, through 9 and 10 for unacceptable
19 risk.

20 Put some attributes and measurement
21 parameters on the scale and a severity model is built. The
22 proposal already has six levels of severity. Suppose that four
23 new levels can be characterized by maybe the extent of risk;
24 for example:

25 Does it go offsite, local and county?

1 Does it get out to be an intrastate
2 problem, or an interstate problem, across the U. S. border or
3 does it get to be a catastrophe.

4 Now modify these descriptions with
5 clearly defined sublevel determinants, such as:

6 Intent of violator;

7 Degree of trust/loyalty/confidence, in
8 case it was a human violator;

9 Mechanism of cause;

10 Mechanism of discovery;

11 Unknowns/unexpected and

12 Others to be defined.

13 Some of the other determinants may turn
14 out to be:

15 NRC involvement in cause;

16 Output power less than designed;

17 Harm to a neighboring country;

18 Storage, shipping, disposal, decommis-
19 sioning and decontamination accidents.

20 Obviously, several of the new determi-
21 nants are rooted in criminal actions. For these the NRC should
22 actively seek criminal penalties as incentives for compliance.

23 Severity of Violations.

24 An ideal situation for a regulatory
25 body to take full command of the control functions over its

1 staff and licensees exists for the NRC in the wake of TMI-2.
2 Virtually free and unbiased consulting from the President's
3 Commission, the Special Interest Group and apparently candid
4 internal opinions of the NRR and I&E task forces (the Lessons
5 Learned Reports) have defined compliance problem areas and
6 pointed directions for improved safety and public confidence.

7 The public is waiting to be enthusiastically
8 cally confident of the safety of nuclear power, but the NRC has
9 gone off in all directions.

10 The Office of Inspection and Enforcement
11 is busily proposing new policy and actions without the benefit
12 of new safety goals now under development by the Office of
13 Policy Evaluation and the Office of General Counsel. This was
14 recently published in NUREG-0735.

15 The stated goal of OPE and OGC in
16 developing a policy statement on safety goals is the definition
17 of actual decision standards by means of NRC rules. Then rules,
18 not the goals of improved safety itself, can be applied to
19 individual cases of violations.

20 Kemeny and Rogovin seem to be as com-
21 petent as prophets as they are as historians. A parenthetical
22 comment that I have here: Intervenor funding could almost
23 guarantee that the Lone Star Chapter would be in there helping
24 to coordinate the internal affairs of the NRC.

25 What is proposed to define and evaluate

1 severity of violations and fairly assess penalties? First, the
2 labeling scheme is upside down. The concept of more is usually
3 associated with large numbers. If the severity levels were
4 reversed so that Level I is least severe and Level VI is most
5 severe, there could be a natural correspondence with other
6 severity concepts, such as classes of accidents where Class 9
7 is so severe that it can't even happen.

8 This new labeling would serve to improve
9 both understanding and efficiency of communication between the
10 NRC, its staff, licensees, the media and the public. Any
11 attempt to describe levels of severity, without first having
12 firmly established safety goals, can only result in a hollow
13 policy and unfair enforcement actions.

14 The substance of our comments and
15 suggestions on severity of violations has to do with concern
16 for understanding; that is, the format, the diction and the com-
17 pleteness of the proposal.

18 Seven levels of understanding are
19 recognized and treated in the semantics industry. These are
20 briefly described and reference is made to the excellent
21 collection of articles edited by S. I. Hayakawa, the title of
22 which is "The Use and Misuse of the Language."

23 Style of the presentation does not
24 contribute to effective communication or understanding -- the
25 style and presentation of the announced proposal. Another

1 example of crossed signals is the recently published NRC
2 Technical Writing Style Manual. The U. S. Government Printing
3 Office Style Manual is the standard, and it's so good that even
4 private industry specifies its use.

5 Completeness depends on answers to the
6 reporting questions: Who? What? Why? When? Where? How?

7 But it also includes two more: How
8 much? And so what?

9 Gaps in issue resolution and data base
10 prevent addressing all aspects of severity. Such unresolved
11 safety issues include: Generic safety items; goldplating versus
12 what's called drugstore plumbing; maintenance of components and
13 systems; the operator problems of qualification, training,
14 certification, and simulation; reporting, review and feedback;
15 emergency preparedness; emergency response and even inspector
16 ingress and access.

17 Several Lone Star Sierran suggestions
18 which parrot the findings of TMI-2, airline disasters and
19 catastrophe theory are discussed for each licensing area
20 listed.

21 Then several areas of omission are pointed
22 out for further consideration by the NRC, such as sweetening of
23 export deals, harm to other nations and degree of NRC blame in
24 violations.

25 Enforcement Actions. Available actions

1 are recited in the proposal, but the root problem of safety
2 assurance is not evident. The NRC's mindset once again betrays
3 them.

4 Regulators should regulate. What
5 is proposed in the area of needs? What are the necessary and
6 sufficient sanctions and penalties -- not to deter noncompliance --
7 but to compel absolute compliance; that is, zero defects?

8 DOD, NASA and their electronic systems
9 suppliers seem to have achieved spectacular success with this
10 attitude. The NRC does not have to rely on threats of calling up
11 the cavalry to enforce compliance. You are the cavalry.

12 Make the citizens confident that you are
13 in control.

14 In answer to the question number one,
15 "Is the policy fair and equitable": No. In our main comments
16 and suggestions, we have suggested that equity is only obtained
17 when there is effective communication leading to complete under-
18 standing. Justice requires that equivalent penalties be assessed
19 for equivalent violations.

20 "Is the policy understandable?" Well,
21 there's an awful lot of non-understanding that's going on that
22 we discussed briefly in our other comments.

23 "Are the severity levels appropriate?"
24 No. There are no criteria or basis, a comprehensive gradient
25 scale does not exist, nor are specific safety goals yet set.

1 Many seemingly relevant determinants are not addressed. A policy
2 that is understandable would clearly state appropriate levels
3 of severity.

4 I think some of the next couple of
5 questions have been answered.

6 The question number five: "Are the
7 distinctions among various types of licensees, shown in Table 1,
8 appropriate?" No, because individuals (workers, operators,
9 supervisors, administrators, managers, even insiders) can't be
10 assessed with suspension of license or fines. The NRC staff,
11 managers or Commissioners are apparently faultless.

12 "Are the factors for determining the
13 level of enforcement actions appropriate? Should there be
14 others?"

15 No. Neither the factors nor the gradient
16 scale are appropriate.

17 Yes. Other appropriate determinants
18 should include risks to the victims (worker, operator, member of
19 the public, the biosphere, or international neighbors) intent or
20 form of duress/stress on the violator, trade-offs between hazards
21 and profit, mechanisms of cause/discovery and contingency for
22 unknown and unexpected events.

23 Question seven asks: "Is the degree
24 of discretion allowed to Office Directors appropriate? Should
25 there be more flexibility permitted? Less?"

1 What is the basis for judgment and dis-
2 cretion? What are criteria for determining technical merits? We
3 need to know more information before we can answer this question
4 intelligently.

5 And question number eight: Without
6 information on hazard-risk-cost-profit or increased safety
7 trade-offs, only a gross value judgment can be made.

8 However, if the Commission could serve
9 better as regulators than as bookkeepers, don't bother them. Do
10 a rulemaking and enforce it.

11 Question number nine: The only criteria
12 or basis for escalated action seems to be Biblical: An eye
13 for an eye or three denials, or sports-related in one instance --
14 one, two, three strikes, you're out.

15 Thank you.

16 MR. SEYFRIT:

17 The next request was received from Mr.
18 Bill Clements of Texas Utilities Generating Company.

19
20 STATEMENT

21 OF

22 B. R. CLEMENTS

23 MR. CLEMENTS:

24 My name is B. R. Clements, and I am
25 Vice President - Nuclear at Texas Utilities Generating Company,

1 Dallas, Texas.

2 We are pleased to have the opportunity to
3 present our views to the Commission on the proposed enforcement
4 policy. We believe that it is part of our obligation as an NRC
5 licensee to provide the Commission with constructive input on its
6 effort in developing such a policy. Towards that end, we have
7 four comments which we would like to bring to your attention.

8 The first of these comments concerns the
9 purposes and goals identified in the proposed enforcement policy.
10 Virtually all of these goals and policies rest on the premise
11 that literal compliance with NRC regulations will automatically
12 result in the safe operation of power reactors.

13 While we certainly agree that meticulous
14 compliance with all NRC requirements should be an important aim
15 of the policy, to focus exclusively on the issue of compliance
16 is inconsistent with or ignores the report of the President's
17 Commission on Three Mile Island; i.e., the Kemeny Commission.

18 That Report stated at page nine that
19 "It is an absorbing concern with safety that will bring about
20 safety -- not just the meeting of narrowly prescribed and complex
21 regulations."

22 Accordingly, we believe that its single
23 and overriding goal is the protection of the radiological health
24 and safety of the public, including employee health and safety, and
25 providing for the common defense and security.

1 We believe that by focusing on such a
2 goal rather than emphasizing literal compliance with the NRC
3 requirements, the enforcement mechanism selected will be best
4 tailored to encourage the safe construction and operation of
5 power reactors.

6 The second aspect of the enforcement
7 policy on which we would like to comment concerns the scope of
8 discretion to be exercised by the staff, Board and Commission
9 in taking enforcement action. Specifically, we believe that dis-
10 cretion should be exercised in determining whether and in what
11 form an enforcement action should be taken.

12 While we fully recognize the importance
13 of clear criteria governing such administrative activity, if
14 the criteria are too detailed and mandatory, the ability of the
15 staff, Board and Commission to fashion sanctions appropriate
16 to the particular facts to each case may be compromised.

17 A comparison between the enforcement
18 policy originally proposed by the staff and enforcement policy
19 now under consideration strongly suggest that the Commission has
20 to some degree accepted this view, but that it has not been
21 fully implemented.

22 Specifically, the policy now under con-
23 sideration states that the Director of I&E exercises discretion
24 when determining whether and in what form to bring enforcement
25 action. However, it is not clear whether and to what extent such

1 discretion extends to the Board and Commission, both of which may
2 review the Director's assessment.

3 By emphasizing the importance of discre-
4 tion in all facets of enforcement as a matter of policy, this
5 difficulty can be resolved. We, therefore, recommend that the
6 policy state explicitly that administrative law judges, appeal
7 boards and the Commission will continue to exercise authority to
8 substitute their judgment for that of the Director in contested
9 civil penalty proceedings and that they have the discretion, as
10 does the Director, to tailor specific penalties to the facts of
11 each case.

12 We believe that it is especially im-
13 portant that such discretion extend to the assessment of civil
14 penalties. As we understand the policy, a base civil penalty
15 figure will be applied.

16 Apparently the only acceptable reason
17 for deviating from such figure is when it does not accurately
18 reflect the ability of the licensee against which it is imposed
19 to pay the designated amount.

20 Next, various factors will be considered
21 which may lead to a reduction or increase of the civil penalty.
22 These factors include the prompt correction of the violation, as
23 well as the licensee's good faith efforts to comply with NRC
24 requirements. As stated before, "good faith" has not been
25 defined.

1 As we stated above, the goal of the en-
2 forcement policy should be the promotion of practices on the part
3 of power reactor licensees which will assure protection of public
4 and employee health and safety and provide for the common defense
5 and security.

6 It is impossible to achieve this goal
7 unless licensees are willing to exchange information concerning
8 potential problems at similar facilities. The proposed enforcement
9 policy presently does not recognize the value and importance of
10 exchanging such information, other than to the extent the civil
11 penalty assessment will focus indirect attention on the violation.

12 We believe that the policy should ex-
13 pressly recognize the importance of such conduct by taking it into
14 account when enforcement action is taken.

15 As a corollary, the policy must be
16 designed to encourage employment of the most capable staff by
17 power reactor licensees. The Kemeny Commission recognized the
18 vital role of such employees when it stated that "It is im-
19 portant to attract highly qualified candidates for the positions
20 of senior operator or operator supervisor."

21 Strict enforcement of the proposed
22 policy without consideration of all pertinent information may
23 create an environment in which fear of the consequences of re-
24 porting minor errors could reduce the flow of information.

25 This may negate what should be an

1 important aspect of the enforcement policy. In addition, this
2 situation could result in high-stress working conditions. As a
3 result, competent staff members might seek less pressure-filled
4 jobs, thus creating additional difficulties in maintaining a
5 staff of competent personnel.

6 The enforcement policy should be
7 flexible enough to encourage the voluntary correction of viola-
8 tions, the sharing of information and the employment of the most
9 capable staff. As presently proposed, however, it does not ade-
10 quately take this factor into consideration.

11 We are pleased to have this opportunity
12 to present our views on the enforcement policy to the Commission
13 and trust that they will be considered.

14 MR. SEYFRIT:

15 Thank you.

16 I'm not sure whether the next gentleman
17 is in the room or not. Kevin Shockley, the Armadillo Coalition.
18 Is he present?

19 (No response.)

20 I think his request actually was for
21 making a statement tonight in the evening session.

22 Mr. Hugh Graff, Vectal Power Corporation.

23 MR. GRAFF:

24 I didn't request to speak.

25 ///

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MR. SEYFRIT:

I'm sorry. I thought you did.

Okay. Mr. Steve Riggs, Arkansas Power & Light Company.

STATEMENT

OF

STEVE L. RIGGS

MR. RIGGS:

My name is Steve Riggs. I am Assistant General Counsel and Director of Legal Services for Arkansas Power & Light Company.

One of the most fundamental concerns that we have about the enforcement policy as it is presently proposed is the difficulty in determining whether it is being promulgated as a binding rule or as a general statement of policy.

It is currently impossible to determine with certainty which of these administrative mechanisms that the Commission intends to use in implementing its enforcement goals.

However, we note that certain members of the staff (for example, Mr. Howard Shapar, Executive Legal Director) have stated that the policy should be issued as a binding rule.

We believe that if the Commission intends

1 to issue its enforcement policy as a binding rule, it must
2 develop an appropriate record to support the rule. To date, it
3 has not done so.

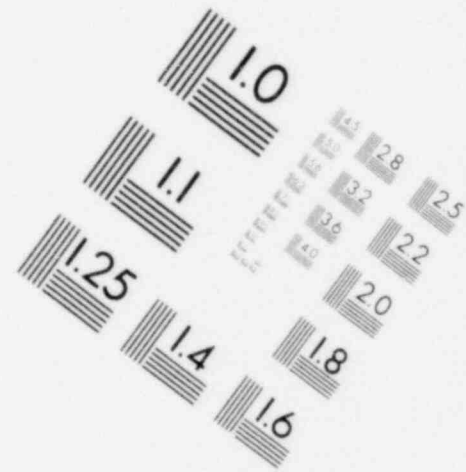
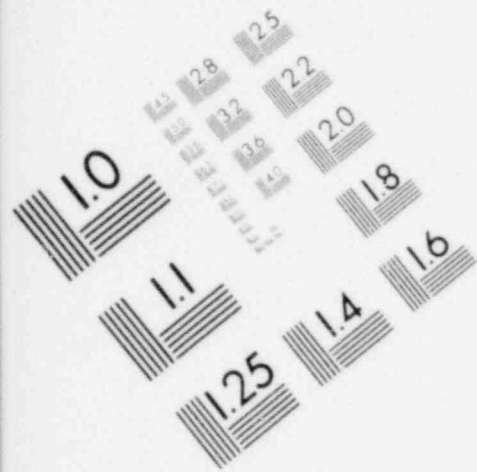
4 For example, the proposed policy states
5 that a licensee's good faith efforts to comply with the NRC re-
6 quirements, no matter how extraordinary, can only lead to a
7 reduction of up to 25 percent in a civil penalty which would
8 otherwise be assessed.

9 If that approach is adopted in the final
10 policy, the Commission must articulate its factual basis for this
11 25 percent maximum civil penalty reduction. Presently, there is
12 no factual basis in the record to justify a limitation of this
13 nature.

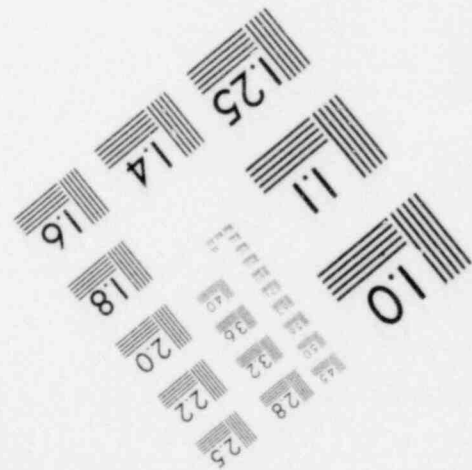
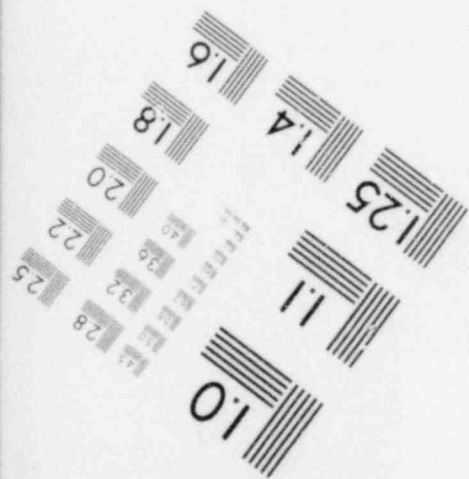
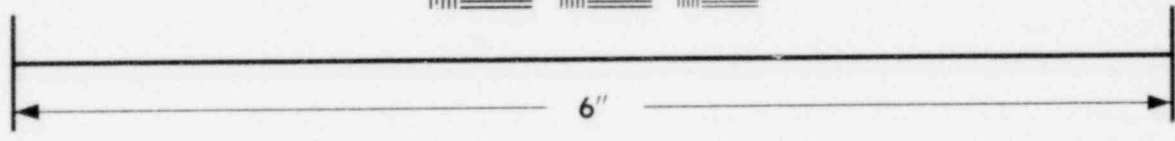
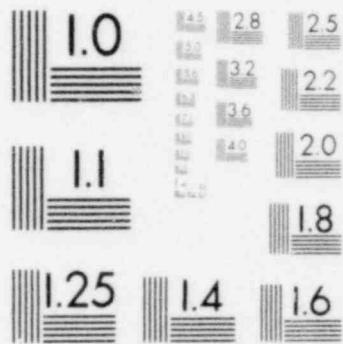
14 Further, this limitation seems incon-
15 sistent with the stated objective of the staff in preserving
16 maximum discretion in the appropriate Office Director.

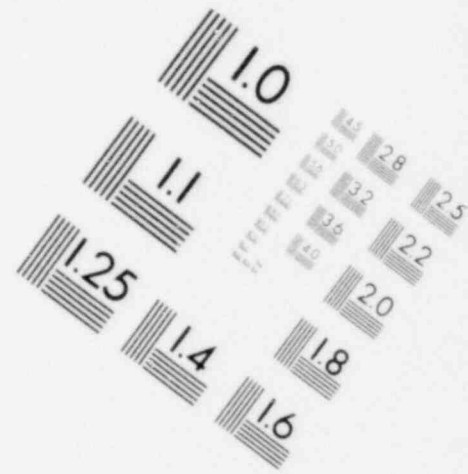
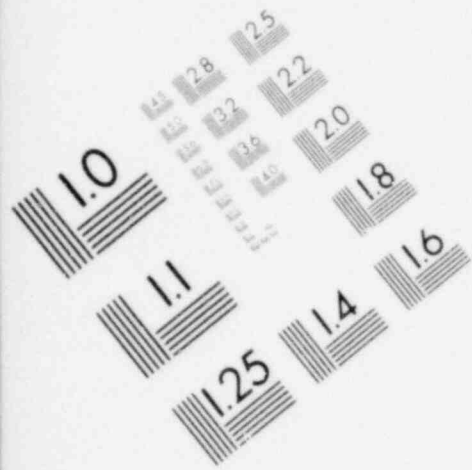
17 We consequently recommend that the
18 enforcement policy not be published as a binding rule, but that
19 the detailed mechanics set forth in it be issued in the form of
20 a general statement of policy. This could be done without develop-
21 ment of further record material and would assure to a great extent
22 consistent application of NRC enforcement authority.

23 Next, we would like to comment on the
24 apparent difficulty which the staff has experienced in attempting
25 to promulgate an enforcement policy with clearly defined

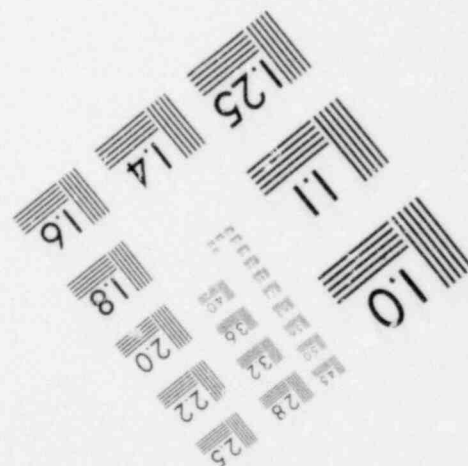
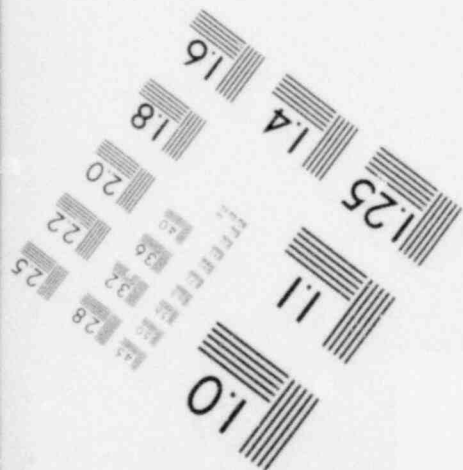
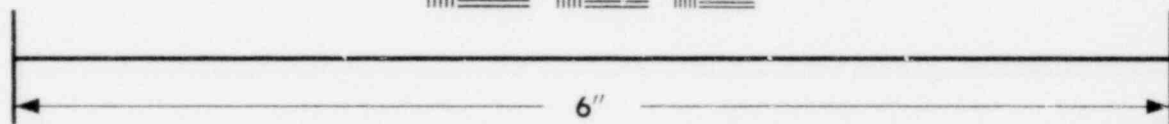
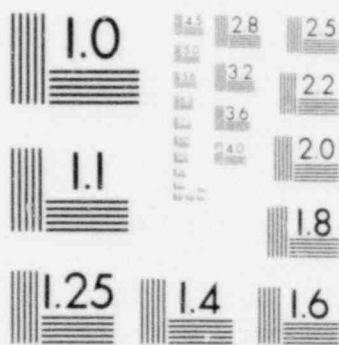


**IMAGE EVALUATION
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**IMAGE EVALUATION
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1 procedures and policies on the one hand, yet which also provides
2 the required level of discretion and is flexible enough to be
3 properly applied in all cases.

4 Apparently there is feeling in some
5 quarters that any enforcement policy with adequate flexibility
6 and discretion cannot encompass clearly defined procedures and
7 policies.

8 Simply stated, we believe this dilemma
9 is more apparent than real. The admittedly difficult task facing
10 the Commission is writing an enforcement policy which properly
11 identifies the criteria the staff must consider and then giving
12 the staff ample flexibility to apply the criteria to the facts
13 of each case.

14 The detailed methodology governing the
15 assessment of civil penalties, which is now included in the en-
16 forcement policy is a good example of how the staff has in-
17 advertently and unnecessarily created this dilemma.

18 As we understand it, the proposed en-
19 forcement policy would require a two-step analysis in arriving
20 at the amount of such penalties. First, by applying Table 1
21 (which relates severity levels to monetary penalties), a base
22 civil penalty is determined.

23 Apparently this amount can be modified
24 only in situations where the base civil penalty does not properly
25 reflect the ability of a licensee to pay such a fine.

1 Second, the base civil penalty can be
2 reduced by up to 50 percent to take into account prompt identifi-
3 cation and correction of the violation by the licensee. It can
4 also be increased or decreased by an additional 25 percent to
5 take into account good faith or lack thereof.

6 At the same time, the Commission
7 apparently contemplates that the staff exercise broad discretion
8 in determining whether and in what amount civil penalties can be
9 assessed.

10 However, the enforcement policy does not
11 so state clearly, nor does it indicate whether the exercise of
12 such discretion is confined by the factors already quantified in
13 the civil penalty methodology..

14 Through careful revision, we believe
15 this (and other similar) ambiguities can be resolved and the
16 Commission's apparent dilemma avoided. Specifically, the enforce-
17 ment policy should state that the staff is free to exercise its
18 discretion in determining whether and in what amount civil
19 penalties should be assessed, provided the criteria identified
20 in the policy are considered.

21 Thus, civil penalty amounts should not
22 be prescribed in advance (as they are currently) thereby con-
23 fining the scope of the staff's discretion. By adopting this
24 recommended approach, uniform application of the Commission's
25 enforcement authority is possible to achieve without tying the

1 staff to an unnecessarily detailed, arbitrary, inflexible policy.

2 Lastly, we would like to comment on the
3 failure of the enforcement policy to recognize adequately
4 effective quality assurance programs. Specifically, we believe
5 that unless a greater amount of credit is given for prompt
6 licensee identification and correction of violations, effective
7 and efficient quality assurance programs may be discouraged and
8 undermined.

9 For example, if a licensee quality
10 assurance program discovers a violation in operating procedures
11 (for example, a closed valve), and the problem is promptly
12 remedied, it may be appropriate in some cases to reduce the civil
13 penalty to an amount less than that prescribed by application
14 of the enforcement policy, or even to impose no civil penalty at
15 all.

16 We certainly do not mean to suggest that
17 no enforcement action should be taken in response to such a
18 violation. However, we do not believe that it is consistent with
19 the stated goal of the enforcement policy to encourage improvement
20 of licensee performance (thus enhancing the degree of protection
21 of public health and safety) if the policy limits the mitigation
22 of a civil penalty to some arbitrary lower limit.

23 MR. SEYFRIT:

24 I believe that that completes who had
25 specifically requested to make statements. However, we do have

1 two additional individuals who indicated that they may want to
2 make a statement. I would ask now, Mr. Brae, do you wish to
3 make a statement.

4
5 STATEMENT

6 OF

7 LARRY BRAE

8 MR. BRAE:

9 I'm Larry Brae with Public Service
10 Company of Colorado. I have just a couple of short comments.

11 First of all, these new enforcement
12 action procedures supersede a workable enforcement policy already
13 in existence. It tends to place added penalties on licensees
14 under the justification that the present enforcement policy is
15 weak.

16 If the NRC feels improved enforcement is
17 necessary, this can be attained by improved management by the
18 NRC of a slightly modified version of the present enforcement
19 policy.

20 This new policy is too one-sided. It
21 indicates in quite inflexible language what enforcement is going
22 to be applied to the licensee. But it does not adequately pro-
23 vide appropriate rights for the licensee to appeal actions taken
24 by the NRC.

25 The magnitude of regulations which are

1 all subject to interpretation, compounded by complexities of the
2 plants and other documents, such as technical specifications
3 and the FSAR, require some latitude in flexibility between the
4 licensee and the NRC inspector to work out problem areas.

5 This document does not provide this
6 flexibility. Your present policy of enforcement provides some
7 flexibility, while maintaining control, especially over a licensee
8 who is recalcitrant.

9 The roles of the NRC and the licensee
10 are not unsimilar in that we both have health and safety of the
11 public as primary concerns. This policy could tend to fracture
12 and alienate our respective organizations.

13 Thank you.

14 MR. SEYFRIT:

15 One other gentleman, Mr. Frank Mathey,
16 do you wish to comment?

17 MR. MATHEY:

18 No.

19 MR. SEYFRIT:

20 Okay. We've come to the end then, I
21 guess, of those who wish to make comments, unless there's some-
22 body else out on the floor presently who wants to make a specific
23 comment.

24 Yes, sir.

25 ///

1 STATEMENT
2 OF
3 STEVE COLLINS

4 MR. COLLINS:

5 Steve Collins with the Louisiana Nuclear
6 Energy Division.

7 With reference to some of the specifics
8 in your FEDERAL REGISTER announcement, since over 90 percent of
9 the licensees are in the "all other" category, I would recommend
10 that you mention some of these major categories and maybe put
11 some further levels of -- base levels of fines in these, such as
12 medical licensees where the potential for harmful exposure to
13 members of the public is low -- the \$8000 level for a base might
14 be too high.

15 Furthermore, in some of the specific
16 severity categories, you have mentioned exposures without putting
17 an exposure rate limit on it, like the exposure of a member of
18 the public to 0.5 Rems of radiation being a Severity I, even
19 though this could be .05 Rems in five years maybe. I'm sure this
20 is not what is intended. It should be spelled out that this is
21 .5 Rems in a year or a month, or whatever it should be.

22 Also, in each of these categories there
23 seems to be a little bit of incongruity. Severity I, for instance,
24 in the health-physics section, 10 CFR Part 20, is whole-body
25 dose or exposure of 25 Rem, whereas the number two item for

1 Severity I is exposure of a member of the public for only .5
2 Rems.

3 In one case, the worker exposure is five
4 times the annual limit allowed. It would appear in the other
5 case that the Severity I is equal to the annual limit allowed,
6 rather than five times.

7 This is carried on into different
8 severity levels. Severity II -- Many of these you have a one-
9 fifth reduction factor. Some of them after only one-half.

10 It looks like, if you're basing it on
11 risk, which supposedly Part 20 limits are based on risks or health
12 effects, that the reduction in each one of these should be by the
13 same factor.

14 Some of the specific examples given.
15 Like a Severity III category under materials operations. You have
16 listed "Procurement of radioactive material for human use where
17 such use is not authorized." That's under a Severity III cate-
18 gory. I would recommend that that should be a Category II or a
19 Category I.

20 Under a Category IV severity, under the
21 same materials operations heading, you have "Failure to determine
22 that a radiographic source is fully retracted after an exposure,"
23 as being a Category IV item.

24 In your text you say that Category IV
25 items are not cause for significant concern. That's on page

1 66755 in this FEDERAL REGISTER.

2 I submit that failure to determine that
3 a radiographic source is fully retracted is definitely cause for
4 significant concern, since a lot of personnel injuries have
5 occurred by this method. That should be at least a Category III.

6 The same logic should apply to the
7 next item, which is failure to maintain patients containing
8 thoracic-therapy sources hospitalized. That also is Category IV.
9 You should consider changing it to a Category III.

10 Thank you.

11 MR. SEYFRIT:

12 Are there other individuals who wish to
13 make a comment at this time?

14 Yes, sir.

15
16 STATEMENT

17 OF

18 WILLIAM HEAD

19 MR. HEAD:

20 My name is William Head. I am Manager
21 for Legal Affairs and Regulatory of Plateau Resources Limited.

22 We're a mining and milling operation,
23 as opposed to operating any nuclear reactors. The thrust of the
24 proposed policy goes toward nuclear reactors. I would suggest
25 that you need -- you being the NRC -- to devote quite a bit of

1 time to developing criteria, rather than lumping all of us into
2 "other."

3 In particular, we had a recent in-
4 spection. We were almost lumped under facility construction in-
5 stead of reactor construction, which in your slide you called
6 reactor construction. In here you call it facility.

7 It would have resulted in a higher
8 severity level.

9 I think the comments of many of the
10 people here show that -- including the Sierra Club -- show that
11 most of us are not too pleased with your efforts. At the risk
12 of giving you some type of accolade, that would show you're doing
13 the right thing. I don't believe that.

14 I hope that when we all have our
15 opportunity to submit our written comments, which, of course,
16 you'll review carefully, there will be some substantial changes
17 made in what you've put forth to date.

18 We, of course, will provide our input.
19 I'm sure you'll have a chance to pay more attention to that than
20 the comments we make before you today.

21 MR. SEYFRIT:

22 Anybody else?

23 (No response.)

24 If not, I notice that the coffee and
25 soft drinks are here. So I suggest that we take a break at this

1 point and when we come back, I guess we'll be ready to take
2 questions from the floor. We'll reconvene at 3:15.

3 (A short recess was taken.)

4 MR. SEYFRIT:

5 If you'll take your seats, we'll resume
6 the meeting.

7 At this point we would like to open the
8 meeting up to questions that may be of concern or of interest to
9 you folks. Depending on the number and nature of questions, I
10 think the panel is prepared to make some comments that may relate
11 to issues that were raised earlier in some of the prepared
12 presentations.

13 But at this time those of you who would
14 like to pose specific questions, if you would proceed to the mike
15 in the center aisle, we'll take you in turn. We'd like to try to
16 limit these appearances to about five minutes a piece, if we can
17 do that.

18 Step right up.

19 MR. BRAE:

20 Larry Brae with Public Service Company
21 of Colorado.

22 Just before Section 4 you say, "the
23 severity level of a violation involving a failure to make
24 a required report to the NRC will be based upon the
25 significance of and the circumstances surrounding the matter not

1 reported."

2 "The severity level assigned to material
3 false statements may be Severity Level I, II or III, depending
4 on the circumstances surrounding the statement. Similarly,
5 failure to make a required Part 21 report may be assigned
6 Severity Level I, II or III."

7 My question is this: We review what
8 we're going to report, both as reportable occurrence and as a
9 Part 21. Let's say that in our review we feel that it's not re-
10 portable.

11 Yet, when the inspector comes on site,
12 he feels that it is reportable. How are you intending to handle
13 that?

14 MR. THOMPSON:

15 If there's a question associated with the
16 accuracy of the review process, in determining whether or not
17 an item is reportable, for example, under Part 21 or the analogous
18 condition under 5059, we have to look at the adequacy of the
19 review process associated with it.

20 If the review was adequate in its depth
21 and breadth in determining the reportability of the event, but
22 there is simple disagreement on the reportability, I don't think
23 the vulnerability is high.

24 If there is demonstrable deficiencies
25 in the review/evaluation process, that could lead to a citation.

1 But I have to look at them on a case-by-case basis.

2 I don't know. That may be a non-
3 response. But if you look at the Severity Level III and IV,
4 5059 conditions, you'll find some discussion there, which I think
5 will probably be revised in the rewrites.

6 But that subject is addressed. And Part
7 21 is fundamentally the same.

8 MR. SEYFRIT:

9 If I understood your question correctly,
10 Dudley, I would have to say that was a non-answer. So let me see
11 if I can --

12 MR. THOMPSON:

13 Please expand.

14 MR. SEYFRIT:

15 Okay.

16 I think the question really was when
17 there is a disagreement between the inspector as to whether or
18 not a particular review was adequate, how does that get resolved.

19 And I'll take a shot at it -- Wasn't
20 that really what you were after?

21 MR. BRAE:

22 (Nods head, "Yes.")

23 MR. SEYFRIT:

24 I'll take a shot at it first here. And
25 if these fellows want to chime in, fine.

1 This sort of thing happens now and has
2 really nothing to do with the new policy. We have those cases
3 where, for example, a 5055(e) revision is made. It is reviewed
4 in-house.

5 We come in and look at the review. And
6 we say, "Gee, they just didn't look deeply enough at this. Okay.
7 There's room for disagreement between the inspector and the
8 licensee."

9 We may and do go ahead and cite this
10 just as we do now, and that would be the case under the new
11 policy. It still is a proposed action.

12 And you have a chance to respond and
13 have it adjudicated at a higher level.

14 MR. BRAE:

15 Well, I'm thinking how would that be
16 handled in, let's say, an inspector's exit interview?

17 MR. SEYFRIT:

18 Well, an inspector at an exit interview
19 normally does not make flat statements that something is or is
20 not a noncompliance. He talks about apparent items of non-
21 compliance. He thinks it is. These things come back, and they
22 are discussed in the Regional Office before a final decision is
23 made on those kinds of matters.

24 Sometimes the inspector will believe
25 that he has found an item of noncompliance. And when he comes

1 back to the office and reviews additional details, determines
2 that indeed it was not.

3 He may believe that a particular event
4 was not an item of noncompliance. And when he comes back, he
5 reviews and finds, "By George, it was."

6 Those things happen frequently. And so
7 you cannot expect and should not expect at the exit interview
8 to have absolute definition of what will be and will not be re-
9 ported as an item of noncompliance.

10 MR. BRAE:

11 Okay. I'll go on to another question, I
12 guess.

13 Just below Table 1 --

14 MR. SEYFRIT:

15 Did you fellows want to--

16 MR. THOMPSON:

17 I agree. I think the characterization
18 was very good.

19 MR. SEYFRIT:

20 Okay.

21 MR. BRAE:

22 Table 1 was predicated on penalizing
23 heavy because operations generally involve greater nuclear
24 material inventories and greater potential consequences to the
25 health and safety of the public.

1 There are disparities from top to bottom
2 with regard to either ability to pay and, I think, to a very
3 lesser extent, the potential hazard to the public. But we recog-
4 nize that there are some occasions where some types of hazards
5 associated with licensees at the upper portion of Table 1 are
6 not the same health hazards as the overall operation of those
7 same licensees; and that activities conducted by other -- by
8 licensees possessing other types of licenses -- and they put
9 them at the bottom of the table.

10 For example, it's not unusual for
11 utilities to engage in radiographic operations under a materials
12 license to conduct radiography at a construction site. And be-
13 cause they are utilities, they are, therefore, at the top of the
14 scale.

15 There is a justification for it, in
16 terms of the total hazard associated with the utility operation;
17 whereas the individual radiography licensee might always be down
18 at the bottom of the scale.

19 The comment you had about the observa-
20 tion in the policy concerning it's not the NRC's intent that
21 civil penalties should put people out of business was very care-
22 fully calculated and intentional.

23 If we believe that a licensee is conduct-
24 ing his operations in such a fashion that he should not be in
25 business, then the way to get him out of business is not to

1 bankrupt him, but to revoke his license. And we will do so in
2 the case we thought he should not be in the business.

3 MR. LIEBERMAN:

4 I'd just like to add one thing to that,
5 and that is I think the legislative history is relatively clear
6 that the reason for adding the \$100,000 civil penalty authority
7 over the previous \$5000 civil penalty authority was that Congress
8 thought that a higher civil penalty was appropriate for power
9 reactors than had previously been imposed.

10 That's another factor that went into
11 the process.

12 Along that same vein, this policy does
13 not implement to the fullest the Commission's civil penalty
14 authority. In a power reactor, if you had five items of non-
15 compliance, you could have five civil penalties.

16 But the way this policy has been de-
17 veloped, we're focusing on events. And, therefore, we are
18 posing one civil penalty for all of the items of noncompliance
19 associated with a given event.

20 MR. BRAE:

21 Thank you.

22 Right now we generally have open or
23 uninvolved items as a result of an inspection. Is that situation
24 still going to exist?

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MR. THOMPSON:

It will continue, yes, using the same ground rules we've had before. The open items and the unresolved items are associated with either work yet to be done or information missing on which to determine whether noncompliance exists. That will continue.

MR. BRAE:

Okay.

My last question is: You kind of lump bulletins, circulars, information notices and generic letters together where you indicate response to these notifications may be required under oath or affirmation.

Here about a year and a half ago, it just seems as though information notices started showing up. We -- be it right or wrong -- we kind of handle bulletins and circulars a lot different than we do information notices.

And my feeling is if you want to place importance on an information notice such that you say, "Response to these notifications may be required to be under oath or affirmation," my question is: Why, if they're that important, why don't you call them a bulletin?

MR. THOMPSON:

Your observation is valid. The statement applies to bulletins and some of the circulars. Information notices we do not expect responses to. Those are just what their

1 name says. They're information on which licensees may choose to
2 take action because they've learned something that's going on
3 someplace else.

4 But the statement was meant to apply to
5 bulletins, and to a limited extent to circulars. Not to
6 information notices.

7 MR. BRAE:

8 Thank you.

9 MR. SEYFRIT:

10 Any other questions?

11 I would ask again, for the benefit of
12 the reporter, if you would state your name before you ask a
13 question. I'd appreciate it.

14 MR. JACOBI:

15 My name is Rick Jacobi with Houston
16 Lighting & Power Company.

17 I'd like to address my question to Mr.
18 Thompson. In the illustrations that were given earlier, one of
19 them was the shipment of radioactive wastes to a burial ground
20 where the limits exceeded three times the DOT limits.

21 I understand it was a Severity Level II.
22 That's understandable. Supplement V, because I would presume
23 it was transportation ... because the waste was from a power
24 reactor, it was assessed a civil penalty of \$80,000.

25 If this waste had been from a hospital,

1 it would have been assessed some lesser amount, I presume.

2 But it seems to me that the actual
3 safety problem here would not have been any different, regardless
4 of where the waste originated from. I was wondering what the
5 rationale was.

6 MR. THOMPSON:

7 This is the same question on discrimina-
8 tion, which is a perfectly understandable question. There was a
9 conscious decision made that once we categorized licensees by
10 the nature of their general overall operations, then that is the
11 basis on which we ought to assess a civil penalty.

12 We'd be interested in receiving comments
13 in this area. I cannot give you assurances that there would be
14 modification to it, but we recognize that it is inequitable in
15 that sense; that the same operation conducted by different types
16 of licensees could result in substantially different civil
17 penalties.

18 MR. JACOBI:

19 I have three questions. The second
20 question is: In another example, the industrial radiographer,
21 because in your example you said he should have had prior knowl-
22 edge because of similar incidents having happened before, how
23 would this pertain to a utility in the sense of the tens of
24 thousands of LER's that are reported every year and that you
25 compile into I don't know how many different categories and send

1 out to us.

2 How does that affect our knowledge or our
3 notice?

4 MR. THOMPSON:

5 There are two responses that I'd like to
6 make to that. Fundamentally what we were thinking of, for the
7 availability of prior knowledge for power reactor licensees in
8 particular (though it applies to all of them), were those means
9 of notification that the Commission uses to call licensees'
10 attention to a recurring kind of a problem; that is, the bulletins
11 and circulars, and perhaps information notices.

12 In addition to notices of violation for
13 that licensee, we don't expect each licensee to be familiar with
14 items of noncompliance perpetuated by other licensees. But if
15 bulletins, circulars and information notice or prior enforcement
16 history indicates that that licensee should have known about this
17 kind of a problem and had ample opportunity to institute pre-
18 ventive measures, then the increase would be justified.

19 And it was the bulletins and circulars
20 we were thinking of in terms of power reactor licensees, not
21 LER's.

22 MR. LIEBERMAN:

23 A good example would be if a licensee
24 has an employee who enters the reactor cavity during the fueling
25 when the thimbles are withdrawing. We've had a number of

1 overexposures in that area. We've issued one information notice.
2 We've imposed a number of civil penalties in that area.

3 I think it's fair to say that licensees
4 should be on notice that during refueling, the reactor cavity is
5 a very high radiation area.

6 MR. THOMPSON:

7 There's one additional area that I'd
8 comment on on this subject, and that is for those of you who
9 follow FEDERAL REGISTER notices rather closely, you may have
10 noted in the last few months we have instituted a practice of
11 making a FEDERAL REGISTER notice on all NRC orders, including
12 civil penalty imposition orders.

13 You are probably aware that the process
14 we go through for the imposition of civil penalties has an extra
15 step beyond a normal hearing process that is associated with most
16 important matters.

17 That is, we go through a proposed im-
18 position of civil penalties with the notice of violation sent to
19 a licensee, and he has a certain time period to respond with his
20 Part II requirements on corrective action and recurrence
21 control.

22 And we find that in a significant number
23 of cases, the licensee follows a practice of including with his
24 response a full payment check. So that the actual imposition
25 order associated with that civil penalty becomes kind of a moot

1 academic exercise, and we have not exercised a confirmatory im-
2 position order, if you please. It seems to be kind of wasteful
3 and bureaucratic to go through that.

4 The situation it has created, however,
5 is for those licensees who voluntarily pay a civil penalty along
6 with their Part II response, those notices have not at this
7 stage been included in the FEDERAL REGISTER publication.

8 We are contemplating in the future
9 methods by which we could include those voluntarily paid civil
10 penalties in the FEDERAL REGISTER notice, as a means of letting
11 other licensees know what it was and why we did it in a formal
12 sense.

13 We don't take a lot of comfort that the
14 FEDERAL REGISTER is the most widely disseminated document in the
15 world. But it is a formal means by which we can get this infor-
16 mation out.

17 Right now, all of our imposition orders
18 and all of the modification, suspension, revocation, cease-and-
19 desist orders are published in the FEDERAL REGISTER.

20 MR. JACOBI:

21 My last question is as an individual
22 more than for the company. In reading your proposed enforcement
23 policy, I notice that licensed reactor operators could, I presume,
24 be fined as individuals.

25 I'm beginning to think, as I understand

1 it today, that any person involved in any activity related to the
2 construction or operation of a power facility or any facility
3 licensed by the NRC could be individually fined or imprisoned.

4 Am I reading that correctly?

5 MR. LIEBERMAN:

6 From a civil fine point of view, the only
7 persons who may be subject to a civil penalty would be licensees.
8 In the power reactor case, the utility and the licensed operator.

9 A person who possesses material without
10 a license could receive a civil penalty. A person who has a
11 license, unless the license has expired, could receive a civil
12 penalty. A vendor or person supplying components subject to
13 Part 21 could receive a civil penalty if a responsible official
14 knowingly and consciously fails to make the required report.

15 Other than that, a non-licensee would
16 not be subject to a civil penalty -- civil fine.

17 There are criminal provisions --

18 MR. JACOBI:

19 The criminal provisions are the ones
20 that I was looking at just now.

21 MR. LIEBERMAN:

22 The new provisions in 223. To my knowl-
23 edge, that hasn't been tested yet.

24 But it would suggest that any employee
25 involved in activity within the scope of Part 21, if he meets the

1 standard or willfully violated the requirement ... could have an
2 effect on safety, could be subject to a penalty.

3 MR. SEYFRIT:

4 Jim, isn't that true regardless of
5 whether one looks at this new policy or not? This new policy
6 doesn't have anything to do with creating --

7 MR. THOMPSON:

8 It has nothing to do with this policy --

9 MR. JACOBI:

10 I didn't read it in this policy, but in
11 looking at 223, I began to think that any individual involved in
12 any activity could fall within the criminal penalty provisions.

13 Thank you very much.

14 MR. SEYFRIT:

15 Anyone else?

16 Glenn.

17 MR. KOESTER:

18 I think everybody can hear me. Glenn
19 Koester, KG&E, Wichita.

20 You already have the right to lift an
21 operator's license at the present time, don't you?

22 MR. SEYFRIT:

23 Yes, sir.

24 MR. KOESTER:

25 Isn't that, in effect, a civil penalty?

1 I've had a great deal of discussion here just this past week
2 with TWA.

3 They tell me that it's very, very un-
4 usual for FFA to fine a pilot, even though they have the same
5 provisions as I believe you people have. I don't know whether --
6 I think it's probably from the same statute.

7 But they say that it's not uncommon for
8 them to lift their license for a week or two weeks. That is con-
9 sidered to me to be a civil penalty pretty damn strong. Excuse
10 the word.

11 If a guy can't operate your facility, I
12 don't think I'm going to pay him. I'm going to probably put him
13 on some kind of a suspension. And to me that's a civil penalty
14 all of its own, isn't it?

15 MR. THOMPSON:

16 Yes. Let me respond to that.

17 Quite clearly, it's a civil penalty in
18 the generic use of the words. It's a civil action, and it is
19 punitive. There's no question about that.

20 We are aware of the FAA practice, and
21 their authority, apparently, is somewhat similar -- to utilize
22 their ability to pull a pilot's ticket. At the staff level at
23 NRC, we anticipate that for those cases involving operator
24 malfeasance or error, or whatever it may be, that makes a
25 licensed operator subject to enforcement action, probably the

1 preferred course of action would be a suspension or even revoca-
2 tion of a license.

3 But there are conceivably conditions
4 less serious than that. We do regard orders as more serious
5 than fines -- than civil monetary penalties.

6 There are conceivable conditions where
7 it might be more appropriate to assess a civil penalty to em-
8 phasize that you can't get away with this, but it's not serious
9 enough to pull your ticket.

10 There is a feeling among the Commission,
11 for example, that that option should be kept available to the
12 NRC. But it appears more likely that the course of action to be
13 taken against an errant operator would be more likely to be
14 suspension or revocation of his license than assessment of a
15 dollar fine.

16 MR. SEYFRIT:

17 I think you can draw the analogy to
18 something that we all know something about. Most of us have
19 driver's licenses. We are licensed to drive a car.

20 I would a whole heck of a lot rather
21 pay a fine for running a stop sign than having my license lifted
22 for running a stop sign.

23 MR. KOESTER:

24 Not \$8000, Karl.

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MR. SEYFRIT:

Well, I didn't suggest the amount.

(Laughter)

But there may be a case where I had rather pay an \$8000 fine than lose my right to make a livelihood.

MR. LIEBERMAN:

Would you have some thoughts as to what the appropriate course of action might be for a licensed operator who makes a significant failure?

MR. KOESTER:

I think it would certainly depend on what caused that operator to do that. Was it willful neglect, because he was lazy or didn't care? Or was it because the licensee gave that operator too much to do and he just couldn't get around to doing it all?

And I think that's going to be something that's going to have to be looked at very close when you start penalizing an operator. It could very well be that it's my fault.

MR. THOMPSON:

There is a flip side to that coin, however. Those of you who are here representing materials licensees -- in particular, radiography licensees -- may be more familiar with a recent case that Mr. Lieberman happened to argue involving some radiography operators -- the Atlantic Research

1 case, in which the Hearing Judge, the Appeals Board and the
2 Commission, after several iterations, finally reached a conclusion
3 that does have some pertinence on the responsibility of corporate
4 licensees for the actions of his employees.

5 If you have -- You can say as a
6 corporate officer, you could very well have a situation where you
7 had an employee engaged in misconduct not condoned by the corporate
8 licensee, for which the corporate licensee would seek not to bear
9 responsibility because that individual acted on its own.

10 The Atlantic Research finding, as I
11 understand it -- Jim may want to expand on it -- says that the
12 corporate licensee does bear responsibility for the actions of its
13 employees in the conduct of company business.

14 Therefore, the question of do you act
15 solely against a licensee or solely against a corporate licensee
16 who is his employer gets to be a little bit complicated, but the
17 fundamental rule, it seems to me, means that the corporate
18 licensee bears the brunt.

19 MR. NORELIUS:

20 The licensed operator situation is a
21 little different than the radiography situation --

22 MR. THOMPSON:

23 Yes.

24 MR. NORELIUS:

25 -- in that you hold a license as a

1 corporation. And the individual also holds his own license.
2 So the Commission decided somewhere in the past that they should
3 separately license these individuals.

4 And in doing so, I guess they bear a
5 greater sense of responsibility for their personal actions. The
6 policy states, in trying to recognize this, that when enforcement
7 action is taken against an operator, action also will likely be
8 taken against a corporate licensee as well, because usually there
9 is ... you know, some interchange of responsibility.

10 But I think there again, we would have to
11 look at specific cases. And we would have to get into some of
12 the factors you mentioned: what caused him to take the action
13 that he did.

14 Certainly if he was directed to take an
15 action that violated the requirement by a superior, that would be
16 a different sort of thing than if he on his own did it willingly
17 and violated the requirement.

18 MR. KOESTER:

19 I don't want to dominate this. But what
20 kind of a hearing process will we be able to -- What process
21 will we go through? Do I bring my attorney and come down to
22 Region IV?

23 MR. SEYFRIT:

24 Please, not Region IV. Maybe Chicago --

25 (Laughter.)

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MR. LIEBERMAN:

Are you referring to a civil penalty proposed against a corporate licensee?

MR. KOESTER:

Well, let's look at -- Take one of my operators. And Mr. -- You just said over there that if you brought a civil penalty against an operator, you would probably also bring one against the company.

Does my attorney get a chance to fight for my employee? Or do I --

MR. LIEBERMAN:

Well, that's a question that gets into legal aspects as to whether your operator and the corporate licensee have a conflict in having the same attorney represent both parties or whatever.

That's your decision to make.

But you would certainly have an opportunity for a hearing on any civil penalty matter. I think what we've tried to express is we don't see on a regular basis imposing civil penalties on licensed operators, certainly in the near term.

We would prefer using the suspension and order route for a licensed operator.

MR. KOESTER:

You've got a lot of my potential operators

1 very upset.

2

MR. THOMPSON:

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We're aware of that nationwide.

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MR. KOESTER:

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They're thinking about leaving.

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MR. THOMPSON:

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We're aware of that nationwide. That is

8

a problem. The likelihood -- I think it's unfair to tell me

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that they're not vulnerable to it. They could be.

10

But the likelihood of that being the

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enforcement action of choice against a licensed operator to me --

12

a personal statement -- is, I believe, relatively remote unless

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conditions change a lot in the future.

14

If we need to get an operator because

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they are really performing so badly, then for the same reason that

16

we would pull a radiographer's license because we don't think he

17

ought to be in the business, if operators are performing so

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poorly that we don't have confidence in their ability to do their

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job and the corporate licensee hasn't done something about it,

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then because they are NRC licensees, what we ought to do is get

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them out of the business and pull their license.

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MR. KOESTER:

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Thank you.

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MR. SEYFRIT:

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MR. DORR:

My name is Paul Dorr from the West Coast Power District. I have a couple of questions or situations that I'd like to pose to clarify for myself -- I'm a power plant person -- as to what this all means.

Let's take the example where we start a diesel generator for surveillance once a month. It starts up. It runs for an hour, and then a cylinder explodes or something. It's -- you know, it destroys itself.

Does that come under a Level II type situation -- severity situation?

MR. THOMPSON:

Only if that event comes about as the result of a violation of a regulatory requirement. If you read the supplements, each of the separate severity levels in the supplements begin with the phrase, "Violations involving."

So the answer to your question is: If there was a violation. Perhaps there was inadequate maintenance. Or surveillance. Or some violation of a tech spec that was the cause of that failure. Then it might be.

But the simple failure by itself does not constitute a violation.

MR. DORR:

What about violations involving multiple pump systems where you might have a system of two loops -- two

1 pumps per loop. One pump is out of service by tech specs for 30
2 days.

3 You have a violation that results from
4 that pump being inoperable. Does that come under this --

5 MR. THOMPSON:

6 If your -- Presumably, the case you're
7 citing involves some LCO action statement --

8 MR. DORR:

9 Uh-huh.

10 MR. THOMPSON:

11 If you are within the action statement
12 of the LCO, you don't have any violation. So only when you have
13 a violation of the LCO and its action statement do you get into
14 this situation.

15 Yes, you could have that situation. But
16 not the failure of the pump by itself. If the pump failed and
17 you did not take the compensatory action required in the action
18 statement, then you'd have a violation; then you'd have a problem.

19 MR. NORELIUS:

20 Also, to back up on your first question,
21 just the loss of a single diesel generator probably would not be
22 a Severity II.

23 MR. SEYFRIT:

24 It depends on which plant you're in,
25 Chuck.

1 MR. NORELIUS:

2 Okay. It might depend on the circumstances
3 But we would focus on the safety system that's involved. If a
4 single diesel generator -- if you have to have one, then obviously
5 if that doesn't work, then you'd probably have to take some
6 action to go down or something.

7 But that probably would still be a
8 Severity Level III.

9 MR. SEYFRIT:

10 I'd like to try a short answer to this
11 question. I think it's very simple.

12 If you do all of the things that you're
13 quired to do by your tech specs, you don't have a violation.

14 Okay?

15 MR. DORR:

16 Have you looked at the average number of
17 fines per licensee if you had implemented this thing a year ago,
18 let's say -- had you lived a year by how you think you're going
19 to live now.

20 Have you looked at the average --

21 MR. THOMPSON:

22 Yes. In a very qualitative sense. We've
23 not attempted to do it in precise quantitative measures. The best
24 guess of the task force that worked on this is that the number of
25 civil penalties is not likely to increase. The dollar value for

1 the major licensees will clearly increase.

2 We expect that the dollar values for
3 the small licensees -- the material licensees -- will probably
4 increase slightly, but still be about the same order of
5 magnitude.

6 We don't anticipate a substantial increase
7 in the number of civil penalties. If you look at the Level I,
8 II and III, those are pretty serious events. And they really
9 don't happen very often.

10 We really don't expect to see them
11 occur more often. The violations are not going to be --
12 The number of violations that occur, we don't believe will be
13 affected substantially by the new policy.

14 As a matter of interest, about 98 percent
15 of the violations -- under the old system: violations, in-
16 fractions or deficiencies -- about 98 percent of noncompliance
17 is quite adequately handled by regional action, usually in the
18 form of a notice of violation and the response that's associated
19 with it.

20 The two percent that involve elevated
21 enforcement action, gets all the publicity, gets all the lime-
22 light -- and there's a great deal of emphasis placed on those
23 and appropriately so in this policy, because that's what we're
24 trying to define more --

25 But we anticipate that the level of

1 performance will remain at 95, 98 percent of the time regional
2 actions in the form of notices of violation will probably still
3 be adequate.

4 MR. DORR:

5 When I saw your slide about violation
6 as Category I, II or III, that really made me step back, because --
7 I'm speaking from memory. But I think in a year's time we have
8 ten violations.

9 I spoke -- Maybe there isn't that
10 many. Maybe I get violations and infractions --

11 MR. SEYFRIT:

12 Violations and noncompliances, I think
13 you're confusing.

14 MR. DORR:

15 Well, I believe we had a violation in the
16 implementation of our operator training program. I believe that
17 was a violation.

18 MR. SEYFRIT:

19 That was. But I think -- Bill, can you
20 help me out a little bit? Is that the only one they've had this
21 year? Violation now.

22 (No response.)

23 MR. DORR:

24 I'm at Cooper. So he couldn't tell me.

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MR. SEYFRIT:

No. Is there anybody here that could?

A VOICE:

The problems that we identified with your re-qualification program ... I don't remember now whether it was -- Was it categorized as a violation of --

MR. DORR:

Maybe it was --

MR. SEYFRIT:

The question really is: How many of them have they had this year?

MR. DORR:

You did that evaluation not too long ago.

A VOICE:

The SARP evaluation. I believe that about ten is about correct.

MR. SEYFRIT:

Ten violations?

A VOICE:

Not violations.

MR. SEYFRIT:

How many violations?

A VOICE:

There were no violations.

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MR. SEYFRIT:

Okay. That's what I wanted to know.

Typically it's a surprise if we get more than one for a facility during the year.

MR. THOMPSON:

Let me expand on my earlier comment on the number of actions.

I think it's also fair to observe that in the last almost two years since TMI, it is clear that the number of enforcement actions -- elevated enforcement actions -- has increased over what it was pre-TMI.

I think that's partly increased effort on the part of our inspectors, increased requirements as a result of the lessons learned. And we have seen an increase in the number of cases.

But I think we're at a leveling off point now. It appears to be that way over the last few months. And that compared to what we've had, say over the last year, we don't see much of an increase.

But if you want to compare us to what we had in '77, certainly the number of elevated cases now is higher than it was in the pre-TMI period.

And so in that sense, yes, there's an increase. But I don't think it's an increase from where we are today in the number of actions. The dollar figures for major

1 licensees will clearly be larger.

2 MR. SEYFRIT:

3 I would suggest that I think the sen-
4 sitivity that most of us have, post-Three-Mile Island, is partly
5 responsible for more of the numbers of the increased enforcement
6 cases that any other single thing.

7 Some of the things that prior to Three-
8 Mile Island we may have looked at and decided, "Gee, this is not
9 really that significant," when you look at the lessons learned
10 from Three-Mile Island, there are a lot of these things that are
11 really significant.

12 So I think an awful lot of this is that
13 we're taking a closer look at these things for their significance
14 than we did in the past.

15 MR. THOMPSON:

16 I think another example that tends to
17 support that, there is no question that a year ago when we
18 promulgated new criteria for transportation, for example, there
19 was a significant increase in the level of actions to be taken
20 for what formerly we did not consider to be quite as serious.

21 There was a very good reason for that.
22 And by the by, the level of compliance on transportation require-
23 ments appears to have improved substantially over the last year.

24 There's very little question that that
25 is part of the general societal increased awareness in this area

1 and that has increased the number of actions.

2 So in that sense, yeah, an increase. But
3 not over what we've had in the last year.

4 MR. SEYFRIT:

5 Anyone else?

6 Yes, sir.

7 MR. HEAD:

8 William Head, Plateau Resources.

9 Earlier I made mention of this facility
10 construction and reactor construction. Supplement II says
11 facility construction, and slide five makes reference to reactor
12 construction.

13 Is it appropriate or do you have any
14 answer which is correct?

15 MR. LIEBERMAN:

16 Supplement II is reactor construction,
17 it's the licensee subject to Part 50.

18 MR. THOMPSON:

19 There are other licensees under Part 50
20 besides reactor. But --

21 MR. HEAD:

22 Specifically that does refer to reactor
23 construction?

24 MR. LIEBERMAN:

25 It refers to any facility that's licensed

1 under Part 50.

2 MR. HEAD:

3 Production or utilization facility?

4 MR. LIEBERMAN:

5 Yes. The word "facility" was used there
6 in the pure sense of a utilization or production facility, and
7 not a --

8 MR. HEAD:

9 Specifically, I would suggest that in --
10 I think it's Severity Level II and IV, that you add that they
11 would have an effect on safety. I don't know if that was a
12 purposeful omission or not.

13 But the others make reference to --
14 There would be some deficiency in the construction ... or you
15 should allude, I think, that they would have an effect on
16 safety, unless your general overall feeling is that any deficiency
17 in that area is going to have a direct impact on safety.

18 MR. NORELIUS:

19 I think it's generally built in in that
20 sense. The violations that would be appropriate here -- the ones
21 we're discussing -- primarily have to do with violations of
22 Part 50, Appendix B.

23 And that has to do with quality as-
24 surance programs, and they apply to safety-related systems. So
25 in a round-about way they do apply to safety-related systems that

1 would be involved.

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MR. HEAD:

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Round-about. You can understand our concern that it would be that our quality assurance program that in a mill something might not be built in strict conformance to design and yet would have very little impact, as far as any radioactive impacts on employees or the public.

MR. THOMPSON:

I think your observation on the clarity of the wording is very pertinent, and we will take it into account. It's a question of clarity.

MR. HEAD:

Thank you.

MR. SEYFRIT:

Yes, sir.

MR. WALDING:

Kim Walding, Nebraska Public Power.

I'd like to beat two dead horses here, if I could for a minute. I have a comment on the licensed operator penalty. And it seems to me that there's only two kinds of violations from him: either willful or the kind that really belong to management and/or the NRC for licensing this individual in the first place.

Either our training program, our licensing program, our personnel selection, but not the individual who

1 made an honest mistake.

2 And my second comment is to Mr. Lieber-
3 man -- a question. Public Law 96-295, the one that gave us the
4 fine, did the Congress clearly state that utilities are more
5 equal and that everybody pays less? Or was that decided internally
6 that --

7 MR. LIEBERMAN:

8 I think the Commission requested the
9 increased civil penalty authority to the Congress. I think in the
10 letters going from the Commission to the Congress, and think
11 also in the legislative history for the statute, indicate that our
12 concern was for a few large licensees, which had been having a
13 series of items of noncompliance, and imposing civil penalties --

14 A \$5000 civil penalty just has not been
15 adequate. So we thought it was appropriate to have a higher
16 civil penalty.

17 MR. WALDING:

18 I think you're still saying that's up
19 to interpretation. And that's how you -- That's what you re-
20 quested, was the ability for a larger fine, primarily for the
21 larger utility -- or for the utilities proper.

22 MR. LIEBERMAN:

23 Well, I don't recall whether that's ex-
24 pressly stated. But I think that's my view, reading the
25 legislative history.

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MR. WALDING:

That was the intent of the request in the first place?

MR. LIEBERMAN:

Right.

MR. WALDING:

Thank you.

MR. SEYFRIT:

Anyone else?

(No response.)

MR. SEYFRIT:

In that case, I think we'll turn this over to the Panel. I think they have some comments to make based on some of the matters that were raised earlier.

MR. THOMPSON:

Let me start off, and perhaps my colleagues will want to expand on my comments or touch on other subjects.

As you are aware, this is the fourth of five meetings --

MR. SEYFRIT:

Before you get started, let me ask a question. How long do you think that it's necessary for us to keep our secretarial help here?

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MR. THOMPSON:

Unless there are particular cases that need to be dealt with, I think you could free them at your discretion.

MR. SEYFRIT:

Okay. Wyatt, would you take care of that?

Thank you.

MR. THOMPSON:

As I think you are aware, this is the fourth of five meetings to discuss this enforcement policy. Even prior to the first one, we had had some indications of the nature of some of the responses by virtue of some early responses to the FEDERAL REGISTER notice, and from some voluntary comments provided by various individuals and groups following publication in the FEDERAL REGISTER.

In common with those early comments and those we have received in the first three meetings, and now again today, there appears to be a common concern about the degree of discretion to be provided in the policy for exercise of technical judgment in assessing the nature of the enforcement action to be taken, and in the case of civil penalties, the amounts to be assessed.

You will recall that we did try to address this in a general way in our prepared comments. In addition,

1 when we prepared this draft of the proposed revision to the
2 policy, we made a concerted effort to include as many qualitative
3 adjectives and adverbs as we could to indicate that there is
4 considerable flexibility in discretion to be exercised by the
5 NRC officials charged with implementing the policy.

6 You'll notice throughout the policy
7 statement words such as "normally" and "generally," "in nearly
8 every case." One particular case I would like to call your at-
9 tention to again is that in the narrative discussion of Table 2,
10 we used alternative wording in the text.

11 For the verb we used "could" and "will
12 normally be." That was by design. We did that at a very late
13 stage in the drafting of the policy, hoping that we would get
14 comments either in the meetings or in the formal comments regarding
15 which would be the preferable way to express the use of Table 2.

16 The point I'm trying to emphasize at
17 this stage is we have made a rather concerted effort to indicate
18 within this policy the need for considerable flexibility on the
19 part of those who have to implement the policy.

20 It appears that either we did not com-
21 municate that flexibility adequately in the way we drafted the
22 policy, or there still is insufficient flexibility provided.
23 We would appreciate having comments in that area -- those of you
24 who plan to prepare formal comments for submittal to the
25 Secretary.

1 At the same time in some of the earlier
2 meetings -- and not quite so prevalent today -- we have found a
3 diametrically opposed view that you need to be much more specific
4 about what you're going to get people for. And that has created
5 considerable dilemma for those of us that worked on the policy
6 statement.

7 Creating more flexibility and yet more
8 specificity is extremely difficult. I'm not trying to look for
9 sympathy or for a soft shoulder to cry on. It does appear that
10 requests to provide more flexibility and yet be more specific are
11 somewhat opposed. And we were surprised at some of our earlier
12 meetings to find some of the commentators making the same comment:
13 One commentator commenting both "Make it more flexible," and "Make
14 it more specific at the same time."

15 The second area that seems to have a
16 considerable amount of commonality -- and it was evident at this
17 meeting as well -- is concern on the part of the licensed in-
18 dustry for the manner in which we have provided credit for self-
19 identification and correction.

20 There are a few comments I feel are
21 appropriate in that connection. We do recognize the desirability
22 of fostering self-identification and correction on the part of
23 licensees.

24 We have done so in a number of different
25 ways. We find now that in the proposed policy, the proposal to

1 offset up to 50 percent of a civil penalty for self-identification,
2 may be a step in the right direction; but at least in the view
3 of those who have expressed views on this subject, not adequate
4 to do the job.

5 A couple of things to point out on that
6 on the part of NRC is: Why can't we do it right the first time,
7 rather than engaging in a series of self-identified corrective
8 action? If the action is done right the first time, then it
9 isn't going to be found by either us or the licensee.

10 So we felt that it is appropriate to
11 emphasize the need to do the job right the first time, in terms
12 of compliance; and at the same time try to provide some emphasis
13 on the mitigation of enforcement actions that would grow out of
14 failure to do it right the first time by giving some credit for
15 self-identification.

16 We would be interested in receiving
17 comments on how we might go about that in a constructive fashion,
18 without destroying the emphasis on doing it right the first
19 time.

20 There are all sorts of analogies as-
21 sociated with what might be involved here. There aren't very many
22 of us who drive to the precinct station and turn ourselves in
23 for speeding.

24 But there aren't very many of us who
25 don't engage in speeding at one time or another.

1 At the same time, if one stays with
2 traffic analogies, there are not infrequently occasions where a
3 driver that has had an accident -- perhaps struck a parked car
4 and in the literal sense been a hit-and-run driver -- subsequently
5 comes and says, "I can't live with what I've done. I did hit
6 that guy, and I know you're looking for a hit-and-run driver."

7 Certainly that self-incrimination
8 associated with that action deserves consideration in the mitiga-
9 tion of the action which follows. Perhaps that's tied to the
10 flexibility people are calling for in the discretion to be exer-
11 cised by the Director in deciding what enforcement action to take
12 in the face of such violations.

13 I don't want to carry that analogy too
14 far, because I don't believe we're in the traffic violation busi-
15 ness. Nevertheless, I think there is some validity for considera-
16 tion.

17 We would really be looking for con-
18 structive suggestions on how this subject can be addressed in a
19 fashion that would take care of this problem.

20 Another comment we have heard today --
21 and echoes comments we have heard in other meetings -- is concern
22 for the impact on the recruitment and retention of competent
23 staff in the face of vulnerabilities that are identified in this
24 enforcement policy on individuals.

25 I would make only one comment in that

1 regard. Bear in mind that any enforcement policy does not
2 establish new requirements. What it does is to outline the
3 criteria by which action will be taken for violations of require-
4 ments.

5 What we're talking about here is looking
6 back in time when a licensee, either individual or corporate,
7 has not been in compliance with regulatory requirements. That's
8 when the enforcement policy comes into play.

9 If we have difficulties with requirements,
10 the enforcement policy is not the mechanism by which we can get
11 those requirements changed. This is an internal problem that we
12 face all the time within NRC.

13 So the concerns about staff retention,
14 I believe are legitimate concerns. And I share those concerns,
15 because we have now articulated the conditions under which we
16 would impose various sanctions against either individuals or
17 corporate entities.

18 The requirements on which those must be
19 based, however, are completely separate. And as a matter of fact,
20 a goodly number of the problems that are identified with the en-
21 forcement policy, in my opinion, are more strongly associated
22 with the requirements placed on those individuals or corporate
23 entities.

24 There is some concern about the punitive
25 wording associated with the enforcement policy. I would submit

1 that one cannot deal with an enforcement policy without some
2 aspects of punitive wording being included. By its very nature,
3 enforcement has some punitive aspects.

4 Of course, the fundamental purpose of
5 any enforcement action is to achieve correction and remedial
6 action. But we would be fooling ourselves to say that there is
7 absolutely nothing punitive about our program.

8 For a long time AEC and NRC have said
9 that the purpose of our enforcement action is to achieve remedial
10 action and to prevent recurrence. Those are still the reasons for
11 having an enforcement action.

12 But to fool ourselves that there's
13 nothing punitive about it, I think is unfair to both us and the
14 licensee. By its very name, a civil penalty involves punishment,
15 since "penalty" comes from the same root.

16 Finally, I would like to say, I've not
17 really been an enthusiastic supporter of the conduct of public
18 meetings of this type on this particular subject. I was appre-
19 hensive about these meetings.

20 We're 80 percent of the way through the
21 meetings now, and I must confess that I have been very pleasantly
22 surprised at the cogency and the constructive nature of the
23 comments that we have gotten from interested parties on all sides
24 of the nuclear question.

25 I appreciate the candor of the comments

1 we've received, in spite of the fact that some of them have a
2 few barbs in them.

3 (Laughter.)

4 You do tend to get a kind of thick skin
5 when you're dealing in this business, as all of you know. We
6 appreciate the candor with which you have presented your comments.
7 And I would like to provide you the assurance that all the
8 comments will be considered. We may not adopt them all -- we
9 can't adopt them all, because some of them are at opposite ends.

10 But we appreciate the comments, and they
11 will be given serious consideration as we go through the revision
12 process of the policy for subsequent approval by the Commission.

13 Do any of you want to add anything?

14 (No response.)

15 MR. SEYFRIT:

16 Well, that being the case, if there are
17 no further questions at this time, I guess it would be an ap-
18 propriate time to adjourn, even though we haven't quite reached
19 the hour of five o'clock.

20 We will reconvene at seven o'clock to
21 give people who may not have had an opportunity, an opportunity
22 to make their feelings known. Perhaps some of you, during this
23 two-hour break, will reflect and think about other things that
24 you wish you had said or wish you had asked during the session
25 this afternoon.

1 If so, you're welcome to come back and
2 face us with those questions.

3 Is there anything else in the nature
4 of business that we ought to take care of before we cut loose?

5 MR. THOMPSON:

6 I would only comment that, recognizing
7 that a goodly number of this group will probably not return this
8 evening, I'll just express thanks from the Panel at this stage
9 for your participation.

10 We'll be looking forward to getting your
11 comments -- those of you who submit them -- in writing.

12 MR. SEYFRIT:

13 I would echo my thanks for your partici-
14 pation. Again, I would suggest that if you have further
15 questions or if during the next couple of hours you come up with
16 some, feel free to come back.

17 Otherwise, thank you very much.

18 (Whereupon, at 4:15 p.m. the meeting
19 was recessed, to reconvene at 7:00 p.m. of the same day.)

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C E R T I F I C A T E

This is to certify that the attached proceedings before the Nuclear Regulatory Commission in the matter of the Public Meeting - Revised Enforcement Policy, held on December 9, 1980 in Irving, Texas, were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Betty Morgan
Betty Morgan
Official Reporter

POOR ORIGINAL

COMMENTS TO BE PRESENTED TO REGION IV OF THE
NUCLEAR REGULATORY COMMISSION ON DECEMBER 9,
1980, CONCERNING GENERAL STATEMENT OF POLICY
AND PROCEDURE FOR ENFORCEMENT ACTION

I am Glenn L. Koester, Vice President - Nuclear, for Kansas Gas and Electric Company (KG&E), with corporate offices in Wichita, Kansas. Our project is the Wolf Creek Generating Station located near Burlington, Kansas. It is being constructed in partnership with Kansas City Power & Light Company (KCPL) and Kansas Electric Power Cooperative, Inc. (KEPCo), a group of electric cooperatives. KG&E is the lead company during construction and will also be the operating company.

I want to thank the NRC for this opportunity to make some brief comments on the Proposed General Statement of Policy and Procedures for Enforcement Action.

We started construction on Wolf Creek in mid-1977 and it is now 68% complete. We, KG&E, are dedicated to building and operating Wolf Creek to protect the public health and safety, the common defense and security, and the environment. Consequently we have reported ourselves many times to the NRC and have taken whatever correction actions necessary in order to meet our goal of this dedication to quality. The philosophy we abide by is, "If in doubt, report the problem". We have found this to be the best path to follow.

The proposed Enforcement Program appears to us to take away from this method we have followed. I, for one, do not believe a civil penalty is in order if I turn myself in for a problem which I know exists. The imposition of fines for violations identified, corrected and reported by the licensee is extremely distasteful and likely to be counter-productive. While we have no plan to reduce our commitment to quality, the proposed system of fines and

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civil actions seems more vindictive than positive and as a result can be counter-productive to strong self-policing a Licensee. While action is justified in the case of wilful or flagrant violations, reactor operators, contractors and others should have strong incentive to take proper preventive measures and to report problems that exist. But human nature being what it is, the almost certain knowledge that self-policing will lead to distasteful public punishment is not incentive to cooperate. If the purpose of the enforcement program truly is to enhance the health and safety of the public, it seems desirable to foster and encourage Licensee cooperation rather than to discourage it. To me it provides exactly the wrong kind of incentive for a good relationship between the Licensees and the NRC.

The proposed changes in penalties leads to a deeper problem that has to do with the federal role in informing the public about its energy options. We still depend greatly on imported oil. And, we have the 1978 federal mandate for utilities like our own to phase out the use of natural gas. This leaves the nuclear and coal options as the only two which now are realistic alternative generating fuels for most utilities. Those of us who build and will operate nuclear facilities are subject to strict enforcement of standards and, as a result, considerable public interest and scrutiny. No comparable federal safeguard, inspection and publicity program affecting other energy resources--coal, solar and so forth--exists. Thus, the Nation hears almost exclusively about problems with only nuclear fuel and its decisions and policies will accordingly be colored. This is not to suggest that the nuclear standards be changed, but only that it should be a federal policy to maintain a national perspective so sound overall analyses can be made. It is true that much of the coloring

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of public opinion about nuclear might be laid at the feet of the news media who do not fully cover the available information about energy, and to the aggressiveness of anti-nuclear organizations. But, again, there is no reason to adopt enforcement policies that will further distort the public view of the nuclear option and ultimately deny the Nation its use at a time of need. This is another way in which unwarranted enforcement procedures can defeat the public good.

To summarize, we believe the NRC already has ample tools available to govern the Licensee during construction and operation; however, since it appears that a new enforcement program, which we believe carries excessive civil penalties, will be put in place, then we would ask that penalties proposed against the Licensee, whenever he reports himself and corrects the problem, be reviewed and completely dropped from the program. We believe that by doing this, it will enhance the quality program which the NRC and the Licensee are working to achieve.

There are a couple of questions which I would like to have answered. On Table I the fourth category of Licensee is listed as, "All other licensees and persons subject to civil penalties". I would like to have a better definition of the word "persons". Does this mean my employees? If it does, I have great problems with NRC assessing civil penalties against my employees for not doing his or her job properly. I believe the Licensee should be the responsible party and the Licensee should take appropriate action against the employee -- not the NRC. The prospect of NRC being able to levy fines against individual employees can only harm employee morale. Furthermore, it will reduce the incentive for qualified individuals to join the industry's nuclear program and thus make our

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recruiting still more difficult.

One other item of concern is ... what if the NRC is wrong in a finding as well as a civil penalty against a Licensee? I see nothing in the program on how the NRC will let the world know that the NRC was wrong and the Licensee was right. I am sure this would not happen often. But, it could, and the Licensee needs to be assured that proper treatment of this issue will be made by the NRC.

Thank you again for this opportunity to appear, and I would be willing to answer any of your questions concerning my remarks.

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Summary of Comments and Suggestions
on the NRC's Proposed General
Policy and Procedure for Enforcement
Action (45 FR 66754),

submitted by the Lone Star Chapter
of the Sierra Club,

in the public meeting held at
Irving, Texas on 9 December, 1980.

Speaker for the Lone Star Chapter:

Walter Traxler
P.O. Box 64414
Dallas, Texas 75206
(214) 669-1961

(Preliminary remarks:

Name/Address/Affiliation.
Statement of appreciation
for notice and permission to
speak at the public meeting.)

Summary:

Our presentation today includes

- a summary of comments and suggestions submitted to the Secretary of the NRC, and
- answers to the 9 specific topics mentioned in the meeting announcement.

* * * PURPOSE * * *

Before attempting to examine a proposal for policy and enforcement actions one must be given (or formulate for himself) some evaluation guidelines. Is its purpose ok? Does it effectively match-up safety goals with criteria for identification of violations and assessment of penalties? Is it understandably formulated and flawlessly communicated to the NRC staff, licensees, and the public? Is it complete? Will it work? If the policy is unworkable, how can it be perfected?

Let's look at PURPOSE. The purpose of the proposed policy and actions is "to foster improvement in licensee performance." How much improvement is expected, how soon? What remedial action is proposed? Are your staff, licensees, and the public to believe that somehow "improved performance" really means: no more accidents, risk and hazard free nuclear operations, or simply less downtime?

This "purpose" we see has four stated goals. How much more compliance is expected? How much faster is "prompt" correction? Is "deterred non-compliance" more, less or about the same as more compliance? How much "improvement" will the NRC encourage? Let's grant that somehow these goals can be measured. How can they be achieved? Four broad means or action criteria list more undefined terms of measurement. These actions are intended to assure three poorly specified licensee actions.

So far as the purpose is stated, the public will be cheated again. The NRC is not getting to the root of nuclear safety regulation. The NRC must REGULATE nuclear safety. The purpose of the policy and actions as stated in Part I, Introduction and Purpose is not ok.

To have an ok purpose for policy and actions the NRC should develop a set of measurement guidelines and clearly defined safety goals. Then internal staff actions and effects of interactions with licensed operations should be examined, clearly defined, and be made part of the policy. This need was identified at TMI-2, public safety and health demand that the NRC address it effectively.

Other preliminary guidelines for the evaluation of "purpose" are suggested at appropriate sections of the comments.

* * * LEGAL ASPECTS * * *

Everyone grants that the NRC has jurisdiction to set enforcement policy and actions, but the proposal does not aggressively or clearly define severity of violations, does not consider factors of risk-hazard-profit, and does not allow blame-fault-cause to fall on the NRC.

Almost anyone can understand a gradient scale of levels valued 1 to 10. Many of those people can understand the semantic differentials: acceptable, low, medium, high, and unacceptable as applied to risks or hazards. Gradient values 1 and 2 correspond to "acceptable" risk and so on to 9 and 10 for "unacceptable" risk. Put some attributes and measurement parameters on the scale and a severity model is built. The proposal already has 6 levels of severity, suppose that four new levels can be characterized by maybe the extent of risk, for example:

- offsite, local, county;
- intra-state,
- inter-state, trans-border; and
- catastrophe.

Now modify the descriptions with carefully defined sublevel determinants such as:

- intent of violator,
- degree of trust/loyalty/confidence,
- mechanism of cause,
- mechanism of discovery,
- unknowns/unexpected, and
- others to be defined.

Other determinants may turn out to be:

- NRC involvement in cause,
- output power less than designed,
- harm to neighbor country,
- storage, shipping, disposal, or decommissioning and decontamination accidents.

Obviously, several of the new determinants are rooted in criminal actions. For these the NRC should actively seek criminal penalties as incentives for compliance.

* * * SEVERITY OF VIOLATIONS * * *

An ideal situation for a regulatory body to take full command of the control functions over its staff and licensees exists for the NRC in the wake of TMI-2. Virtually free and unbiased consulting from the President's Commission (Kemeny Report), the Special Interest Group (Rogovin Report), and apparently candid internal opinions from NRR and I & E task forces (Lessons Learned Reports) have defined compliance problem areas and pointed directions for improved safety and public confidence.

The public is waiting to be enthusiastically confident of the safety of nuclear power, but the NRC has gone off in all directions.

The Office of Inspection and Enforcement is busily proposing new policy and actions without the benefit of new safety goals now under development by the Office of Policy Evaluation and the Office of General Counsel (See NUREG-0735). The stated goal of OPE and OGC in developing a Policy Statement on Safety Goals is the definition of actual decision standards by means of NRC Rules. Then RULES, not the goals of improved safety itself, can be applied to individual cases of violations. Kemeny and Rogovin seem to be as competent as prophets as they are as historians. (Parenthetically: Intervenor Funding could almost guarantee that the Lone Star Chapter would be in there helping to co-ordinate the internal affairs of the NRC.)

What is proposed to define and evaluate severity of violations and fairly assess penalties? First, the labeling scheme is upside-down. The concept of "MORE" is usually associated with larger numbers. If the severity levels were reversed so that Level I is least severe and Level VI is most severe, there could be a natural correspondence with other severity concepts such as Classes of Accidents where Class 9 is so severe that it can't even happen.

This new labeling would serve to improve both understanding and the efficiency of communication between NRC, its staff, licensees, the media, and the public. Any attempt to describe levels of severity, without first having firmly established safety goals, can only result in a hollow policy and unfair enforcement actions.

The substance of our comments and suggestions on SEVERITY OF VIOLATIONS has to do with concern for understanding, i.e., format,

diction, and completeness. Seven levels of UNDERSTANDING are recognized and treated in the semantics industry. These are briefly described and reference is made to the excellent collection of articles edited by S. I. Hayakawa.

Style of the presentation does not contribute to effective communication or understanding. Another example of crossed signals is the recently published NRC Technical Writing Style Manual: the U.S. Government Printing Office Style Manual is the standard, and it's so good that even private industry specifies its use.

Completeness depends on answers to the general queries:

- Who?
- What?
- Why?
- When?
- Where?
- How?
- How much? and
- So what?

Gaps in issue resolution and data base prevent addressing all aspects of severity. Such unresolved safety issues include:

- generic safety items,
- "goldplating" -v- "drugstore plumbing,"
- maintenance of components/systems,
- the operator problems (qualification, training, certification, simulation),
- reporting, review, feedback,
- emergency preparedness,
- emergency response, and even
- inspect or access/ingress

Several Lone Star Sierran suggestions which parrot the findings of TMI-2, airline disasters, and catastrophe theory are discussed for each licensing area listed. Then several areas of omission are pointed out for further consideration by the NRC (sweetening of export "deals", harm to other nations, and degree of NRC blame in violations.

Available actions are recited in the proposal but the root problem of safety assurance is not evident. The NRC's "mindset" once again betrays them. Regulators should REGULATE. What is proposed in the area of needs? What are the necessary and sufficient sanctions and penalties - not to deter noncompliance - but to compel absolute compliance, i.e., zero defects? DOD, NASA, and their electronic systems suppliers seem to have achieved spectacular success with this attitude. The NRC does not have to rely on threats of calling up the calvary to enforce compliance, you ARE the cavalry. Make the citizens confident that you ARE IN CONTROL.

(Civil penalties, need for additional criminal penalties, and responsibilities of the Commission are discussed in the answers to the 9 Specific Questions listed in the meeting notice.)

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Answers to the 9 Specific Questions
Listed in the Meeting Announcement (45 FR 69077).

QUESTION 1

Is the policy fair and equitable?

No. We have suggested that equity is only obtained when there is effective communication leading to complete understanding. Justice requires that equivalent penalties be assessed for equivalent violations.

QUESTION 2

Is the policy understandable?

No. Details of seven kinds of understanding are discussed in
*** SEVERITY OF VIOLATIONS ***.

QUESTION 3

Are the severity levels appropriate?

No. There is no criteria/basis, a comprehensive gradient scale does not exist, nor are there specific safety goals yet, many seemingly relevant determinants are not addressed. A policy that is understandable would clearly state appropriate levels of severity.

QUESTION 4

Are the different types of activities well enough defined?
Should there be others?

No, and Yes. (Recall previous answers.)

QUESTION 5

Are the distinctions among various types of licensees, shown in Table 1, appropriate?

QUESTION 5 (cont'd)

No. Individuals (workers, operators, supervisors, administrators, managers, even "insiders") cannot be assessed with suspension of license or fines. NRC staff, managers, or Commissioners are apparently faultless.

QUESTION 6

Are the factors for determining the level of enforcement actions appropriate? Should there be others?

No. Neither the factors nor the gradient scale are appropriate.

Yes, other appropriate determinants should include risks to the victims (worker, operator, member of the public, the biosphere, or international neighbors), intent or form of duress/stress on the violator, trade-offs between hazards and profit, mechanisms of cause/discovery, and contingency for unknown/unexpected events.

QUESTION 7

Is the degree of discretion allowed to Office Directors appropriate? Should there be more flexibility permitted? Less?

What is the basis for "judgement and discretion"? What are criteria for determining "technical merits"? We need to know more information to answer this question intelligently.

QUESTION 8

Are the levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?

Without information on hazard-risk-cost-profit- increased safety trade-offs only a gross value judgement can be made. However, if the Commission could serve better as REGULATORS than as BOOKKEEPERS, don't bother them: do a rulemaking and ENFORCE it.

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QUESTION 9

Are the provisions for escalated action, set forth in Table 2 appropriate?

The only criteria or basis for escalated action seems to be Biblical (eye for an eye or three denials) or sports related (1, 2, 3 strikes: OUT). (Recall the dilemma of tradeoffs -v- safety.)

POOR ORIGINAL

STATEMENT ON BEHALF OF
TEXAS UTILITIES GENERATING CO. ON THE PROPOSED ENFORCEMENT POLICY

SUBMITTED TO THE NUCLEAR REGULATORY COMMISSION

IRVING, TEXAS

DECEMBER 9, 1980

MY NAME IS B. R. CLEMENTS AND I AM VICE PRESIDENT, NUCLEAR AT TEXAS UTILITIES GENERATING COMPANY. MY MAILING ADDRESS IS 2001 BRYAN TOWER, DALLAS, TEXAS 75201 AND MY BUSINESS TELEPHONE NUMBER IS (214) 653-4017.

WE ARE PLEASED TO HAVE THE OPPORTUNITY TO PRESENT OUR VIEWS TO THE COMMISSION ON THE PROPOSED ENFORCEMENT POLICY. WE BELIEVE THAT IT IS PART OF OUR OBLIGATION AS AN NRC LICENSEE TO PROVIDE THE COMMISSION WITH CONSTRUCTIVE INPUT ON ITS EFFORT IN DEVELOPING SUCH A POLICY. TOWARDS THAT END, WE HAVE FOUR COMMENTS WHICH WE WOULD LIKE TO BRING TO YOUR ATTENTION.

THE FIRST OF THESE COMMENTS CONCERNS THE PURPOSES AND GOALS IDENTIFIED IN THE PROPOSED ENFORCEMENT POLICY. VIRTUALLY ALL OF THESE GOALS AND POLICIES REST ON THE PREMISE THAT LITERAL COMPLIANCE WITH NRC REGULATIONS WILL AUTOMATICALLY RESULT IN THE SAFE OPERATION OF POWER REACTORS. WHILE WE CERTAINLY AGREE

POOR ORIGINAL

THAT METICULOUS COMPLIANCE WITH ALL NRC REQUIREMENTS SHOULD BE AN IMPORTANT AIM OF THE POLICY, TO FOCUS EXCLUSIVELY ON THE ISSUE OF COMPLIANCE IS INCONSISTENT WITH OR IGNORES THE REPORT OF THE PRESIDENT'S COMMISSION ON THREE MILE ISLAND ("KEMENY COMMISSION"). THAT REPORT STATED AT PAGE 9 "IT IS AN ABSORBING CONCERN WITH SAFETY THAT WILL BRING ABOUT SAFETY -- NOT JUST THE MEETING OF NARROWLY PRESCRIBED AND COMPLEX REGULATIONS." ACCORDINGLY, WE BELIEVE THAT ITS SINGLE AND OVERRIDING GOAL IS THE PROTECTION OF THE RADIOLOGICAL HEALTH AND SAFETY OF THE PUBLIC, INCLUDING EMPLOYEE HEALTH AND SAFETY, AND PROVIDING FOR THE COMMON DEFENSE AND SECURITY. WE BELIEVE THAT BY FOCUSING ON SUCH A GOAL RATHER THAN EMPHASIZING LITERAL COMPLIANCE WITH NRC REQUIREMENTS, THE ENFORCEMENT MECHANISM SELECTED WILL BE BEST TAILORED TO ENCOURAGE THE SAFE ~~CONSTRUCTION~~ AND OPERATION OF POWER REACTORS.

THE SECOND ASPECT OF THE ENFORCEMENT POLICY ON WHICH WE WOULD LIKE TO COMMENT CONCERNS THE SCOPE OF DISCRETION TO BE EXERCISED BY THE STAFF, BOARD, AND COMMISSION IN TAKING ENFORCEMENT ACTION. SPECIFICALLY, WE BELIEVE THAT DISCRETION SHOULD BE EXERCISED IN DETERMINING WHETHER AND IN WHAT FORM AN ENFORCEMENT ACTION SHOULD A VIOLATION OF NRC REQUIREMENTS BE DISCOVERED. WHILE WE FULLY RECOGNIZE THE IMPORTANCE OF CLEAR CRITERIA GOVERNING SUCH ADMINISTRATIVE ACTIVITY, IF THE CRITERIA ARE TOO DETAILED AND MANDATORY, THE ABILITY OF THE STAFF, BOARD, AND COMMISSION TO FASHION SANCTIONS APPROPRIATE TO THE PARTICULAR FACTS TO EACH CASE MAY BE COMPROMISED.

POOR ORIGINAL

A COMPARISON BETWEEN THE ENFORCEMENT POLICY ORIGINALLY PROPOSED BY THE STAFF AND ENFORCEMENT POLICY NOW UNDER CONSIDERATION STRONGLY SUGGEST THAT THE COMMISSION HAS TO SOME DEGREE ACCEPTED THIS VIEW BUT THAT IT HAS NOT BEEN FULLY IMPLEMENTED. SPECIFICALLY, THE POLICY NOW UNDER CONSIDERATION STATES THAT THE DIRECTOR OF I&E EXERCISES DISCRETION WHEN DETERMINING WHETHER AND IN WHAT FORM TO BRING ENFORCEMENT ACTION (40 FED. REG. 66758--1980). HOWEVER, IT IS NOT CLEAR WHETHER AND TO WHAT EXTENT SUCH DISCRETION EXTENDS TO THE BOARD AND COMMISSION, BOTH OF WHICH MAY REVIEW THE DIRECTOR'S ASSESSMENT.

BY EMPHASIZING THE IMPORTANCE OF DISCRETION IN ALL FACETS OF ENFORCEMENT AS A MATTER OF POLICY, THIS DIFFICULTY CAN BE RESOLVED. WE, THEREFORE, RECOMMEND THAT THE POLICY STATE EXPLICITLY THAT ADMINISTRATIVE LAW JUDGES, APPEAL BOARDS AND THE COMMISSION WILL CONTINUE TO EXERCISE AUTHORITY TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE DIRECTOR IN CONTESTED CIVIL PENALTY PROCEEDINGS AND THAT THEY HAVE THE DISCRETION, AS DOES THE DIRECTOR, TO TAILOR SPECIFIC PENALTIES TO THE FACTS OF EACH CASE.

WE BELIEVE THAT IT IS ESPECIALLY IMPORTANT THAT SUCH DISCRETION EXTEND TO THE ASSESSMENT OF CIVIL PENALTIES. AS WE UNDERSTAND THE POLICY, A BASE CIVIL PENALTY FIGURE WILL BE APPLIED. APPARENTLY THE ONLY ACCEPTABLE REASON FOR DEVIATING FROM SUCH FIGURE IS WHEN IT DOES NOT ACCURATELY REFLECT THE ABILITY

POOR ORIGINAL

OF THE LICENSEE AGAINST WHICH IT IS IMPOSED TO PAY THE DESIGNATED AMOUNT. NEXT, VARIOUS FACTORS WILL BE CONSIDERED WHICH MAY LEAD TO A REDUCTION OR INCREASE OF THE CIVIL PENALTY. THESE FACTORS INCLUDE THE PROMPT CORRECTION OF THE VIOLATION AS WELL AS THE LICENSEE'S GOOD FAITH EFFORTS TO COMPLY WITH NRC REQUIREMENTS. HOWEVER, THEY CAN ONLY LEAD TO A REDUCTION OF THE PENALTY UP TO CERTAIN PREDETERMINED AMOUNTS. WE BELIEVE THAT A MUCH MORE PRODUCTIVE APPROACH WOULD BE TO ALLOW THOSE IMPOSING CIVIL PENALTIES TO DEVIATE FROM THESE PRECISE AMOUNTS WHEN CIRCUMSTANCES WARRANT, SO LONG AS ALL OF THE FACTORS IDENTIFIED IN THE POLICY ARE CONSIDERED.

THIRD, WE BELIEVE THAT THE ENFORCEMENT POLICY SHOULD EXPLICITLY STATE THAT PENALTIES ARE REMEDIAL IN NATURE. SPECIFICALLY, SUCH PENALTIES SHOULD BE ONLY AS STRINGENT AS IS NECESSARY TO DETER VIOLATIONS AND SHOULD NOT BE IMPOSED SIMPLY TO PUNISH LICENSEES FOR VIOLATING NRC REQUIREMENTS. NO VALID PURPOSE WILL BE SERVED BY IMPOSING LARGE CIVIL PENALTIES ON A POWER REACTOR LICENSEE WHEN SUCH PENALTIES MAY RESULT IN ITS INABILITY TO MAINTAIN THE HIGHEST STANDARDS OF SAFETY. CONVERSELY, NO VALID PURPOSE WILL BE SERVED BY REVOKING OR SUSPENDING A POWER REACTOR LICENSE FOR A VIOLATION WHICH DOES NOT IMPOSE AN IMMEDIATE AND SIGNIFICANT ACTUAL DANGER TO THE PUBLIC HEALTH OR COMMON DEFENSE AND SECURITY, ESPECIALLY WHEN A CIVIL PENALTY WILL ADEQUATELY DIRECT THE LICENSEE'S ATTENTION TO THE VIOLATION.

LASTLY, WE BELIEVE THAT THE ENFORCEMENT POLICY MUST BE DESIGNED TO ENCOURAGE LICENSEES TO SEARCH OUT AND RESOLVE PROBLEMS, EXCHANGE INFORMATION ABOUT SUCH PROBLEMS, AND EMPLOY THE MOST CAPABLE STAFF. AS WE STATED ABOVE, THE GOAL OF THE ENFORCEMENT POLICY SHOULD BE THE PROMOTION OF PRACTICES ON THE PART OF POWER REACTOR LICENSEES WHICH WILL ASSURE PROTECTION OF PUBLIC AND EMPLOYEE HEALTH AND SAFETY AND PROVIDE FOR THE COMMON DEFENSE AND SECURITY. IT IS IMPOSSIBLE TO ACHIEVE THIS GOAL UNLESS LICENSEES ARE WILLING TO EXCHANGE INFORMATION CONCERNING POTENTIAL PROBLEMS AT SIMILAR FACILITIES. THE PROPOSED ENFORCEMENT POLICY PRESENTLY DOES NOT RECOGNIZE THE VALUE AND IMPORTANCE OF EXCHANGING SUCH INFORMATION, OTHER THAN TO THE EXTENT THE CIVIL PENALTY ASSESSMENT WILL FOCUS INDIRECT ATTENTION ON THE VIOLATION. WE BELIEVE THAT THE POLICY SHOULD EXPRESSLY RECOGNIZE THE IMPORTANCE OF SUCH CONDUCT BY TAKING IT INTO ACCOUNT WHEN ENFORCEMENT ACTION IS TAKEN.

AS A COROLLARY, THE POLICY MUST BE DESIGNED TO ENCOURAGE EMPLOYMENT OF THE MOST CAPABLE STAFF BY POWER REACTOR LICENSEES. THE KEMENY COMMISSION RECOGNIZED THE VITAL ROLE OF SUCH EMPLOYEES WHEN IT STATED THAT "IT IS IMPORTANT TO ATTRACT HIGHLY QUALIFIED CANDIDATES FOR THE POSITIONS OF SENIOR OPERATOR OR OPERATOR SUPERVISOR" AND THAT "PAY SCALES SHOULD BE HIGH ENOUGH TO ATTRACT SUCH CANDIDATES." KEMENY COMMISSION AT 69.

POOR ORIGINAL

STRICT ENFORCEMENT OF THE PROPOSED POLICY WITHOUT CONSIDERATION OF ALL PERTINENT INFORMATION MAY CREATE AN ENVIRONMENT IN WHICH FEAR OF THE CONSEQUENCES OF REPORTING MINOR ERRORS COULD REDUCE THE FLOW OF INFORMATION. THIS MAY NEGATE WHAT SHOULD BE AN IMPORTANT ASPECT OF AN ENFORCEMENT POLICY. IN ADDITION, THIS SITUATION COULD RESULT IN HIGH-STRESS WORKING CONDITIONS. AS A RESULT, COMPETENT STAFF MEMBERS MIGHT SEEK LESS PRESSURE-FILLED JOBS THUS CREATING ADDITIONAL DIFFICULTIES IN MAINTAINING A STAFF OF COMPETENT PERSONNEL.

THUS, THE ENFORCEMENT POLICY SHOULD BE FLEXIBLE ENOUGH TO ENCOURAGE THE VOLUNTARY CORRECTION OF VIOLATIONS, THE SHARING OF INFORMATION, AND THE EMPLOYMENT OF THE MOST CAPABLE STAFF. AS PRESENTLY PROPOSED, HOWEVER, IT DOES NOT ADEQUATELY TAKE THIS FACTOR INTO CONSIDERATION.

WE ARE PLEASED TO HAVE THIS OPPORTUNITY TO PRESENT OUR VIEWS ON THE ENFORCEMENT POLICY TO THE COMMISSION AND TRUST THAT THEY WILL BE CONSIDERED.

POOR ORIGINAL

Statement on Behalf of
Arkansas Power & Light Company
Submitted to the NRC
Irving, Texas
December 9, 1980
Steve L. Riggs, Esq.
Assistant General Counsel

My name is Steve L. Riggs and I am Assistant General Counsel of Arkansas Power & Light Company, which owns and operates two power reactors. We appreciate this opportunity to comment on the proposed Enforcement Policy.

One of the most fundamental concerns we have about the Enforcement Policy as it is presently proposed is the difficulty in determining whether it is being promulgated as a binding rule or as a general statement of policy. It is currently impossible to determine with certainty which of these administrative mechanisms the Commission intends to use in implementing its enforcement goals. However, we note that certain members of the Staff (for example Mr. Howard Shapar, Executive Legal Director) have stated that the policy should be issued as a binding rule.

We believe that if the Commission intends to issue its Enforcement Policy as a binding rule, it must develop an appropriate record to support the rule. To date, it has not done so. For example, the proposed Policy states that a licensee's good faith efforts to comply with NRC requirements, no matter how extraordinary, can only lead to a reduction of up to 25% in a civil penalty which would otherwise be assessed. If that approach is adopted in the final Policy,

POOR ORIGINAL

the Commission must articulate its factual basis for this 25% maximum civil penalty reduction. Presently, there is no factual basis in the record to justify a limitation of this nature. Further, this limitation seems inconsistent with the stated objective of the Staff in preserving maximum discretion in the appropriate Office Director.

We consequently recommend that the Enforcement Policy not be published as a binding rule, but that the detailed mechanics set forth in it be issued in the form of a general statement of policy. This could be done without development of further record material, and would assure to a great extent consistent application of NRC enforcement authority.

Next, we would like to comment on the apparent difficulty which the Staff has experienced in attempting to promulgate an Enforcement Policy with clearly defined procedures and policies on the one hand, yet which also provides the required level of discretion and is flexible enough to be properly applied in all cases. Apparently there is feeling in some quarters that any Enforcement Policy with adequate flexibility and discretion cannot encompass clearly defined procedures and policies.

Simply stated, we believe this dilemma is more apparent than real. The admittedly difficult task facing the

POOR ORIGINAL

Commission is writing an Enforcement Policy which properly identifies the criteria the Staff must consider and then giving the Staff ample flexibility to apply the criteria to the facts of each case.

The detailed methodology governing the assessment of civil penalties which is now included in the Enforcement Policy is a good example of how the Staff has inadvertently and unnecessarily created this dilemma. As we understand it, the proposed Enforcement Policy would require a two step analysis in arriving at the amount of such penalties. First, by applying Table I (which relates Severity Levels to monetary penalties), a base civil penalty is determined. Apparently this amount can be modified only in situations where the base civil penalty does not properly reflect the ability of a licensee to pay such a fine. Second, the base civil penalty can be reduced by up to 50% to take into account prompt identification and correction of the violation by the licensee. It can also be increased or decreased by an additional 25% to take into account good faith or lack thereof.

At the same time, the Commission apparently contemplates that the Staff exercise broad discretion in determining whether and in what amount civil penalties can be assessed. However, the Enforcement Policy does not so state clearly, nor does it indicate whether the exercise of such discretion is confined by the factors already quantified in the civil penalty methodology.

Through careful revision, we believe this (and other similar) ambiguities can be resolved and the Commission's apparent dilemma avoided. Specifically, the Enforcement Policy should state that the Staff is free to exercise its discretion in determining whether and in what amount civil penalties should be assessed, provided the criteria identified in the Policy are considered. Thus, civil penalty amounts should not be prescribed in advance (as they are currently) thereby confining the scope of the Staff's discretion. By adopting this recommended approach, uniform application of the Commission's enforcement authority is possible to achieve without tying the Staff to an unnecessarily detailed, arbitrary, inflexible policy.

Lastly, we would like to comment on the failure of the Enforcement Policy to recognize adequately effective Quality Assurance programs. Specifically, we believe that unless a greater amount of credit is given for prompt licensee identification and correction of violations, effective and efficient Quality Assurance programs may be discouraged and undermined. For example, if a licensee Quality Assurance program discovers a violation in operating procedures (i.e., a closed valve), and the problem is promptly remedied, it may be appropriate in some cases to reduce the civil penalty to an amount less than that prescribed by application of the Enforcement Policy, or even to impose no civil penalty at all. We certainly do not mean to suggest that no enforcement action should be taken in response to such a

POOR ORIGINAL

violation. However, we do not believe that it is consistent with the stated goal of the Enforcement Policy to encourage improvement of licensee performance (thus enhancing the degree of protection of public health and safety) if the Policy limits the mitigation of a civil penalty to some arbitrary lower limit.