

WINSTON & STRAWN

Attachment 2

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August 30, 1993

BY HAND

Mr. Edward L. Jordan
Director, Office for Analysis and Evaluation
of Operational Data
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Supplemental Comments Regarding Staff Position
2 On Draft NUREG-1022, Revision 1, Section
3.2.4 (58 Fed. Reg. 18,167, 18,174 (April 8,
1993))

Dear Mr. Jordan:

I. INTRODUCTION

On behalf of the Nuclear Utility Backfitting and Reform Group ("NUBARG"), we hereby submit supplemental comments regarding draft NUREG-1022, Revision 1 ("Event Reporting Systems 10 CFR 50.72 and 50.73"). In particular, these comments address a specific question which arose at the recent NRC meeting on the resolution of public comments concerning the draft NUREG. As we discussed at that meeting, NUBARG agreed to prepare supplemental comments to provide further information related to the application of the reporting provision concerning conditions outside the design basis of the plant. In particular, this question concerns the NRC Staff position 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 found to be designed, manufactured, or installed such that it does/||id 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 its design basis per FSAR. (Emphasis added.)

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"Event Reporting Systems; Public Meeting," 58 Fed. Reg. 18,167, 18,174 (April 8, 1993).^{1/} For the reasons set forth below, NUBARG believes that the proposed position is unnecessary and overly burdensome to the extent that it requires 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. In many cases, exceeding an LCO time limit results in plant shutdown and is already reportable as outside Technical Specifications under 10 C.F.R. §50.72(b)(1)(i)(A). We are also concerned that the Staff position appears to conflict with existing NRC guidance.

II. NUBARG COMMENTS REGARDING PROPOSED POSITION

To be consistent with previous practice and to foster predictability in the reporting context, we recommend that the Staff modify its position regarding postulating single failures under 10 C.F.R. §50.72(b)(1)(ii)(B). Where notification is to be provided within one hour, the desire for predictability would be undermined by the expectation that licensees would need to postulate hypothetical additional failures and evaluate their effects. Such an expectation, given the one-hour time limit, would place a heavy burden on licensees. For example, the Staff position may force licensees to perform a single failure analysis to determine whether an event should be reported.

The potential additional impact resulting from the Staff position would not be offset by any countervailing safety benefit. The position addresses a condition which involves inoperable equipment (rather than, for instance, a particular plant parameter being exceeded). If a component is inoperable for longer than the LCO allows, the LCO will most likely require a shutdown, which is reportable in any case under 10 C.F.R. §50.72(b)(1)(i)(A). If the discovery is after the fact, such events would require a Licensee Event Report ("LER") under 10 C.F.R. §50.73(a)(2)(i)(A), or if a Technical Specification violation occurred, under 10 C.F.R. §50.73(a)(2)(i)(B). These collateral reporting provisions

^{1/} As an example, the Staff suggested that if a licensee discovers that one train of a two train safety system has been inoperable for an extended period of time during operation, exceeding the LCO allowed time, this would be considered operation outside the design basis because, "for an extended period of time," the system could not perform its safety function, assuming a single failure in the operable train. Id.

effectively address the situations contemplated by the new Staff position regarding postulated single failures. Thus, modification of the position should not result in a loss of information to the Staff.

Furthermore, both the language of 10 C.F.R. §50.72(b)(1)(ii)(B) and prior NRC Staff positions suggest that licensees should not be required to postulate a single failure in addition to an existing failure merely to determine reportability of an event under 10 C.F.R. §50.72(b)(1)(ii)(B).^{2/} The language of the regulation indicates that the Commission did not intend licensees to postulate additional events or conditions in assessing whether the plant is outside its design basis for reportability purposes pursuant to this provision. The regulations under §50.72(b)(1)(ii) specifically require reporting only where the plant is outside the "design basis." Single failure analyses may be appropriate for determining the design basis of a system, as in the General Design Criteria (10 C.F.R. Part 50, App. A), but not for determining the design basis of the plant in the reporting context pursuant to §50.72 and §50.2. While the Staff has previously indicated that potential common cause failures should be considered for reporting under certain circumstances, requiring licensees to hypothesize additional failures would conflict with earlier guidance and run the risk of creating confusion among licensees.

The new Staff position departs from earlier reporting guidance in several instances. First, the Staff has not previously required licensees to report a condition outside a plant's design basis based on purely hypothetical or postulated events. In fact, the Staff had previously indicated a clear difference in treatment between those reporting provisions which involve an actual event or condition, e.g., that "would" or "did" have a particular impact, and those concerning an event or condition that "could" have a particular effect. See, e.g., NUREG-1022, Rev. 0, Supp. 1 (Question and Answer 7.2, 7.8). The former category of provisions, including the provision at issue here, focus on actual plant conditions. The latter category may include some assessment of failures that did not actually occur, yet even then only if the condition that caused the failure is likely to have been present

^{2/} 10 C.F.R. §50.72(b)(1)(ii)(B) states that licensees shall notify the NRC as soon as practical and in all cases within one hour of "any event or condition . . . that results in the nuclear powerplant being . . . [i]n a condition that is outside the design basis of the plant."

elsewhere (see, e.g., Question and Answer 7.10). However, even under provisions couched in terms of "could," unrelated actual failures in multiple systems (see, e.g., Question and Answer 7.18) or single, independent failures where the redundant component remained operable (see, e.g., Question and Answer 7.20) would not be reportable. Thus, it seems inconsistent with this prior guidance to suggest that hypothetical failures must be postulated along with the actual event or condition to determine reportability under 10 C.F.R. §50.72(b)(1)(ii)(B).

Further, previous examples contained in prior reporting guidance do not suggest the need to postulate additional failures in evaluating reports under this provision. For instance, the examples of events reportable under 10 C.F.R. §50.73(a)(2)(ii)(B)^{3/} in Appendix C to the original NUREG-1022 do not indicate that licensees should postulate additional failures to determine whether a condition is outside a plant's design basis. In one of the examples, containment pressure decreased below negative 12 inches of water during a plant cooldown. NUREG-1022 (Original) at C-24. The Staff commented that the event was not reportable if no Technical Specification limits were violated (relevant to 10 C.F.R. §50.72(b)(1)(i)(B)) and the condition was not outside the design basis of the plant. In short, the example focused on the actual conditions present at the time and did not suggest hypothesizing additional events to assess reporting.

Another example involved Steam Generator water chemistry samples indicating a primary to secondary leak. NUREG-1022 (Original) at C-4. However, the Staff noted that the event was not reportable under 10 C.F.R. §50.73(a)(2)(ii) because the activity level did not exceed the Technical Specification limit and a single steam generator tube failure is an analyzed situation that is within the design basis of the plant. Again, the Staff did not indicate that the licensee should postulate additional failures (e.g., additional tube ruptures) to determine reporting obligations.

^{3/} This provision is essentially equivalent to the one-hour reporting standard in 10 C.F.R. §50.72(b)(1)(ii)(B). As the Staff has noted, the examples relating to 10 C.F.R. §50.73 would apply equally to parallel provisions of 10 C.F.R. §50.72, in that reporting criteria under 10 C.F.R. §50.72 and 10 C.F.R. §50.73 are "in most cases either identical or similar." NUREG-1022 (Original) at 1.

The Staff's new position asking licensees to postulate additional single failures in the design basis context also appears to be inconsistent with its parallel statements relating to reporting unanalyzed conditions under the same portion of 10 C.F.R. §50.72(b)(1). With regard to this provision, the Staff position reflected in the Federal Register notice summarizing the current status of issues related to NUREG-1022, Revision 1, stated that:

[the] intent was not [to require consideration of] postulated conditions -- potential failures [are] not reportable under this criterion: [the] draft NUREG will be clarified to limit [reporting] to actual conditions.

58 Fed. Reg. 18,167, 18,176 (April 8, 1993). Consistent with this view, on a related concept regarding whether licensees need to report if the "plant could have potentially been in an unanalyzed condition," the existing NRC reporting guidance provides the following answer: "the event is not reportable [under this subsection] if the plant was never in an unanalyzed condition." NUREG-1022, Supp. 1, Question and Answer 4.1, at p. 6 (emphasis added). Both of these views suggest that additional conditions, such as hypothetical single failures, should not be considered for "unanalyzed condition" reporting purposes. Yet, the Staff has taken the opposite approach to the parallel "design basis" provision under the same section of 10 C.F.R. §50.72.

Accordingly, to assure consistency with prior Staff guidance, and to maintain internal consistency in the guidance to be provided in NUREG-1022, Revision 1, the Staff should not require additional postulated failures for determinations of whether a plant is outside its design basis for 10 C.F.R. §50.72 reporting purposes.

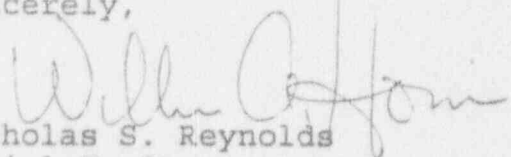
III. CONCLUSION

We urge the Staff to modify its position relating to the consideration of single failures under 10 C.F.R. §50.72(b)(1)(ii)(B). Requiring licensees to postulate additional failures to determine reportability would be inconsistent with

Edward L. Jordan
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prior and current Staff positions, will only complicate reporting evaluations under this provision, and will not increase plant safety.

Sincerely,



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January 31, 1992

Mr. David L. Meyer, Chief
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RE: Comments On NUREG-1022, Revision 1, "Event Reporting Systems, 10 CFR 50.72 and 50.73, Clarification of NRC Systems and Guidelines for Reporting" (Draft Report) 56 Fed. Reg. 50,598 (October 7, 1991)

Dear Mr. Meyer:

The Nuclear Utility Backfitting and Reform Group (NUBARG)^{1/} provides the following comments on the backfitting implications of the above-referenced draft NUREG-1022, Rev. 1. We generally commend the Staff in developing a consolidated set of reporting guidelines and providing an opportunity for public comment. We also agree with the Staff that improving the reporting guidance is a valuable and necessary adjunct to ensuring safe facility operation. However, we have identified two basic concerns with various statements and positions contained in draft NUREG-1022, Rev. 1, that warrant comment.

First, within several sections of draft NUREG-1022, Rev. 1, the Staff has developed new reporting guidance that conflicts with the requirements of 10 C.F.R. §§ 50.72 and 50.73. Section A of the discussion below identifies some specific areas of concern. In brief, NUBARG recommends the revision of draft NUREG-1022, Rev. 1, to delete any guidance that is contrary to the existing language of the regulations. Second, in several other sections of draft NUREG-1022, Rev. 1, the reporting guidance contains new or different Staff positions regarding reportability. Section B of the discussion below identifies our specific concerns. In brief, NUBARG recommends the revision of NUREG-1022, Rev. 1, to delete

^{1/} NUBARG is a consortium of 22 nuclear 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.

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guidance that is more stringent than that contained in NUREG-1022, Rev. 0, and its two supplements, or the completion of a backfitting analysis to support the changes in Staff position.

DISCUSSION

A. Elements Of The Proposed New Reporting Guidance Conflict With The Terms Of 10 C.F.R. §§ 50.72 And 50.73.

1. Applicable Standards For Promulgating New Regulations

As discussed more fully below, draft NUREG-1022, Rev. 1, contains some positions that alter the standard for reporting under Sections 50.72 and 50.73. To the extent these positions exceed the regulations, they lack an adequate regulatory basis and may not be adopted by means of a guidance document. In order to change the reporting standards in the current regulations, the NRC must follow the rulemaking process.

It is well established that agency guidance documents which set forth new regulatory standards are in effect substantive "rules" as defined in the Administrative Procedures Act (APA) and may be adopted only in accordance with the notice and comment rulemaking procedures of the APA. The APA, in Section 551(4), defines agency "rules" in broad terms:

"rule" means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. . . .

In the case of agency communications such as the proposed new reporting guidance, set forth in a Staff "guidance" document, the NRC should look behind the label attached to the agency statement to determine whether in reality it constitutes a substantive rule.^{2/} If the agency statement establishes binding norms or substantially affects the rights or obligations of private parties, it constitutes a substantive rule.^{3/} This would appear to be the

^{2/} See Batterton v. Marshall, 648 F.2d 694, 702-04 (D.C. Cir. 1980).

^{3/} See Morton v. Ruiz, 415 U.S. 199, 232 (1974); and Batterton v. Marshall, 648 F.2d at 702. For example, in Batterton, Department of Labor guidance on calculating unemployment statistics was held to constitute a substantive rule. See (continued...)

case for the proposed reporting guidance. As discussed below, several of the sections of NUREG-1022, Rev. 1, would have the practical effect of expanding the requirements of 10 C.F.R. §§ 50.72 and 50.73, despite being labeled as merely guidance. In addition, we observe that the Commission has recently acknowledged that Staff guidance documents cannot be used to impose new requirements or secure licensee commitments in the absence of a firm legal basis as would be provided through rulemaking.^{4/}

In sum, licensees may not be required to report events or conditions pursuant to the requirements of 10 C.F.R. §§ 50.72 and 50.73 based on proposed new reporting guidance in NUREG-1022, Rev. 1, that extends the reporting obligations beyond the applicable regulations. The rulemaking process must be used if the NRC intends to expand the current reporting requirements of Sections 50.72 and 50.73.

2. Specific Examples Of Proposed Guidance Exceeding The Regulatory Basis

The following examples illustrate specific instances where NUREG-1022, Rev. 1, reflects guidance that exceeds the regulatory basis for reporting under 10 C.F.R. §§ 50.72 and 50.73.

1. Under 10 C.F.R. §§ 50.72(b)(1)(ii) and 50.73(a)(2)(ii), licensees must report events or conditions that result or resulted "in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded; or . . . in the nuclear power plant being . . . (B) [i]n a condition that is outside the design basis of the plant

^{3/} (...continued)

also Pickus v. U.S. Board of Parole, 507 F.2d 1107 (D.C. Cir. 1974) ("guidelines" for parole of federal prisoners held to constitute a substantive rule).

^{4/} "The Commission is aware of industry concerns that a number of new requirements are being placed on the industry by the NRC through informal mechanisms such as generic correspondence. The staff is reminded that generic letters are not legally binding in and of themselves and . . . do not impose requirements." SECY-90-347, "Regulatory Impact Survey Report," dated November 29, 1990, at p. 2 (emphasis in original). See also SECY-90-340, "Diesel Generator Reliability -- Resolution of Generic Safety Issue B-56," dated June 28, 1991, at p. 1. While these two SECY documents specifically refer to generic letters, the same philosophy applies to other NRC generic guidance, such as NUREGs and Regulatory Guides.

... " Contrary to this requirement, as well as the existing Staff guidance that does not apply this requirement to minor parameter variances or problems concerning single items of equipment,^{2/} the proposed new reporting guidance would require licensees to report a "system, structure, or component in which there has been some loss of quality or functional capability" (§ 3.2.4, at pp. 41-45 (emphasis added)). In addition, the new guidance states that conditions outside the plant's design include those in which "a structure, system, or component is unable to perform its intended safety function . . . [or] is exceeding the specific value or range of values that were chosen for controlling parameters" (§ 3.2.4, at p. 45 (emphasis added)). These proposed new guidelines thus direct licensees to report individual component defects irrespective of whether they affect the plant's condition as contemplated by the regulations.

2. Under 10 C.F.R. §§ 50.72(b)(1)(ii) and 50.73(a)(2)(ii)(B), licensees must report events or conditions that result or resulted "in the nuclear power plant being . . . (B) [i]n a condition that is [or was] outside the design basis of the plant" (Emphasis added.) Contrary to these requirements and the definition of "design basis" in 10 C.F.R. § 50.2, as well as recent Staff conclusions regarding the application of this requirement,^{6/} the new guidance would expand this requirement to include conditions outside the plant's "engineering design basis" (see § 3.2.4, at p. 44 (emphasis added)), and conditions outside the plant's "licensing basis" (see §§ 3.3.2, at p. 44, and 3.3.2, at p. 80 (emphasis added)). These proposed new guidelines thus direct licensees to report such events or conditions irrespective of the whether they affect the plant's design basis as specifically directed by the regulations.
3. Under 10 C.F.R. §§ 50.72(b)(1)(iii) and (vi) and 10 C.F.R. §§ 50.73(a)(2)(iii) and (x), licensees must 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" (Emphasis added.) Contrary to these requirements,

^{2/} See 48 Fed. Reg. 39,039, 39,042, col. 2 (Aug. 29, 1983) (Section 50.72); and 48 Fed. Reg. 33,850, 33,856, col. 1 (July 28, 1983) (Section 50.73). See also NUREG-1022, Rev. 0 (Sept. 1983), at p. 12.

^{6/} See NUREG-1397 (Feb. 1991), at pp. 4-11 to 4-12, and SECY-91-364 (Nov. 12, 1991), at Enclosure 4.

as well as the existing Staff reporting guidance,^{7/} the proposed new reporting guidance would require licensees to report an internal event with the "potential to significantly hamper site personnel" (see § 3.2.8, at p. 68 (emphasis added)) or an external condition that "could . . . or is expected to significantly hamper personnel" (see § 3.2.5, at p. 53 (emphasis added)). These proposed new guidelines thus direct licensees to report such events or conditions if they had the potential to significantly hamper irrespective of whether they do significantly hamper as specifically directed by the regulations.

4. Under 10 C.F.R. §§ 50.72(b)(1)(ii) and 50.73(a)(2)(ii), licensees must report any event or condition that "results [or resulted] in the nuclear power plant being: (A) [i]n an unanalyzed condition that significantly compromises plant safety" (Emphasis added). Contrary to these requirements, as well as the existing Staff guidance,^{8/} the proposed new reporting guidance would require licensees to report "potentially significant events or conditions" (§ 3.2.8, at p. 42 (emphasis added)), unanalyzed conditions "potentially affecting a component, system, or structure" (§ 3.2.4, at p. 43-43 (emphasis added)), and conditions that "could affect component operability, qualification, or design life" (§ 3.2.4, at p. 47 (emphasis added)). These proposed new guidelines thus direct licensees to report such events or conditions if they had the potential to significantly compromise plant safety irrespective of whether they do significantly compromise plant safety as contemplated by the regulations.
5. Under 10 C.F.R. §§ 50.72(b)(2)(ii) and 50.73(a)(2)(iv), licensees must report any event or condition that results or resulted in "manual or automatic actuation of an Engineered Safety Feature (ESF)" (Emphasis added.) Contrary to these requirements, as well as the existing Staff guidance,^{9/} the proposed new reporting guidance directs licensees to report the simple movement of ESF equipment (see § 3.3.2, at

^{7/} See 48 Fed. Reg. at 39,042, col. 3, and 39,043, col. 2; and 48 Fed. Reg. at 33,853, col. 1. See also NUREG-1022, Rev. 0., at p. 13, and NUREG-1022, Supp. 1 (Feb. 1984), Question and Answer 5.2, at p. 7, and Question and Answer 9.3, at p. 17.

^{8/} See NUREG-1022, Supp. 1, Question and Answer 4.1, at p. 6.

^{9/} See 48 Fed. Reg. at 39,043, col. 3; and 48 Fed. Reg. at 33,854, col. 1. See also NUREG-1022, Rev. 0, at p. 14.

p. 87), rather than an actuation of ESF equipment as directed by the regulations.

3. NUBARG Recommendations

Prior to issuing NUREG-1022, Rev. 1, in its final form, NRC should delete the new guidance in the above-referenced sections since the new guidance directs licensees to report events or conditions that are not currently required to be reported by the corresponding subsections of 10 C.F.R. §§ 50.72 and 50.73. If NRC decides to issue NUREG-1022, Rev. 1, however, without deleting the inconsistent language -- for example, under the theory that NRC positions taken in generic communications such as NUREGs are not legally binding requirements -- we submit that the reporting guidance contained in NUREG-1022, Rev. 1, has the practical effect of establishing new standards that licensees are expected to meet, and therefore should be treated in the rulemaking process.

B. The Proposed New Reporting Guidance Reflects New Or Different NRC Staff Positions That Must Be Reviewed For Backfitting Implications

1. Applicable Standards For Instituting A Backfitting Analysis

Backfitting is defined at 10 C.F.R. § 50.109(a)(1), in relevant part, as "the imposition of a regulatory staff position that is either new or different from a previously applicable staff position" Although information contained in a generic communication such as a NUREG does not require a licensee to modify its procedures (e.g., draft NUREG-1022, Rev. 1, does not require licensees to revise their reporting procedures), the NRC Staff has previously stated that the backfitting rule will be applied to "NRC staff positions that are documented explicit interpretations of more general requirements" (NUREG-1409, at p. 3), which are contained in guidance documents such as NUREGs.^{10/} As reviewed below, NUREG-1022, Rev. 1, contains interpretations of Sections 50.72 and 50.73 that are new or different from previously applicable Staff positions and therefore should be subjected to a documented backfitting analysis under the requirements of Section 50.109.

^{10/} Backfitting "includes not only Commission rules and orders, but staff interpretations of those rules and orders." 50 Fed. Reg. 38097, 38102, col. 2 (Sept. 20, 1985) (Statement of Considerations accompanying initial promulgation of 10 C.F.R. § 50.109).

NUREG-1022, Rev. 1, was issued without a backfitting analysis, presumably because the NRC Staff concluded that the "document provides clarifications and does not change the reporting requirements in 10 CFR 50.72 and 50.73" and "because the clarifications do not change the scope or intent of the reporting requirements in §§ 50.72 and 50.73" (56 Fed. Reg. at 50,598, col. 3). However, significant portions of the proposed new guidance would, if adopted, substantially change the fundamental bounds of several reporting obligations. Accordingly, in order for the proposed new reporting guidance to adopt new or different Staff positions in these areas, the NRC Staff must comply with the requirements of 10 C.F.R. § 50.109 by completing a backfitting analysis prior to adopting new reporting guidance.

2. Specific Examples Of New Or Different Staff Positions

NEW STAFF POSITIONS: The following examples illustrate specific instances where NUREG-1022, Rev. 1, contains new reporting guidance:

1. Licensees are instructed that if they "initially decide[] that a design or operational problem is significant enough to enter a technical specification limiting condition for operation or to take other compensatory measure, it is immediately reportable [pursuant to Section 50.72] on that evidence alone" (§ 4.2.1, at p. 129). In addition, a licensee must make a followup report, pursuant to Section 50.72(c)(1)(i), in the event "TS limiting conditions for operation (LCO) [are] entered or exited" (§ 4.3.3, at p. 150).
2. For the first time, a licensee must report as an ESF actuation the "automatic, manual, or inadvertent actuations or failures to actuate" of the mitigation systems installed in accordance with the requirements of 10 C.F.R. § 50.62, i.e., to respond to an Anticipated Transient Without Scram (ATWS) (see § 3.3.2, at p. 84).

DIFFERENT STAFF POSITIONS: The following examples illustrate specific instances where NUREG-1022, Rev. 1, contains different reporting guidance than previously provided in NUREG-1022, Rev. 0, and its two supplements:

1. The existing NRC guidance on what is an Engineered Safety Feature (ESF), as an element for reporting an ESF actuation pursuant to 10 C.F.R. §§ 50.72(b)(2)(ii) and 50.73(a)(2)(iv), states that "[t]here is no standard list of ESF. The criterion is based on each plant having defined systems as ESF (e.g., in the plant's FSAR)" (NUREG-1022, Supp. 1, Question and Answer 6.1, at p. 7 (emphasis added)). In contrast to this previous Staff position, the proposed new reporting

guidance specifically lists typical ESF systems (see § 3.3.2, at p. 82), and then concludes that "[e]quivalent plant systems with different names are to be considered ESF systems for reportability" (§ 3.3.2, at p. 81 (emphasis added)). This new guidance would direct licensees to report actuations of plant systems that may not be true ESF systems and may not have been previously reported as ESF actuations.

2. For multichannel ESF systems, the existing NRC guidance creates an exception from the requirement to report any event or condition that actuates an ESF system. Specifically, licensees need report only when there has been an "actuation of enough channels to complete the minimum actuation logic. . . . [S]ingle channel actuations (whether caused by failures or otherwise) are not reportable if they do not complete the minimum actuation logic" (see NUREG-1022, Rev. 0, at p. 14 (emphasis added)). In contrast, the proposed new reporting guidance implies that a single channel actuation in a multichannel ESF system is reportable by failing to address the single channel actuation exception in the applicable section of NUREG-1022, Rev. 1 (see § 3.3.2, at p. 83). Therefore, the new guidance would seem to direct licensees to report single channel actuations in multi-channel ESF systems even though they previously were not reportable. If this is the Staff's intent, it would be a clear change in position.
3. The original Statement of Considerations for Section 50.73(a)(2)(x) indicate that "the scope [of this requirement] has been narrowed so that the hazard must hamper the ability of site personnel to perform safety-related activities affecting plant safety" (48 Fed. Reg. at 33,856, col. 3 (emphasis added)). This limitation is also reflected in the existing NRC reporting guidance (see NUREG-1022, Rev 0, at pp. 17-18). In contrast to these existing NRC positions, the new reporting guidance defines events that significantly hamper site personnel without including the limitation regarding "safety-related activities affecting plant safety" (see § 3.2.8, at pp. 65-66). This implies that both safety-related and nonsafety-related events should be considered. Moreover, the new guidance explicitly states that "[t]he scope of the regulation is broad, covering more than just safety systems" (§ 3.2.8, at p. 65 (emphasis added)). Therefore, the new guidance would direct licensees to report events or conditions that significantly hamper site personnel in the performance of nonsafety-related activities, even though such events or conditions were not previously reportable.
4. The existing NRC guidance on the need to report, pursuant to 10 C.F.R. § 50.73(a)(2)(i)(B), a failure to meet the administrative requirements of Section 6 of the Technical

Specifications (TS) states that "if the requirement is only administrative and does not affect plant operation, then an LER is not required; for example, a change in the plant's organizational structure that has not yet been approved as a Technical Specification change" (NUREG-1022, Supp. 1, Question and Answer 2.9, at p. 4). In contrast to this previous Staff position, the proposed new reporting guidance states that "[i]f a change in the plant's organizational structure is made that has not yet been approved as a TS change, an LER is required" (§ 3.2.2, at p. 38). Therefore, the new guidance would direct licensees to report changes to organizational structures not yet approved by the NRC when the existing NRC guidance would not require a report to be filed.

3. Potential Impacts Of New Or Different Staff Positions

We further observe that imposition of the terms of the proposed new reporting guidance would result in significant impacts on licensees. These impacts result not only from the substantially increased reporting obligations,^{11/} but from the need to implement the new guidance, including new training and the revision of existing procedures and internal guidance. Further, the type of information sought pursuant to the Staff's new interpretations appears to reflect a focus on routine operational activities, rather than those events or conditions which have true safety significance. Indeed, no technical basis has been developed to show that these new positions will produce any material increase in safety, and in fact they would appear to have the opposite impact in view of the potential diversion of resources away from activities that may have actual safety significance. Each of these considerations must be evaluated pursuant to 10 C.F.R. § 50.109 prior to issuance of a final revision to NUREG-1022.

4. NUBARG Recommendations

Before the Staff may issue NUREG-1022, Rev. 1, in final form, the Staff must perform a backfitting analysis of each of the new or changed Staff positions therein. NUBARG believes that the impact of this new guidance has been significantly underestimated by the Staff. The full impact must be evaluated prior to issuance of the new guidance.

^{11/} Some licensees have estimated that imposition of even selected portions of the proposed new guidance involving new or different Staff positions could increase the number of reports by a factor of at least two, and in some instances even more. If the Staff implements the new reporting provisions that are inconsistent with the terms of the regulations themselves, this increase will be significantly greater.

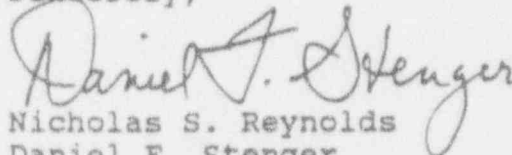
Mr. David L. Meyer
January 31, 1992
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In addition, the Staff states that the new reporting guidance in draft NUREG-1022, Rev. 1, "supersedes NUREG-1022 and its Supplements 1 and 2" (§ 1.3, at p. 3). While we generally agree that consolidated reporting guidance is valuable, and therefore would not necessarily question the proposal to supersede the existing guidance, as noted above there are several sections within draft NUREG-1022, Rev. 1, that contain new or different Staff positions on reporting. However, no backfitting analysis has been completed to address the changes in Staff positions. Thus, any decision to forsake the existing reporting guidance should be considered within the confines of the backfitting rule.

CONCLUSION

NUBARG appreciates the opportunity to submit these comments. For the reasons expressed above, NUBARG urges the Commission to delete those portions of the proposed guidance which conflict with the terms of the underlying reporting regulations, and to perform a backfitting analysis for the portions of the guidance that are premised on new or different Staff positions.

Sincerely,



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