



OFFICE OF THE SECRETARY

UNITED STATES NUCLEAR REGULATORY COMMISSION WASHINGTON, D.C. 20555

REFER TO: M820715B

July 23, 1982

- ACTION - Denton
Cys: Dircks
Rehm
Stello
Trammell
GCunningham
DeYoung
Minogue
Felton
Philips
Besaw
Woolley

MEMORANDUM FOR: Leonard Bickwit, Jr., General Counsel

Paul B. Cotter, Jr., Chairman
Atomic Safety and Licensing Board Panel

William J. Dircks, Executive Director
for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION,
3:30 P.M., THURSDAY, JULY 15, 1982,
COMMISSIONERS' CONFERENCE ROOM (PUBLIC MEETING)

I. SECY-82-99 - 10 CFR Part 50 - Proposed Rule to Clarify Applicability of License Conditions and Technical Specifications in an Emergency

The Commission, by a vote of 5-0* approved for publication a proposed rule, as modified in Attachment 1, that would provide for a licensee taking reasonable actions that depart from license conditions or technical specifications when such action is immediately needed to protect the public health and safety. Subsequent to the meeting Chairman Palladino agreed with the additional views of Commissioners Ahearne and Asselstine. These have been included in Attachment 1 as the Commission's comments. The proposed rule as attached also includes the additional comments of Commissioner Gilinsky.

In approving the paper Commissioner Roberts noted that he believes the NRC in considering any enforcement action, should carefully consider the circumstances involved in which a licensee had taken actions departing from a license condition or technical specifications in an emergency.

* Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously indicated that he would approve. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision.

The Commission requested that:

1. The proposed rule be published in the Federal Register allowing 60 days for public comment.
(EDO) (SECY Suspend: 8/9/82)
NRR
 2. Absent objections from Commissioners and provided that no significant adverse comments or significant questions have been received and no substantial changes in the text of the rule are indicated, the Executive Director for Operations arrange for publication of the amendment in final form. Additionally any comments in respect to added Commission views should be referred to them. If significant questions have been received or substantial changes in the text of the rule are indicated, the revised amendment will be submitted to the Commission for approval.
(EDO) (SECY Suspend: 11/15/82)
NRR
 3. Copies of the proposed rule be distributed to applicants, licensees, and other interested persons.
(ADM/EDO) (SECY Suspend: 8/16/82)
NRR
 4. The appropriate Congressional committees be informed.
(OCA/EDO) (SECY Suspend: 8/16/82)
NRR
 5. The Office of Public Affairs issue a public announcement.
(OPA/EDO) (SECY Suspend: 8/4/82)
NRR
 6. The prepared action be submitted to OMB for its considerations of any potential or new reporting requirements, record keeping, or information collection requirements, pursuant to Public Law 96-511.
(EDO) (SECY Suspend: 8/16/82)
NRR ADM
- II. SECY-82-257 - Draft Policy Statement on Treatment of Psychological Stress Contentions in Proceedings Other than TMI-1 Restart

The Commission by a vote of 5-0* approved a Statement of Policy providing guidance to the licensing boards on the treatment of psychological stress contentions in proceedings other than TMI-1 restart.

(Subsequently, on June 16 the Statement of Policy was signed by the Secretary.)

* Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously indicated that he would approve. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision.

III. SECY-82-268 - Draft Immediate Effectiveness Order for San Onofre 2 and 3

The Commission by a vote of 5-0* approved an Order allowing the San Onofre Licensing Board's January 11, 1982 and May 14, 1982 decisions to become effective.

The Commission directed the Board to provide the Commission with a report on the status of the offsite medical arrangements questions within four months of the date of issuance of the full-power operating license if the Board's decision on that subject had not been issued.

(ASLBP)

(SECY Suspense: 12/16/82)

(Subsequently, on June 16 the Secretary signed the Order.)

IV. SECY-82-281 - TMI-1 Psychological Impacts -- Litigation Strategy and Response to Licensee's "Motion with Respect to Psychological Stress Issue"

The Commission, by a vote of 4-1** (Commissioner Gilinsky disapproving) approved an Order denying licensee's "Motion with Respect to Psychological Stress Issue."

(Subsequently, on July 16 the Order with separate views of Commissioner Gilinsky was signed by the Secretary.)

* Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously indicated that he would approve. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision.

** Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously indicated that he would disapprove. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision.

V. SECY-82-282 - Three Mile Island Restart Proceeding -- Appeal Board Order Requesting Authorization to Hear Issues Sua Sponte

The Commission, by a vote of 5-0,* approved an Order responding to the TMI-1 Restart Appeal Board request for authorization to hear three safety issues sua sponte.

The Commission denied the ASLAB request and directed the NRC staff to examine each of the issues raised by the Board and to provide the Commission with its findings prior to the time the Commission is to make its decision on restart.

(EDO)
Nre

(SECY Suspense: TBD)

(Subsequently, on July 16 the Order was signed by the Secretary.)

Attachment:
As stated

cc: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
Commission Staff Offices
PDR - Advance
DCS - 016 Phillips

* Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Gilinsky was not present when this item was affirmed, but had previously indicated that he would approve. Had Commissioner Gilinsky been present, he would have affirmed his prior vote. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision.

U 2200

NUCLEAR REGULATORY COMMISSION

10 CFR PART 50

Applicability of License
Conditions and Technical Specifications
in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a change to its regulations which would clarify that all Part 50 ~~reactor~~ licensees may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

The rule is being proposed because NRC regulations currently do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which a license condition or a technical specification could prevent necessary protective action by the licensee. The proposed rule would allow such action to be taken in emergency circumstances.

DATE: Comments must be submitted in writing on or before _____.

Comments received after this date will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed rule change to the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Copies of the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D. C.

FOR FURTHER INFORMATION CONTACT: Charles M. Trammell, III, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555 (telephone: 301-492-7389).

SUPPLEMENTARY INFORMATION: The proposed change would clarify the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary action by a licensee to protect the public health and safety. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions -- normal, transient and accident conditions -- analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing -- e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforeseen in the licensing process before TMI-2; thus, the technical specifications prohibited this action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failures or coincident accidents where plant emergency procedures could be in conflict or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the license. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of use of equipment needed for proper protective action.

Technical specifications or license conditions can be amended by NRC, and the proposed rule is not intended to apply in circumstances where time allows this process to be followed. The proposed rule would apply only to those emergency situations where action by the licensee is required immediately to protect the public health and safety -- action which may be contrary to a technical specification or a license condition.

It is the intent of the proposed rule to allow deviations from license requirements only in the special circumstances described. It is not intended that licensees be allowed to deviate from procedures and other license requirements where these are applicable.

For these reasons, the Commission believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

In view of the fact that the rule permits a licensee to depart from NRC's requirements, the Commission expects that, if adopted, it would be applied rarely and only under the special circumstances described. The NRC would review carefully any licensee's use of the rule to determine whether the licensee had to act immediately in an emergency to avert possible adverse consequences to the public health and safety and may require written statements from a licensee concerning its actions after use of the provisions of this rule. The Commission recognizes that a licensee would need to exercise judgment in applying the rule and that, in its after-the fact review, it may not agree in every instance with

a licensee's actions. However, enforcement action for a violation of the rule would not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The proposed rule also would require a licensee, under §50.72, to notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification. When time permits, the notification would be made before the protective action is taken; otherwise, it would be made as soon as possible thereafter. The impact of this reporting requirement on licensees would be negligible.

The proposed rule follows the recommendation in NUREG-C616, "Report of Special Review Group, Office of Inspection and Enforcement on Lessons Learned from Three Mile Island"* that NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

- a). The proposed rule does not require that departure from a license condition or technical specification have the concurrence of the most senior licensee and NRC personnel available at the time before the departure.

While the Commission does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the proposed rule specifies only the minimum actions necessary to assure public health and safety, without going into further detail as to which other licensee personnel should be involved if time permits. The persons responsible for safe operation

* NUREG-9616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H. Street, N.W., Washington, D.C.

that a reactor operator should get the concurrence of a senior reactor operator and does not go into further detail as to which additional persons should be involved if time permits. which persons should be involved under other circumstances.

of the facility are already identified in the facility license and implementing procedures. Adding this requirement to the proposed rule itself is therefore believed to be unnecessary.

- b). The proposed rule does not require the concurrence of NRC personnel. Receiving the "concurrence" or "approval" of NRC personnel would amount to a license amendment using procedures contrary to those existing for amendments. The rule specifically applies to emergency situations where immediate action is needed and time is not available for a license amendment. Requiring the concurrence of NRC personnel available at the time tends to shift the burden of safety from the licensee to NRC - contrary to the proposed rule's intent. It could also shift the burden to NRC personnel on site who may be unqualified to concur in a proposed licensee action.

The Commission believes that the proposed rule on the applicability of license conditions and technical specifications in emergencies should be implemented by adding the necessary clarification to §50.54, "Conditions of licenses" and to §50.72, "Notification of significant events." The proposed rule would apply to all facilities licensed pursuant to Part

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

ADDITIONAL COMMENTS OF COMMISSIONER GILINSKY

I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

PAPERWORK REDUCTION ACT STATEMENT: Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC will submit to the Office of Management and Budget for its consideration of any potential or new reporting, record keeping, or information collection requirements contained in the proposed rule.

REGULATORY FLEXIBILITY CERTIFICATION: In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These proposed regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated.

PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 reads as follows:

Authority: Sec. 161i., 68 Stat. 948 [42 U.S.C. 2201(1)].

2. A new paragraph (y) is added to §50.54 to read as follows:

§50.54 Conditions of licenses.

(y) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when such action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(z) A licensed reactor operator taking action permitted by paragraph (y) shall, as a minimum, obtain the concurrence of a licensed senior reactor operator prior to taking such action.

3. A new paragraph (c) is added to §50.72 to read as follows:

§50.72 Notification of significant events.

(c) Each licensee licensed under §50.21 or §50.22 shall notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification, as permitted by §50.54(y). When time

permits, the notification shall be made before the protective action is taken; otherwise, notification shall be made as soon as possible thereafter. The Commission may require written statements from a licensee concerning its actions after use of this provision of the rule.

Dated at Washington, D.C. this _____ day of _____, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission