

**NORTHEAST UTILITIES**



THE CONNECTICUT LIGHT AND POWER COMPANY  
WESTERN MASSACHUSETTS ELECTRIC COMPANY  
MOLYBDEUM WATER POWER COMPANY  
NORTHEAST UTILITIES SERVICE COMPANY  
NORTHEAST NUCLEAR ENERGY COMPANY

DOCKET NUMBER **PR 2**  
PROPOSED RULE

(54 FR 50610)

General Offices • Bolden Street, Berlin, Connecticut

P.O. BOX 270  
HARTFORD, CONNECTICUT 06141-0270  
(203) 666-8000

'90 FEB -6 A10

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

February 5, 1990

Docket Nos. 50-213

50-245  
50-336  
50-421  
813434

Re: 10CFR Part 2,  
Appendix C

Secretary, U.S. Nuclear Regulatory Commission  
Attention: Docketing and Service Branch  
Washington, DC 20555

Gentlemen:

Haddam Neck Plant  
Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3  
Comments on Modified Enforcement Policy  
Appendix C to 10CFR Part 2

On December 8, 1989, the NRC published in the Federal Register (54 Fed. Reg. 50610) a modification to its Enforcement Policy, codified as Appendix C to 10CFR Part 2. This revision adds another civil penalty adjustment factor, allowing escalation for violations of NRC requirements where the root cause involves programmatic maintenance-related implications. This Enforcement Policy modification was effective on December 8, 1989, however, it will only be applied to violations which occur after March 8, 1990. The public comment period for this Enforcement Policy modification expires on February 6, 1990. In accordance with this schedule, Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) are providing the following comments on this policy modification.

The Commission's Enforcement Policy modification is significant and could result in increased civil penalties in many different cases, involving many different types of violations and many different substantive requirements. The revision raises a number of concerns.

First, the modification appears to represent an effort by the Commission to, at least temporarily, circumvent the normal rulemaking process. In the Statement of Consideration, the NRC demonstrates support for its modification in the "decision to hold in abeyance the rulemaking on maintenance." Further, although the Commission suspended development of its proposed rulemaking in June 1989 due to acknowledged improvements by industry, the Enforcement Policy revision asserts that further improvements in maintenance-related activities are needed.

9002080232 900205  
PDR PR  
2 54FR50610 PDR

JD510

U.S. Nuclear Regulatory Commission  
B13434/Page 2  
February 5, 1990

We believe that the NRC's current action is not well-supported by the enforcement results associated with maintenance team inspections. As an example, the NRC Staff conducted a special maintenance team inspection at our Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, from April 30 to June 16 and July 10-14, 1989, and has stated that there exists "an aggressive and effective maintenance program to ensure the reliability of components and equipment at Millstone." Given the Commission's decision to hold off on a maintenance rule, we are troubled that the agency is now bypassing that decision through its Enforcement Policy.

Second, the Enforcement Policy revision will indirectly impose substantive requirements on licensees. Licensees will be required to meet the standards of the Revised Maintenance Policy or face increased civil penalties. This approach is inconsistent with the Administrative Procedure Act. The Act specifies that new agency requirements may be imposed only through rulemaking or formal orders in individual cases. In addition, the NRC's own backfit rule, 10CFR50.109, requires that new rules or new Staff positions be formally justified in accordance with the backfitting standards. It appears that the NRC has followed none of these procedures for maintenance program "requirements."

Third, we are troubled by the mechanism that would be utilized under the revised policy to determine what constitutes a "maintenance" problem. As the new adjustment factor states, a "violation shall be considered to be maintenance-related if the violation could have been prevented by implementing a maintenance program consistent with the scope of activities defined by the Revised Policy Statement on the Maintenance of Nuclear Power Plants." Not only does this raise the issue that the Commission is imposing the regulatory standards of its Revised Maintenance Policy Statement through enforcement action, but it also brings into question whether the definition in the Revised Maintenance Policy Statement is appropriately bounded in a technical sense.

In this latter regard, we believe that there are at least two problems with the definition in the Revised Maintenance Policy Statement. One involves the concept that maintenance should "prevent the degradation or failure" of systems or components. The fact is that no matter how effective one's maintenance program may be, the instant a component is installed and begins operation, it starts to degrade. Thus, maintenance can at best only minimize degradation and/or failure. The other point, perhaps even more disturbing, is related to the broad scope of the definition, which includes "supporting" activities and functions. A brief review of the seven functions listed in the Revised Maintenance Policy Statement make it immediately clear that just about any activity can be deemed a supporting function to a maintenance program (e.g., maintenance management). This, in turn, gives extremely broad sweep to the new enforcement escalation factor.


J.S. Nuclear Regulatory Commission  
B13434/Page 3  
February 5, 1990

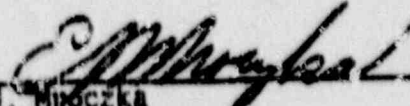
Finally, the modification to the Enforcement Policy raises the question as to what constitutes a "programmatic" failure. The Enforcement Policy does not define this concept. Thus, without a clear definition of the term, any number of violations greater than two could be deemed programmatic in nature.

As the Commission acknowledged in the Statement of Consideration to the Enforcement Policy modification, the use of root cause as an adjustment factor is a significant departure from prior practice. The NRC has never before singled out a particular programmatic area for escalation in its Enforcement Policy. Rather, the factors have been directed at such general considerations as identification and reporting. The full effect of this departure will only be known in the future as the NRC Staff begins to apply the factor to escalated enforcement actions. However, we believe that this is potentially a very significant change. We believe that Commissioner Remick, who disapproved the enforcement portion of the maintenance policy, has identified some potential flaws in the revised policy. His concerns relate to reservations regarding the ability to conclusively determine that maintenance is a root cause of a regulatory violation, and with his concern that special treatment of maintenance violations could draw attention and resources from other areas of equal or even greater safety importances.

In addition to the comments offered above, CYAPCO and NNECO endorse the comments being filed by NUMARC on behalf of the industry. We trust these comments will be given careful consideration, and we remain available to discuss this matter at your convenience.

Very truly yours,

CONNECTICUT YANKEE ATOMIC POWER COMPANY  
NORTHEAST NUCLEAR ENERGY COMPANY

  
E. J. Hinczka  
Senior Vice President

cc: W. T. Russell, Region I Administrator  
A. B. Wang, NRC Project Manager, Haddam Neck Plant  
J. T. Shedlosky, Senior Resident Inspector, Haddam Neck Plant  
M. L. Boyle, NRC Project Manager, Millstone Unit No. 1  
G. S. Vissing, NRC Project Manager, Millstone Unit No. 2  
D. H. Jaffe, NRC Project Manager, Millstone Unit No. 3  
W. J. Raymond, Senior Resident Inspector, Millstone Unit Nos. 1, 2, and 3