

NORTHEAST UTILITIES



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

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April 5, 1993

Docket Nos. 50-213

50-245

50-336

50-423

B14432

Chairman Ivan Selin
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Selin:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3
Final Policy Statement on
Possible Safety Impacts of Economic Performance Incentives
Nuclear Safety Engineering Group Evaluations

In its Final Policy Statement on Possible Safety Impacts of Economic Performance Incentives, dated July 24, 1991, 56 Fed. Reg. No. 142, pp. 33945-33947 ("Final Policy Statement"), the NRC expressed its concern that certain forms of economic performance incentive regulation have the potential for adversely affecting nuclear plant operation and public health and safety. In particular, the NRC stated its concern "about any State public utility commission's undue reliance on a utility's corrective actions following an incident to justify the disallowance of costs related to the incident" 56 Fed. Reg. 33947. The NRC expressed its intention to continue to monitor state regulatory actions to identify changes in existing programs and how the programs have been implemented. The NRC also urged licensees to inform the NRC of economic performance incentive programs that can affect safety.

Northeast Utilities (NU) has been periodically providing the NRC with information relevant to this matter. One example⁽¹⁾ dealt with a proposed disallowance at our Millstone Unit No. 2 facility stemming from an isolated employee error performing routine surveillance.

(1) E. J. Mroczka letter to S. J. Chilk "Draft Policy Statement -- Possible Safety Impacts of Economic Performance Incentives: Report of NNECO, Proposed Economic Disallowance Penalty," dated March 28, 1991.

Adol
1/10 Add: Ivan Selin Ltr

Further to our continuing dialogue on this matter, Northeast Nuclear Energy Company (NNECO) hereby notifies the NRC of a decision by a hearing examiner of the Massachusetts Department of Public Utilities (DPU) which NNECO believes has the potential to adversely affect plant operation and public health and safety. The hearing examiner's decision was diametrically opposed to the decisions of the Connecticut Department of Public Utility Control (DPUC) on the same issue. The Connecticut decisions were provided to the NRC in January of this year. Pending review of the final order from the hearing examiner, Western Massachusetts Electric Company (WMECO), a subsidiary of NU, intends to request that the hearing officer's decision be reviewed by the DPU, who may benefit from any thoughts the NRC may have about the possible impact of such a decision on public health and safety.

The Massachusetts decision grants the Massachusetts Attorney General's motion to compel WMECO, NNECO's affiliate, to produce reports and other documents prepared by NU's Nuclear Safety Engineering Group (NSEG) in an economic regulatory proceeding in Massachusetts, subject to a confidentiality agreement. WMECO objected to the Attorney General's request, on the grounds that such documents are subject to the privilege of self-critical assessment and therefore are not discoverable, and that, whether or not the privilege is applicable, strong public policy reasons support nondisclosure. In particular, there is a strong public policy in favor of encouraging candid internal self-assessments by operators of nuclear power plants. If NSEG documents are used as evidence to support an economic disallowance, the employees whose job it is to prepare such reports will view adverse decisions from economic regulators as incentive to be less than fully candid in future NSEG reports. Because the NSEG's function depends upon absolute candor and complete attention to the details of operational events at nuclear plants to prevent recurrence, without regard to other potential implications of their work, any diminution of that candor could have an adverse impact on plant operation and public health and safety.

This issue arose in the context of the DPU's annual review of the performance of the generating units in which WMECO owns an interest, including Millstone Units Nos. 1, 2, and 3, the Haddam Neck Plant, Vermont Yankee, Maine Yankee, and Yankee Rowe. The Massachusetts performance review program is described in NUREG/CR5975, "Incentive Regulation of Investor-Owned Nuclear Power Plants by Public Utility Regulators," Sec. 2.9. If the DPU finds, as a result of its review, that management's activities with respect to any outage during the performance year were imprudent, it is authorized to disallow the recovery through rates of replacement power costs related to that outage.

The 1991-92 performance review is currently in the discovery phase. As required by the DPU's rules, WMECO has filed voluminous contemporaneous documentation concerning the outage events at each plant during the performance year. WMECO has also responded to almost 700 detailed information requests from the Attorney General, the purported advocate for consumer interests in Massachusetts. It is anticipated that the Attorney General will argue for disallowance of replacement power costs based on its analysis of the information filed by WMECO. WMECO's total exposure is greater than \$20 million.

As part of its massive discovery effort, the Attorney General has requested WMECO to provide reports and other documents prepared by NSEG. The NSEG is the group that NNECO has tasked with performing independent assessments of operational events at plants operated by NNECO and Connecticut Yankee Atomic Power Company. The NSEG also recommends corrective actions to prevent their recurrence. The Attorney General is sponsoring two witnesses whose usual method is to extract self-critical statements and conclusions from the NSEG reports and submit them to the economic regulator as evidence of imprudence.

NSEG reports were similarly sought by the Connecticut Office of Consumer Counsel (OCC) for use by one of the same adversary witnesses in a Connecticut DPUC proceeding investigating the prudence of outage costs incurred by The Connecticut Light and Power Company (CL&P), NNECO and WMECO's Connecticut affiliate. In September 1992, in a decision previously provided to the NRC, the Connecticut DPUC sustained CL&P's objection to producing such documents to the OCC, on the grounds that:

"[t]he self-critical assessment conducted by the NSEG is consistent with the type of evaluation conducted by the NRC, and is designed not to assign fault for a particular incident but to improve reliability and achieve higher levels of safety in the future operation of CL&P's nuclear facilities. Such self-critical assessment is governed by the privilege against disclosure of self-critical assessments. Clearly, there is a strong public interest in encouraging continued internal performance assessments by operators of nuclear power plants. That public interest is not served if disclosure of the result of such performance assessments is compelled, resulting in a chilling effect on the thoroughness and candor with which those assessments are performed. Furthermore, the benefits of the search for improved safety at nuclear power plants far outweigh the interest in disclosure of the information sought by the OCC in Interrogatories 8(b) and 8(c)."

NNECO submits that, unlike the Connecticut decision quoted above, the Massachusetts hearing examiner's decision compelling WMECO to produce the NSEG reports is precisely the type of regulatory activity that was identified as a cause for concern in the NRC's Final Policy Statement. If the employees responsible for preparing NSEG reports know that their evaluations will be used as the basis for imposing a financial disallowance, there is a risk that they will be less candid in preparing their reports. The potential for economic disallowance will have a chilling effect on their work, and the ultimate result will be an adverse effect on nuclear safety.

The NRC also recognized the possibility of such an adverse effect in the Final Policy Statement and reiterated that concern with specific reference to use of

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SALP ratings in economic incentive programs in NUREG/CR5975, where it stated that:

"The NRC Staff focuses on the issues identified in the SALP report and apparent root causes of problems. The NRC's concern is that the safety of the unit could be adversely affected if the issues identified in SALP reports are obscured because of concerns over the financial consequences incurred as a result of specific SALP ratings"

"[t]he NRC perceives a program that employs SALP ratings as one that could inhibit the operating staff and management from disclosing safety-significant information, which is cause for major concern."

In the same NUREG, it was acknowledged that:

"[i]ncentive programs that focus on nuclear safety rather than economic operation of nuclear units have one more drawback. They may interfere with the exclusive Federal regulatory authority under the Atomic Energy Act over safety matters at nuclear power plants (56 FR 33947)."

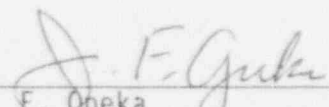
SUMMARY

Pending the DPU hearing examiner's final decision, which the company will forward to you, this issue will be presented to the full DPU for review through the Company's appeal of the hearing examiner's decision. If the NRC has views on this issue that were not expressed in earlier statements concerning the possible effects of performance incentive regulation, it may wish to express those views at this time.

We appreciate your consideration of the above matters and will continue to keep you informed. Please contact me at (203) 665-5323, or Richard M. Kacich at (203) 665-3298 if you have any questions.

Very truly yours,

NORTHEAST UTILITIES



J. F. Opeka
Executive Vice President

cc: See Page 2

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cc: Commissioner J. R. Curtiss
Commissioner G. DePlanque
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Commissioner K. C. Rodgers
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