

DOCKET NUMBER PR 2
PROPOSED RULE

(7)

DUKE POWER COMPANY

LEGAL DEPARTMENT

DOCKETED
USNRC

(54 FR 50610)

P. O. Box 33189

CHARLOTTE, N. C. 28242

90 FEB -6 P2:51

(704) 373-2570

February 5, 1990

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

Attention: Docketing and Service Branch

Re: Revisions to Policy and Procedure
for Enforcement Actions
(54 Fed. Reg. 50610)

Dear Mr. Chilk:

Duke Power Company (Duke) hereby submits the following comments */ regarding the Nuclear Regulatory Commission's (NRC or Commission) revision to its General Statement of Policy and Procedure for NRC Enforcement Actions published in the Federal Register on December 8, 1989. (54 Fed. Reg. 40610)

Duke does not support the concept embodied in the modified policy statement. Duke does not believe that present circumstances justify the Commission's amending its Enforcement Policy to add an additional civil penalty adjustment factor for violations involving maintenance deficiencies. As Duke understands the Commission's action, it has simultaneously modified its Enforcement Policy (see 54 Fed. Reg. 50610-11) and revised its Policy Statement on Maintenance (see 54 Fed. Reg. 50611-13). The net effect of these changes is to provide, in the modified Enforcement Policy, that for any enforcement action

The base civil penalty may be increased as much as 50% for cases where a cause of a maintenance-related violation at a power reactor is a programmatic failure. For the purposes of application of this factor, a cause of the violation shall be considered to be maintenance-related if the violation could have been prevented by implementing a maintenance program consistent with the scope and activities

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*/ Duke recognizes that comments also will be filed by the Nuclear Management and Resources Council (NUMARC) and by the firm of Bishop, Cook, Purcell and Reynolds on behalf of several NRC Licensees, of which Duke is one. Duke adopts those comments as its own.

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defined by the Revised Policy Statement on the Maintenance of Nuclear Power Plants. In assessing this factor, consideration will be given to, among other things, whether a failure to perform maintenance or improperly performed maintenance was a programmatic failure. The degree of the programmatic failure will be considered in applying this factor. (Emphasis added) (54 Fed. Reg. 50611)

As noted, Duke supports, and adopts as its own, the comments filed by NUMARC and Bishop, Cook. In addition to those comments, however, Duke would point out that it believes that if the Commission amends its Enforcement Policy as it appears to intend to do, a likely result will be enforcement actions which are not uniformly applied. This is so because there is at present a lack of guidance from the Commission available to NRC Licensees and to the NRC Staff as to precisely what constitutes a "maintenance-related violation" which is a "programmatic failure."

As illustrated in the quote above, NRC says that a "maintenance-related" violation shall be deemed to exist if it could have been prevented by Licensee implementation of a maintenance program as defined by the Revised Policy Statement on Maintenance. NRC goes on to say that during the "next 18 months" */ it will monitor Licensees and the industry as a whole to assess the need for additional rulemaking in the maintenance area. During that same 18-month time period, moreover, NRC "intends to emphasize maintenance [in enforcing existing requirements for power reactors] by assessing whether a safety significant violation . . . of license conditions or regulations could have been prevented if an effective maintenance program had been implemented." (54 Fed. Reg. 50612) It is for that reason that the Commission is modifying its Enforcement Policy in the manner stated above.

One would assume from the foregoing that the Commission already has in place clear guidance and standards for its preferred maintenance program so that Licensees can measure their activities against those standards, and for individual NRC inspectors to use in assessing whether or not a violation (or a "problem area", defined as "aggregated violations") has a "maintenance root cause" (54 Fed. Reg. 50610) and thus should be escalated. This, however, is not the case. The Revised Policy Statement on Maintenance does not establish any clear standard with respect to maintenance programs. Likewise, it does not provide any criteria for applying the Enforcement Policy Revisions.

In its Revised Policy Statement on Maintenance, the Commission observes that it believes that:

"development and use of a comprehensive performance-based standard for maintenance, which provides guidance and requirements on the scope,

*/ The 18 months dates from December 8, 1989, the effective date of the Revised Policy Statement on Maintenance.

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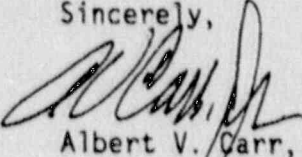
goals, performance and activities associated with an effective maintenance program, is important in assuring that maintenance is improved." (Emphasis added) (54 Fed. Reg. 50612)

The Commission's observation would seem to be correct. However, the NRC then goes on to say: "Therefore, during the next 18 months, the Commission intends to develop, on a cooperative basis with the industry and public, a maintenance standard for commercial nuclear power plants," and that it "intends to have [such a] standard available for use in approximately 1 year." (Id.)

Consequently it appears to Duke that, at a minimum, NRC Licensees and inspectors will be operating from March 8, 1990, until at least early in 1991, without the benefit of "guidance and requirements" from the Commission as to what constitutes a standard for maintenance against which to measure the escalation factor to be applied under the revised Enforcement Policy. */ The lack of guidance to Licensees and to the individual inspectors could well be exacerbated by the fact that the Commission itself has told the Staff that it is taking a personal interest in Staff's actions under the modified Enforcement Policy Statement. In Duke's view, the situation described above is quite likely to lead to inconsistent and arbitrary enforcement actions which in turn will intensify the already-existing adversarial nature of the NRC's enforcement process. Duke respectfully requests that the NRC withdraw its revisions to its Enforcement Policy at least until NRC has, as discussed in the Revised Policy Statement on Maintenance, promulgated (on a cooperative basis with the industry and the public) the standards for what it believes to be an adequate maintenance program.

Duke appreciates the opportunity to comment on the revisions to the Enforcement Policy and would welcome the opportunity to discuss further any comments with the appropriate NRC personnel.

Sincerely,



Albert V. Carr, Jr.
Associate General Counsel

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*/ Duke has had direct contact with members of NRC Headquarters Staff on these matters and is aware from those discussions that NRC Licensees (or at least Duke), NRC Headquarters and NRC Regional personnel do not have a consistent understanding of what the Commission intends by "maintenance."