

10/65

WINSTON & STRAWN

DS09

FREDERICK H. WINSTON (1853-1885)
SILAS H. STRAWN (1851-1948)

1400 L STREET, N.W.
WASHINGTON, D.C. 20005-4502
APR 5 1994 -6 AM 8:26

(202) 371-5700

FACSIMILE (202) 371-5950

CHICAGO OFFICE
39 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601
(312) 558-5800

NEW YORK OFFICE
175 WATER STREET
NEW YORK, NY 10038-4981
(212) 289-2500

D. Allison

59 FR 5614

2/7/94

(5)

April 5, 1994

Mr. David L. Meyer
Chief, Rules Review and Directives Branch
Division of Freedom of Information
and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Second Draft NUREG-1022, Revision 1; 59 Fed. Reg. 5614 (February 7, 1994)

Dear Mr. Meyer:

I. INTRODUCTION

On behalf of the Nuclear Utility Backfitting and Reform Group ("NUBARG"),^{1/} we hereby submit these comments regarding the second draft NUREG-1022, Revision 1. NUBARG is responding to the Staff request for comment in the Federal Register notice announcing the availability of this most recent draft. 59 Fed. Reg. 5614 (February 7, 1994). Overall, the second draft of NUREG-1022, Revision 1 resolves the majority of NUBARG's backfitting related concerns and takes a significant step towards clarifying and consolidating Staff guidance on the reporting requirements of 10 C.F.R. §§ 50.72 and 50.73. As explained in detail below, NUBARG believes that only a few issues related to its prior comments require further clarification. We also address an additional issue related to the proper mechanism for future clarification of the reporting guidance.

^{1/} A list of NUBARG members is attached (Attachment 1). NUBARG is a consortium of utilities that actively participated in the NRC's development of the backfitting rule, 10 C.F.R. § 50.109, and which has monitored the application of the rule in practice.

II. NUBARG COMMENTS ON SECOND DRAFT NUREG-1022, REVISION 1

NUBARG commends the Staff on its efforts to revise this significant guidance document. The latest draft of NUREG-1022, Revision 1 will greatly assist licensees in complying with NRC reporting requirements at 10 C.F.R. §§ 50.72 and 50.73. However, NUBARG is concerned that some confusion still exists on the four matters addressed below. NUBARG believes that further clarification would be helpful to ensure that licensees fully understand Staff interpretations of NRC reporting regulations and that the guidance is consistent with those regulations and previous Staff positions.

A. Assuming Additional Single Failures

On April 8, 1993, the Staff published a position in the Federal Register stating that

an event or condition is reportable [pursuant to 10 C.F.R. § 50.72(b)(1)(ii)(B)] if a component or system was installed such that it does/did not meet minimum operability requirements for a period exceeding the allowed LCO and combined with another single failure, it would cause the plant to be outside the design basis per FSAR. (Emphasis added.)

"Event Reporting Systems; Public Meeting," 58 Fed. Reg. 18167, 18174 (April 8, 1993). NUBARG commented that this position was unnecessary and overburdensome to the extent that it would require licensees to postulate, in addition to the inoperable component or system, hypothetical events or conditions to determine for reporting purposes whether a plant is outside its design basis.²

The Staff subsequently revised the guidance to state that the Staff would consider long term inoperability of one train of a two-train system reportable because the system did not have suitable redundancy (assuming such redundancy was required) per the General Design Criteria. (Second Draft NUREG-1022, Rev. 1, § 3.2.4). In addition, the guidance excepted minor infractions such as (1) cases of technical inoperability, where a component is declared inoperable because a surveillance test is overdue, or (2) cases where the LCO allowed outage

² See NUBARG's August 30, 1993 Supplemental Comments Regarding Staff Position 2 on Draft NUREG-1022, Revision 1, Section 3.2.4 (58 Fed. Reg. 18167, 18174 (April 8, 1993)) ("Supplemental Comments") (Attachment 2).

time is slightly exceeded. Id.^{3/} NUBARG agrees that these positions are reasonable. However, the Federal Register notice announcing the availability of the second draft emphasizes that the Staff position requesting licensees to postulate additional single failures "has not been retracted." 59 Fed. Reg. 5614 (February 7, 1994).

NUBARG believes that clarification is required to assure that the language of the guidance document is recognized as controlling and that the record reflects that the Staff position of April 8, 1993 (suggesting that additional single failures be postulated regardless of a plant's design basis) has, in fact, been retracted. Absent this clarification, the April 8, 1993, Staff position may yet be misconstrued as an interpretation of how the Staff would apply the guidance. As NUBARG noted in its earlier comments, such an interpretation would be overly burdensome and inconsistent with previous Staff guidance in this area.^{4/}

B. Significant Hampering of Site Personnel

10 C.F.R. §§ 50.72(b)(1)(iii) and (vi) and 10 C.F.R. §§ 50.73(a)(2)(iii) and (x) require licensees to report any internal event or external condition "that significantly hampers [or hampered] site personnel in the performance of duties necessary for the safe operation of the [nuclear power] plant" The first draft of NUREG-1022, Rev. 1 proposed to require licensees to report an internal event with the "potential to significantly hamper site personnel" or an external condition that "could . . . or is expected to significantly hamper personnel." (First Draft NUREG-1022, Rev. 1, §§ 3.2.8, 3.2.5, emphasis added.) NUBARG commented that these proposals would ask licensees to report events or conditions with the "potential" to significantly hamper personnel regardless of whether they do hamper site personnel as specified in the regulations.^{5/}

In response to these concerns, the Staff eliminated the language objected to by NUBARG. However, the Staff added similar language to the second draft in some instances. For example, the guidance states that a small fire that "could not reasonably be expected to

^{3/} These conditions may, however, be reportable pursuant to other provisions, such as conditions prohibited by Technical Specifications under 10 C.F.R. § 50.73(a)(2)(i)(B).

^{4/} See NUBARG Supplemental Comments (Attachment 2).

^{5/} See NUBARG Comments on NUREG-1022, Revision 1 ("Comments") dated January 31, 1992, Specific Example of Proposed Guidance Exceeding the Regulatory Basis Number 3, at pages 4-5. (Attachment 3).

endanger the plant" would not be reportable, and that minor events requiring evacuation of an individual room are not reportable unless "the ability of site personnel to perform necessary safety functions is (or would be) significantly hampered." (Second Draft NUREG-1022, Rev. 1, § 3.2.8, emphasis added.) NUBARG does not object to these statements so long as they are not intended to require licensees to report events that could only hypothetically hamper personnel.

However, the Federal Register notice announcing the availability of the second draft of NUREG-1022, Rev. 1 noted that significant hampering includes "hypothetical demands, i.e., site personnel were or 'would be' significantly hampered." 59 Fed. Reg. 5614 (February 7, 1994) (emphasis added). As with the previous comment concerning consideration of single failures, NUBARG is concerned that although the Staff has modified the guidance to alleviate the problems presented by the first draft, the language of the Federal Register notice could still be interpreted to indicate that events that, under hypothetical circumstances could, but do not, or have not significantly hampered site personnel must still be reported under these provisions. We therefore recommend that the Staff clarify, preferably in the guidance itself, that licensees are not required to consider hypothetical demands for purposes of determining whether personnel are significantly hampered. As NUBARG has noted in previous comments,^{6/} the language of the regulations clearly contemplate reporting only events that actually hamper site personnel. Any consideration of hypothetical demands is inconsistent with the regulation and goes beyond the actual intent of the Commission.

C. Publication Of Staff Interpretations Of Guidance

On November 2, 1993, the Assistant Director for Regions IV and V of the Division of Reactor Projects wrote an internal memorandum interpreting NRC guidance related to outage surveillances and setpoint issues.^{7/} In particular, the memorandum contained detailed interpretations of 10 C.F.R. §§ 50.72(b)(1)(ii), 50.73(a)(2)(ii), 50.72(b)(2)(iii), 50.73(a)(2)(v), 50.73(a)(2)(vi), 50.73(a)(2)(vii), and 50.73(a)(2)(i)(B). The Regional Director of the Division of Reactor Safety then informed several licensees that the NRC intended to implement the "guidance" contained in the memorandum during future inspections.

^{6/} See NUBARG Comments (Attachment 3) at pages 4-5.

^{7/} Memorandum to Samuel J. Collins, Director Division of Reactor Safety, Region IV, from Elinor G. Adensam, Assistant Director for Regions IV and V, Division of Reactor Projects, "Task Interface Agreement: Interpretation of Reporting Requirements -- 93TIA006 (TAC No. M86339)" (November 2, 1993).

Mr. David L. Meyer
April 5, 1994
Page 5

NUBARG recognizes, of course, that the NRC has a need for such internal correspondence, and that various offices within the NRC will need support from other offices. However, an internal memorandum is not the appropriate device to establish substantive interpretations of legal standards that will be applied generically. The use of an internal memorandum to develop such generic standards violates fundamental principles of openness and public participation in the development of agency positions. NUBARG recommends that this "guidance" should be noticed in the Federal Register and licensees should be provided an opportunity to comment. If the Staff wishes to adopt the positions taken in the memorandum as generic guidance, these positions should -- after public comment -- be incorporated into NUREG-1022.

D. Timing Of Reports

NUBARG agrees with the Staff position in Second Draft NUREG-1022, Revision 1, § 2.11 that licensees sometimes require time to evaluate a particular condition to determine its reportability. NUBARG also agrees that such an evaluation should generally proceed on a schedule commensurate with the safety significance of the question. However, the second draft of NUREG-1022, Revision 1 should explicitly recognize that, in such cases, the 30-day time limit for submitting an LER runs from the time the licensee completes the evaluation (i.e., the time the reportable condition is "discovered"). NUBARG therefore recommends that, in those instances where a licensee must evaluate a condition to determine its reportability, the guidance be revised to specifically indicate that time limits for reporting begin to run only when the condition is determined to be reportable.

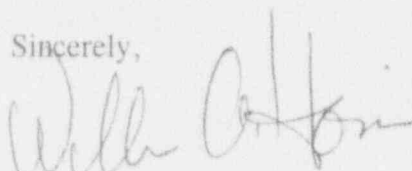
In contrast, Second Draft NUREG-1022, Revision 1, at Section 2.11 is less than clear on this point. The Staff defines an "Event Date" and a "Discovery Date." These definitions seem to suggest that the discovery date is the date when the licensee recognizes that a reportable event has occurred and that is the date that starts the 30-day clock. However, the language then goes on to dismiss the idea of a "reportability date" as a date that starts the clock. This is inconsistent and confusing. NUBARG believes that where an event has occurred or an issue has been identified, and the date or significance (for reportability) of that event or issue is less than manifest, the Discovery Date (as newly defined) and the reportability date (as previously referred to) are equivalent, namely, the 30-day clock begins when the licensee recognizes that a reportable event has occurred. As noted, NUBARG recommends clarification of § 2.11 consistent with these principles.

Mr. David L. Meyer
April 5, 1994
Page 6

III. CONCLUSION

The second draft NUREG-1022, Revision 1 marks a significant improvement over the first draft and, with some clarification of the backfitting related issues noted above, can provide licensees with valuable assistance in assessing reporting obligations. NUBARG appreciates the efforts of the Staff to resolve public concerns regarding the proposed reporting guidance.

Sincerely,



Daniel F. Stenger
William A. Horin
Mark J. Hedien
WINSTON & STRAWN

Legal Counsel To The Nuclear Utility
Backfitting and Reform Group

Attachments

NUBARG Members

Baltimore Gas & Electric Company

Carolina Power & Light Company

Centerior Energy Corporation
(representing Cleveland Electric
Illuminating Company and Toledo
Edison Company)

Commonwealth Edison Company

Entergy Operations, Inc
(representing Arkansas Power & Light,
System Energy Resources, Inc., and
Louisiana Power & Light)

Florida Power & Light Company

Florida Power Corporation

New York Power Authority

Niagara Mohawk Power Corporation

Northeast Utilities

Pennsylvania Power & Light Company

Philadelphia Electric Company

Rochester Gas & Electric Corporation

Texas Utilities

Washington Public Power Supply System