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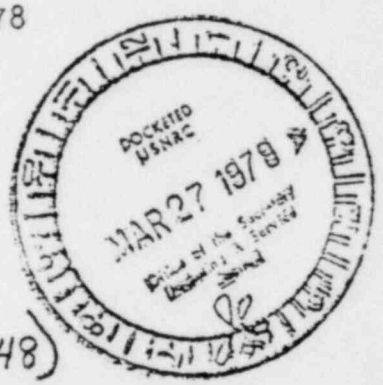


Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

(6)

Re: PRM-20-10 (43FR 3448)

Dear Sir:

On January 25, 1978, the Nuclear Regulatory Commission ("Commission") published in the Federal Register notice of receipt of a petition for rulemaking filed by Citizens United for Responsible Energy ("CURE"). 43 Fed. Reg. 3448 (1978). CURE's petition seeks an amendment of 10 C.F.R. § 20.403 to require that notice of all abnormal incidents (defined to include the release of any radioactive products to the air or water without regard to quantity), be provided immediately both to the Commission and to "the director of a designated state agency". In response to the Commission's notice, we submit the following comments on behalf of The Detroit Edison Company, Exxon Nuclear Company, Inc., Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, Public Service Company of Indiana, Inc., and Rochester Gas and Electric Corporation.

The fundamental flaw in CURE's petition is that it would require the reporting of the release of any radioactivity, without regard to the quantity of the

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release. Current regulations permit the release of extremely low levels of radioactivity for activities regulated by the Commission. Licensees are presently prohibited from releasing to unrestricted areas amounts of radioactivity in excess of those limits specified in Appendix B, Table II, of Part 20. 10 C.F.R. § 20.106 (1977). Moreover, releases from nuclear power reactors in amounts lower than those specified in Table II are to be kept "as low as is reasonably achievable" ("ALARA"). 10 C.F.R. §§ 50.34a, 50.36a (1977). Numerical guidance interpreting the ALARA standard is provided in Appendix I to Part 50. Those low level releases must be monitored by licensees and the totals reported to the Commission semi-annually. 10 C.F.R. § 50.36a(a)(2).

In contrast, the reporting requirements of § 20.403 are triggered at significantly higher release levels. Those requirements are designed "to give the [Commission] prompt notice of potentially serious accidents involving licensed material in order that appropriate steps may be taken to protect against further hazard to life or property." 22 Fed. Reg. 3389 (1957). It is simply inconsistent with the purpose of § 20.403 to trigger emergency reporting requirements upon the release of the extremely small amounts of radioactivity now permitted under normal operating conditions. CURE has provided no basis for its request to establish the threshold reporting requirements at zero, despite the requirement of 10 C.F.R. § 2.802 that persons initiating rulemaking proceedings set forth "the basis for the[ir] request." For this reason alone, the Commission would be fully justified in denying the petition.

Moreover, CURE's proposed amendment, if read literally, would establish a reporting requirement only for releases of radioactivity, and thus would eliminate the requirement for emergency reporting of radiation exposure to individuals. Currently, 10 C.F.R. § 20.403 requires such reporting if designated levels of radiation are received by individuals. Consistent with the purpose of that regulation, the emergency reporting levels are orders of magnitude greater than the low levels of radiation currently permitted by 10 C.F.R. § 20.105 (1977). CURE has likewise provided no basis for eliminating those requirements.

CURE bases its petition, in part, on "the absence of rules requiring any communications with state agencies within close geographic proximity." Section

20.403 presently contains no such requirement, but that is not to say the requirement is non-existent. Section 50.34(b)(6)(v) of the Commission's regulations requires that each application for an operating license for a production or utilization facility contain an emergency plan within the required final safety analysis report. Detailed requirements for emergency plans are contained in Appendix E to Part 50. In essence, emergency plans must contain requirements for the notification of appropriate State and local agencies in cases of emergency. 10 C.F.R. Part 50, App. E, ¶¶ IV A, C, and D. Thus, imposing the same requirement under § 20.403 is redundant. Moreover, the responsible State, as well as local, agencies may vary for each site. These differences in organizational responsibility for dealing with emergencies can best be addressed on a case-by-case basis through the emergency plan rather than through a generic requirement for reporting to a "designated state agency".

Finally, CURE seeks a "full hearing" on its requested amendment. This request is ambiguous because it is unclear whether CURE is requesting that the Commission institute its customary notice-and-comment rulemaking or whether CURE is requesting the Commission use additional, trial-type procedures. Assuming the Commission were to grant the petition and institute a rulemaking proceeding, we submit that the notice-and-comment procedures ordinarily employed by the Commission are fully adequate to address any issues raised by CURE. Neither the subject matter in itself nor the terms of CURE's petition indicate the need for any additional procedures in this case. There would thus be no reason to treat this requested rulemaking proceeding any differently from the vast majority of other Commission proceedings which utilize only the notice-and-comment format.

For the foregoing reasons, we respectfully submit that the petition for rulemaking should be denied. Should the Commission decide to institute a rulemaking proceeding, we urge that notice-and-comment procedures be employed.

Respectfully submitted,

LeBoeuf, Lamb, Leiby & MacRa