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**POLICY ISSUE**  
(Notation Vote)

SFCY-90-400

December 6, 1990

For: The Commissioners

From: James M. Taylor  
Executive Director for Operations

Subject: DENIAL OF PETITION FOR RULEMAKING (PRM-50-50) REQUESTING RESCISSION OF 10 CFR 50.54 PARAGRAPHS (X) AND (Y), "REASONABLE ACTION THAT DEPARTS FROM A LICENSE CONDITION OR A TECHNICAL SPECIFICATION"

Purpose: To obtain Commission approval for publication of a Federal Register notice denying the petition.

Background: On April 18, 1988, Mr. Charles Young of Glen Ellyn, Illinois, petitioned the NRC for a rulemaking to rescind 10 CFR 50.54 paragraphs (x) and (y) (Enclosure 1). Paragraph (x) of this section permits licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when this 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. Paragraph (y) of this section requires that licensee action permitted by paragraph (x) shall be approved, as a minimum, by a senior operator prior to taking the action.

Mr. Young's background includes employment at Commonwealth Edison Company and previous experience in the Atomic Energy Commission and U.S. Navy. He opposes the regulation because he believes that nuclear power plants should be operated in accordance with the operating license and appropriate technical specifications and that requiring a senior operator to follow the technical specifications during an emergency enhances plant safety.

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

Contact:  
J. Scarborough, RES  
492-3797

M. Fleishman, RES  
492-3794

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The petitioner notes that the technical specifications (a) prescribe settings for safety systems at nuclear power plants, such as the emergency core cooling system, so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded; and (b) require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant. The petitioner cites several cases of hazardous practices involving nuclear power reactors where these practices could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner claims that three official investigations have confirmed that damage to the nuclear reactor at Three Mile Island, Unit 2, could have been prevented if the operators had followed the requirements of the plant's operating license and technical specifications.

According to the petitioner, the three investigations and their applicable findings are as follows:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. [Kemeny Commission Finding #4, pg 28]

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. [Rogovin, Vol II, Part 2, pgh D.2.b, pgs 558, 561]

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant and managers. [Hart Report Chapter 2, Findings and Conclusions, #2, pg 9]

The petitioner believes that the NRC should rescind the existing provisions in paragraphs (x) and (y) of 10 CFR 50.54 to adequately protect the public health and safety from the hazards of nuclear radiation from nuclear power reactors.

Notice of receipt of the petition and request for public comment was published in the Federal Register on August 26, 1988 [53 FR 32624] (Enclosure 2). On October 20, 1988 the original notice of receipt for PRM-50-50 was corrected to provide additional information in support of the petitioner's original intent by revising two sentences in the Grounds for the Petition. The correction had the effect

of increasing the number of plants included in the basis for the petition [53 FR 40432] (Enclosure 3). The sixty-day comment period of the original petition expired on October 18, 1988. A total of seven responses were received, representing eleven organizations. All of the commenters (seven organizations) were opposed to the petition for rulemaking.

Discussion:

It is the staff's position that emergency conditions can arise during which a license condition could prevent necessary protective action by the licensee, and that paragraphs (x) and (y) of 10 CFR 50.54 allow this action to be taken in emergency circumstances. 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 not foreseen in the licensing process before TMI-2; thus, the technical specifications prohibited this action. Other circumstances requiring a deviation from license requirements can arise during emergencies involving multiple equipment failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances.

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 licensee. In addition, performance of routine surveillance testing, which might fall due during a period for which the plant is in an emergency status, may have to be delayed or cancelled because it could either divert the attention of the operating crew from the emergency or cause loss of equipment needed for proper protective action.

Paragraph (x) of 10 CFR 50.54 is similar to the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. This rule states:

"In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which make a departure from those rules necessary to avoid immediate danger."

Thus, a Commanding Officer of a ship is permitted to deviate from written rules to the extent necessary to save the ship.

Paragraph (x) of 10 CFR 50.54 is also very similar to a Federal Aviation Administration (FAA) rule governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from any rule . . . to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule . . . shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

As the Commission stated in the Statement of Considerations for the Final Rule adopting 10 CFR 50.54 paragraphs (x) and (y), "The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed rule". [48 FR 13966]

All of the public comments received by the staff on the petition opposed any change to 10 CFR 50.54 paragraphs (x) and (y). Most of the commenters observed that technical specifications do not dictate mitigation strategies or recovery actions under accident conditions as the petitioner states; rather, generic emergency operating procedures approved by the NRC are relied upon for this purpose instead. Examples of proceduralized deviations from technical specifications were cited and included: inhibiting detrimental automatic plant responses; defeating interlocks to allow preferred flow paths; taking manual control of automatic systems; maintaining plant parameters (such as reactor water level) outside normal ranges; and cross-tying non-safety equipment to perform accident mitigation functions.

One commenter noted that without 10 CFR 50.54 paragraphs (x) and (y), operators may be reluctant to take reasonable

actions in an emergency immediately needed to protect the health and safety of the public. Another commenter noted that requiring operators to obtain permission from the NRC to deviate from technical specifications during an emergency could result in diversion of personnel resources at a critical time.

A third commenter, a legal firm representing five utility licensees, stated that even if the petitioner's statement that the TMI accident would not have occurred had operators complied with technical specification and operating license conditions were true, this conclusion did not support elimination of 10 CFR 50.54 paragraphs (x) and (y). As the Kemeny Commission found, "[t]he accident at . . . TMI occurred as a result of a series of human, institutional, and mechanical failures." The commenter further stresses that "10 C.F.R. §§ 50.54(x) and (y) were promulgated subsequent to TMI." Furthermore, the commenter pointed out that one of the lessons learned from TMI is that the range of circumstances addressed by the technical specifications is limited and that strict adherence to them in an emergency can actually be hazardous to public health and safety.

The staff believes that operators of nuclear power plants must be provided the flexibility during plant emergencies to deviate from plant technical specifications and license conditions in order to respond appropriately to the emergencies and to place the plant in a safe condition. The petition did not present any new information which showed that this flexibility was unneeded.

Therefore, the staff proposes to deny the petition for rulemaking (PRM-50-50).

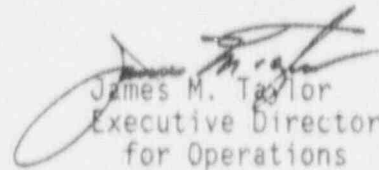
Recommendation: That the Commission:

1. Approve publication of a notice of denial of the petition for rulemaking (PRM-50-50). (Enclosure 4).
2. Note that:
  - a. The staff intends to inform the petitioner of its decision to deny the petition (Enclosure 5).
  - b. That the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works, the Subcommittee on Energy and the Environment of the

House Committee on Interior and Insular Affairs, and the Subcommittee on Environment, Energy, and Natural Resources of the House Committee on Government Operations will be informed (Enclosure 6).

c. That the staff recommends this paper be placed in the PDR.

Coordination: The Office of General Counsel has reviewed this paper and has no legal objection.

  
James M. Taylor  
Executive Director  
for Operations

Enclosures:

1. Letter from Charles Young to Lando Zec., dtd April 18, 1988
2. FR Notice of Receipt of Petition [53 FR 32624]
3. FR Notice of Correction of Petition [53 FR 40432]
4. Proposed Notice of Denial of Petition for Rulemaking
5. Proposed Letter to Petitioner
6. Proposed Letter to Senate and House Subcommittees

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Thursday, December 20, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Thursday, December 13, 1990. with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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enclosure 1

262 Sheffield Lane  
Glen Ellyn, Il. 60137  
April 18, 1988

Mr. Lando Zech  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Lando:

In May 1987, I made a formal Complaint to the Illinois Commerce Commission against Commonwealth Edison Company, the Chicago based utility. I complained that Commonwealth Edison risks the health and safety of Illinois citizens when operating nuclear power plants in northern Illinois.

During proceedings conducted by the Illinois Commerce Commission, Commonwealth Edison's lawyer acknowledged that Company officials authorize work in a reactor containment vessel with the reactor producing power at Dresden and Quad Cities Stations. The lawyer also acknowledged that Company officials authorize operators to turn off water being pumped into a nuclear reactor by a safety system before the system has finished its job during an emergency. Commonwealth Edison's lawyer moved that my Complaint be dismissed because the Nuclear Regulatory Commission resolved these issues in 1982 and nuclear safety is a matter under federal jurisdiction.

The Illinois Commerce Commission dismissed my Complaint for want of jurisdiction. In a letter dated January 13, 1988, the Chairman of the Commerce Commission suggested that I write to Region III of the Nuclear Regulatory Commission.

On January 29, 1988, I wrote to the Regional Administrator, Nuclear Regulatory Commission, Region III. I cited the hazardous practices at Commonwealth Edison's nuclear power plants. In a follow up letter dated February 24, 1988, I wrote that employees work near a nuclear reactor producing power at the Company's Dresden and Quad Cities Stations, but risking a fuel meltdown by turning off a safety system can occur at any Commonwealth Edison nuclear power plant.

Mr. Charles H. Weil, Investigation and Compliance Specialist, acknowledged my letters. In a letter dated March 31, 1988, Mr. Edward G. Greenman, Director Division of Reactor Projects, replied to my complaints.

Mr. Greenman writes that the Nuclear Regulatory Commission approves of employees working in a reactor containment vessel when the reactor is producing power at Commonwealth Edison's Dresden and Quad Cities Stations. Mr. Greenman writes that when workers are inside the containment vessel with the

Enclosure 1

reactor producing power, the containment vessel is always deinerted. But Dresden Unit 2 Technical Specification 3.7.A.5.a. requires that the containment vessel be inerted - oxygen concentration reduced to less than 5% with nitrogen - during reactor power operations. Commonwealth Edison officials therefore violate Operating Licenses and Technical Specifications when they work employees in a reactor containment vessel with the reactor producing power at Dresden and Quad Cities Stations.

Mr. Greenman also writes that the Nuclear Regulatory Commission approves of employees working in a containment vessel with the reactor producing power because Commonwealth Edison officials ensure that the radiation dose limits of 10 CFR Part 20 are not exceeded. But 10 CFR Part 20 reads, in addition to complying with stipulated dose limits, officials shall make every reasonable effort to maintain radiation exposures of nuclear plant employees as low as reasonably achievable. Because of high radiation levels, General Electric engineers designed the boiling water reactors at Dresden and Quad Cities to operate without workers entering the containment vessel during power operations (General Electric Manuals NEDO-10128 and NEDO-10260). Commonwealth Edison officials therefore violate 10 CFR Part 20 and plant Operating Licenses, when they expose workers to hazardous radiation by sending them into a reactor containment vessel with the reactor producing power at Dresden and Quad Cities Stations.

Mr. Greenman writes that the Nuclear Regulatory Commission considers it reasonable to turn off a nuclear plant safety system in an emergency. But Federal Regulations require a nuclear plant safety system to pump water into a nuclear reactor as long as the abnormal condition which activated the system, persists. Commonwealth Edison's Policy permits operators to turn off water being pumped into a nuclear reactor during an emergency before the safety system has finished its job. Turning off water being pumped into a nuclear reactor during an emergency, can cause a nuclear fuel meltdown. Commonwealth Edison's Policy can cause a nuclear fuel meltdown, release of highly radioactive fission products, and exposure of plant personnel and people nearby to hazardous radiation. Mr. Greenman writes that the Nuclear Regulatory Commission affirms this Policy - a Policy that can cause an accident like Three Mile Island.

Regarding the Three Mile Island accident, Victor Stello writes:

".. had the operators allowed the emergency core cooling system to perform its intended function, damage to the core would most likely have been prevented." (FORWARD to NUREG-0600, fifth paragraph)



In July, 1979, Mr. Stello commissioned a Special Review Group to review the lessons learned from the Three Mile Island accident. The Special Review Group found if operators had adhered to Technical Specifications, the high pressure injection system would not have been throttled with the reactor coolant system at low pressure conditions. (NUREG-0616, pgs 87, 88)

Three official investigations confirm that operating Three Mile Island as required by the Operating License and Technical Specifications, would have prevented damage to the nuclear reactor:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. (Kemeny Commission Finding #4, pg 28)

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. (Rogovin Vol II Part 2, pgh D.2.b, pgs 558,561)

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant operators and managers. (Hart Report Chapter 2, Findings and Conclusions, #2, pg 9)

The Nuclear Regulatory Commission issued a new Regulation on June 1, 1983. This Regulation, 10 CFR 50.54 (x) and (y), authorizes a Senior Operator in a nuclear plant to deviate from technical specifications in an emergency. Technical specifications prescribe settings for nuclear plant safety systems. Settings for automatic protective systems - emergency core cooling systems for example - are defined so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded. Technical Specifications require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant. Following technical specifications during an emergency leads to plant safety. Safety will not require a Senior Operator to deviate from technical specifications. Mr. Stello believes that following technical specifications is the safe way to operate a nuclear plant 1.

To protect public health and safety from the hazards of nuclear radiation when nuclear energy is producing power, I urge you to cancel Federal Regulation 10 CFR 50.54 paragraphs (x) and (y). Enclosed is a draft to replace these paragraphs.

Sincerely yours,

Cy 4 - 7

Charles Young

1 On December 31, 1984, the Office of Nuclear Reactor Regulation established a Technical Specification Improvement Project to consider the entire subject of Technical Specifications and provide recommendations for improvement. The Group concluded that problems identified with Technical Specifications do not pose an acute safety problem for operating power reactors. Mr. Stello sent the Report to the Commissioners in a letter dated January 13, 1986. In his letter, Mr. Stello endorsed the principal finding of the Group. The Group's principle finding is that there are no acute safety concerns associated with Technical Specifications which support a mandatory program of changes to the Technical Specifications of operating reactors.

Enclosure

Copy to:

Ms. Mary Bushnell  
Chairman  
Illinois Commerce Commission

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the termination of the following provisions of the order regulating the handling of milk in the Nashville marketing area is being considered:

1. In § 1098.9(c), the provision "of its producer members".
2. In § 1098.73(c), the provision "of its members".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agricultural, Washington, DC 20250, not later than 7 days after the publication of this notice in the *Federal Register*. It is necessary that the time for responding be limited in order that the termination procedure can be completed at the earliest possible date to adapt the order to a recent change in milk handling practices in the market.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

#### Statement of Consideration

The proposed termination would permit a cooperative association to be the handler on milk of producers who are not members of the cooperative association when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

Dairymen, Inc., requested that the proposed termination of provisions of the Nashville order be made effective in August 1988. The cooperative indicated that termination of the provisions would:

- (1) Facilitate the pooling of producer milk which will be needed to fulfill the fluid needs of pool distributing plants;
- (2) Eliminate unnecessary reporting costs otherwise borne by the receiving pool distributing plant on such milk delivered for the account of Dairymen, Inc.;
- (3) Allow the commingling of member and nonmember milk on the same farm-to-market routes and thereby lead to greater farm-to-market delivery efficiency; and
- (4) Result in similar application under the Nashville order as applies under most other Federal milk marketing orders.

Therefore, comments are sought to determine whether the aforementioned provisions should be terminated.

#### List of Subjects in 7 CFR Part 1098

Milk marketing order, Milk, Dairy products.

The authority citation for CFR Part 1098 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on August 23, 1988.

J. Patrick Boyle,  
Administrator.

[FR Doc. 88-19483 Filed 8-25-88; 8:45 am]

BILLING CODE 3410-02-M

#### Packers and Stockyards Administration

#### 9 CFR Parts 201 and 203

#### Poultry Regulations and Policy Statements

**AGENCY:** Packers and Stockyards Administration, USDA.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** On July 11, 1988, a notice of proposed rulemaking was published in the *Federal Register* (53 FR 28082) advising that the Packers and Stockyards Administration was proposing to amend certain existing regulations relative to poultry to conform to the Poultry Producers Financial Protection Act of 1987 (Pub. L. 100-173) amending the Packers and Stockyards Act.

That notice provided that comments regarding the proposal should be filed

with the Administration on or before September 9, 1988.

Pursuant to requests from interested parties for additional time to prepare their comments, the time for filing comments concerning the proposed rulemaking is hereby extended 60 days.

**DATE:** The time for filing comments is hereby extended to and including November 8, 1988.

**ADDRESS:** Written comments may be mailed to: Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the office of the Administrator.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Stricklin, Director, Packer and Poultry Division, Packers and Stockyards Administration, Room 3422-South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-7363.

Done at Washington, DC this 23rd day of August, 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88-19482 Filed 8-25-88; 8:45 am]

BILLING CODE 3410-KD-M

#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Part 50

[Docket No. PRM-50-50]

#### Charles Young; Filing of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of petition for rulemaking.

**SUMMARY:** The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated April 18, 1988, which was filed with the Commission by Charles Young. The petition was docketed by the Commission on July 3, 1988, and has been assigned Docket No. PRM-50-50. The petitioner requests the Commission to amend its regulations to rescind the provision that authorizes nuclear power plant operators to deviate from technical specifications during an emergency.

**DATE:** Submit comments by October 25, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Washington, DC 20555, Telephone (301) 492-8926.

**SUPPLEMENTARY INFORMATION:**

**Background**

*I. Petitioner's Interest*

Mr. Charles Young, the petitioner, is requesting the NRC to rescind paragraphs (x) and (y) of § 50.54 of 10 CFR. The regulation, issued on June 1, 1983 (48 FR 13906), authorizes a senior operator in a nuclear power plant to deviate from technical specifications in an emergency. The petitioner opposes the regulation because he believes that nuclear power plants should be operated in accordance with the operating license and appropriate technical specifications and that requiring a senior operator to follow the technical specifications during an emergency enhances plant safety.

The petitioner notes that technical specifications (a) prescribe settings for safety systems at nuclear power plants, such as the emergency core cooling system, so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded; and (b) require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant.

*II. Grounds for the Petition*

The petitioner cites several cases of hazardous practices where, the petitioner asserts, the licensee has violated Federal regulations at the Dresden and Quad Cities Nuclear Power Plants, owned by Commonwealth Edison Company, Chicago, Illinois. The petitioner believes that these practices could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner claims that three official investigations have confirmed that damage to the nuclear reactor at Three Mile Island, Unit 2, could have been

prevented if plant operators had followed the requirements of the plant's operating license and technical specifications. According to the petitioner, the three investigations and their applicable findings are as follows:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. (Kemeny Commission Finding #4, pg 28)

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. (Rogovin, Vol II, Part 2, pgh D.2.b, pgs 558, 561)

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant operators and managers. (Hart Report Chapter 2, Findings and Conclusions, #2, pg 9)

The petitioner believes the NRC should rescind the existing provisions in paragraphs (x) and (y) of § 50.54 to adequately protect the public health and safety from the hazards of nuclear radiation when nuclear energy is producing power.

*III. Petitioner's Proposal*

**PART 50—[AMENDED]**

The petitioner proposes that 10 CFR 50.54 (x) and (y) be amended to read as follows:

**§ 50.54 Conditions of Licenses.**

(x) The Atomic Energy Act of 1954 stipulates that a licensee shall operate a commercial nuclear power plant in accordance with technical specifications. Technical specifications define the specific characteristics of a nuclear power plant which ensure that fuel design limits are not exceeded during normal operations and emergencies. By review of a nuclear power plant's safety analysis and technical specifications, the Nuclear Regulatory Commission determines that utilization of special nuclear material will be in accord with the common defense and security and will provide protection to the health and safety of the public. To prevent fuel damage and protect public health and safety from the hazards of nuclear radiation, a licensee shall follow technical specifications when operating a commercial nuclear power plant.

(y) The Chief Executive Officer of a public utility or other organization licensed to operate a commercial

nuclear power plant shall establish policy for operating the plant. The Chief Executive Officer shall direct that the nuclear power plant be operated in accordance with the Operating License and Technical Specifications.

Dated at Rockville, MD, this 22nd day of August of 1988.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-19428 Filed 8-25-88; 8:45 am]

BILLING CODE 7590-01-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 101**

[Docket No. RM88-22-000]

**Accounting for Phase-in Plans; Extension of Time**

Issued: August 19, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of inquiry; extension of time.

**SUMMARY:** On June 21, 1988, the Commission issued a notice of inquiry into the effects of recent and proposed actions of the Financial Accounting Standards Board (FASB) that would change the way regulated public utilities account for certain transactions in financial statements that they issue to the public. (53 FR 24096, June 27, 1988). On August 19, 1988, an extension of time was granted at the request of various interested parties for the filing of comments on the notice of inquiry.

**DATE:** The time for filing comments is extended from August 22, 1988 to August 31, 1988.

**ADDRESS:** Office of the Secretary, 825 N. Capitol Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Lois D. Cashell, Acting Secretary, (202) 357-8400.

**Extension of Time**

On August 19, 1988, The American Institute of Certified Public Accountants (AICPA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Inquiry issued June 21, 1988, in the above-docketed proceeding. In its motion, the AICPA states that while the AICPA's Public Utility Committee is in the process of preparing comments in

8. Section 1944.235 is amended by revising paragraph (a)(3) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) \* \* \*

(3) Unless the applicant is a nonprofit organization, the applicant will furnish evidence that the initial operating capital is in place. If cash is being used, evidence of deposit in the general operating account will be furnished. If an irrevocable letter of credit is being used, it will be maintained in the District Office with the casefile.

§ 1944.237 [Amended]

9. In § 1944.237, paragraph (c)(2) is amended by adding the following sentence at the end of the paragraph: "The 2 percent can be in the form of cash or an irrevocable letter of credit as described in § 1944.211(a)(6) of this subpart."

*Exhibit A-8 [Amended]*

10. In Exhibit A-8 of Subpart E, the introductory text of paragraph I.A. is amended by adding the following sentence at the end of the paragraph: "The initial operating capital requirement may be fulfilled by contributing cash or by providing an irrevocable letter of credit."

Dated: September 6, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-23916 Filed 10-14-88; 8:45 am]

BILLING CODE 5110-07-M

Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-3783.

In the notice of receipt for PRM-50-50 published on August 26, 1988 (53 FR 32624), under the heading, "II. Grounds for the Petition," remove the first two sentences and insert the following sentences in their place:

The petitioner states that not following technical specifications in an emergency could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner states that Federal Regulations require a nuclear plant safety system to pump water into a nuclear reactor as long as the abnormal condition which activated the system persists; but, that Commonwealth Edison's Policy permits operators to turn off water being pumped into a nuclear reactor during an emergency before the safety system has finished its job. The petitioner notes that turning off water being pumped into a nuclear reactor during an emergency can cause a nuclear fuel meltdown, release of highly radioactive fission products, and exposure of plant personnel and people nearby to hazardous radiation. The petitioner offers that during a Proceeding before the Illinois Commerce Commission on September 15, 1987, Commonwealth Edison's attorney cited 10 CFR 50.54, paragraphs (x) and (y) as authority for their policy. The petitioner states that this policy applies to all of Commonwealth Edison's nuclear power plants; therefore, the petitioner concludes that Commonwealth Edison risks an accident such as the accident at Three Mile Island Unit 2 at twelve nuclear power plants.

Dated at Rockville, Maryland, this 11th day of October 1988.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,  
Secretary of the Commission.

[FR Doc. 88-23890 Filed 10-14-88; 8:45 am]

BILLING CODE 7590-01-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 509 and 512

(No. 88-1049)

#### Rules of Practice and Procedure

Date: September 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is proposing revisions to 12 CFR Parts 509 and 512,

respectively, its regulations governing the rules of practice and procedure in adjudicatory proceedings and investigative and formal examination proceedings. The proposed revisions to Part 509 would streamline prehearing procedures with a view toward expediting the proceedings, clarify the authority of Administrative Law Judges appointed to conduct the proceedings, and add several new provisions. The proposed revisions to Part 512 would be of a clarifying and technical nature and would update several provisions of the rules relating to the conduct of investigative and formal examination proceedings.

**DATE:** Comments must be received by December 16, 1988.

**ADDRESS:** Send comments to: Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office at 801 17th Street, N.W., Washington, DC, 20552.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Gegenheimer, Senior Attorney, Office of Enforcement, (202) 653-2612; or Rosemary Stewart, Director, Office of Enforcement, (202) 653-2628.

**SUPPLEMENTARY INFORMATION:** The Board is considering certain revisions to its Rules of Practice and Procedure that govern adjudicatory proceedings authorized by the National Housing Act of 1934, 12 U.S.C. 1730 ("NHA"), the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 ("HOLA"), the Change in Savings and Loan Control Act, 12 U.S.C. 1700(q) ("Control Act"), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (the "Holding Company Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). These proposed revisions would, *inter alia*, revise prehearing procedures with a view toward streamlining adjudicatory proceedings and eliminating the need for unnecessary proof, clarify the authority of Administrative Law Judges designated to conduct such proceedings, clarify when depositions may be taken in connection with adjudicatory proceedings, and institute a new procedure for summary disposition where no genuine issues of material fact exist.

In addition, the Board is proposing certain technical amendments to its Rules for Investigative Proceedings and Formal Examination Proceedings.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

[Docket No. PRM-50-50]

#### Charles Young; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of petition for rulemaking; correction.

**SUMMARY:** This document clarifies a portion of the notice of receipt for a petition for rulemaking filed by Charles Young and docketed as PRM-50-50. The notice of receipt for this petition was published August 26, 1988 (53 FR 32624). This notice provides additional information in support of the petitioner's original intent.

**FOR FURTHER INFORMATION CONTACT:** John D. Phillips, Acting Chief, Regulatory

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-50]

DENIAL OF PETITION FOR RULEMAKING (PRM-50-50) REQUESTING RESCISSION OF  
10 CFR 50.54 PARAGRAPHS (X) AND (Y), "REASONABLE ACTION THAT DEPARTS  
FROM A LICENSE CONDITION OR A TECHNICAL SPECIFICATION"

AGENCY: Nuclear Regulatory Commission

ACTION: Denial of Petition for Rule Making

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted on April 18, 1988, by Mr. Charles Young of Glen Ellyn, Illinois, in his own behalf which requests that the Commission rescind 10 CFR 50.54 paragraphs (x) and (y) to preclude deviation from license conditions or technical specifications for licensed nuclear power plants in an emergency when this 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.

ADDRESSES: Copies of comments and documents cited in this notice are available for public inspection at the NRC Public Document Room, 2120 L Street, (Lower Level), NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Murton R. Fleishman, Office of Nuclear Regulatory Research, U. S. Regulatory Commission, Washington, D.C. 20555, Telephone 301-492-3794.

#### SUPPLEMENTARY INFORMATION

##### Background:

By letter dated April 18, 1988, Charles Young of 22 Sheffield Lane, Glen Ellyn, Illinois, petitioned the U.S. Nuclear Regulatory Commission to rescind the provision that authorizes nuclear power plant operators to deviate from technical specifications during an emergency. The petitioner notes that the technical specifications (a) prescribe settings for safety systems at nuclear power plants, such as the emergency core cooling system, so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded; and (b) require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant. The petitioner cites several cases of practices involving nuclear power reactors that he considers to be hazardous. In his opinion, these practices could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner claims that three official investigations

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have confirmed that damage to the nuclear reactor at Three Mile Island, Unit 2, could have been prevented if the operators had followed the requirements of the plant's operating license and technical specifications.

According to the petitioner, the three investigations and their applicable findings are as follows:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. [Kemeny Commission Finding #4, p. 28]

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. [Rogovin, Vol II, Part 2, pgh D.2.b, pgs 558, 561]

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant and managers. [Hart Report Chapter 2, Findings and Conclusions, #2, pg 9]

The petitioner believes that the NRC should rescind the existing provisions in paragraphs (x) and (y) of 10 CFR 50.54 to adequately protect the public health and safety from the hazards of nuclear radiation from nuclear power reactors.

Notice of receipt of the petition and request for public comment was published in the Federal Register on August 26, 1988 [53 FR 32624]. On



October 20, 1988 the original notice of receipt for PRM-50-50 was corrected to provide additional information in support of the petitioner's original intent by revising two sentences in the Grounds for the Petition. The correction had the effect of increasing the number of plants included in the basis for the petition [53 FR 40432]. The sixty-day comment period of the original petition expired on October 18, 1988. A total of seven (7) public comment letters were received, representing eleven organizations. All of the commenters (seven organizations) were opposed to the petition for rulemaking. The comment letters may be examined in the NRC public document room. All comment letters have been evaluated by the NRC staff.

Discussion:

It is the Commission's position that emergency conditions can arise during which a license condition could prevent necessary protective action by the 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 not foreseen in the licensing process before TMI-2; thus, the technical specifications prohibited this action. Other circumstances requiring a deviation from license requirements can arise during emergencies involving multiple equipment failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances.

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 licensee. In addition, performance of routine surveillance testing, which might fall due during a period for which the plant is in an emergency status, may have to be delayed or cancelled because it could either divert the attention of the operating crew from the emergency or cause loss of equipment needed for proper protective action. It was for these reasons that the Commission added paragraphs (x) and (y) to 10 CFR Part 50.54 (47 FR 35996).

Paragraph (x) of 10 CFR 50.54 is similar to the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. This rule states:

"In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which make a departure from those rules necessary to avoid immediate danger."

Thus, a Commanding Officer of a ship is permitted to deviate from written rules to the extent necessary to save the ship.

Paragraph (x) of 10 CFR 50.54 is also very similar to a Federal Aviation Administration (FAA) rule governing the operation of aircraft, 14 CFR 91.3, which states that "in an emergency requiring immediate action, the pilot in command may deviate from any rule . . . to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule . . . shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

As the Commission stated in the Statement of Considerations for the Final Rule adopting 10 CFR 50.54 paragraphs (x) and (y), "The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed rule". [48 FR 13966]

All of the public comments received by the staff on the petition opposed any change to 10 CFR 50.54 paragraphs (x) and (y). Most of the commenters observed that technical specifications do not dictate mitigation strategies or recovery actions under accident conditions as the petitioner states; rather, generic emergency operating procedures approved by the NRC are relied upon for this purpose instead. Examples of proceduralized deviations from technical specifications were cited and included: inhibiting detrimental automatic plant

responses; defeating interlocks to allow preferred flow paths; taking manual control of automatic systems; maintaining plant parameters (such as reactor water level) outside normal ranges; and cross-tying non-safety equipment to perform accident mitigation functions.

One commenter noted that without 10 CFR 50.54 paragraphs (x) and (y), operators may be reluctant to take reasonable actions in an emergency immediately needed to protect the health and safety of the public. Another commenter noted that requiring operators to obtain permission from the NRC to deviate from technical specifications during an emergency could result in diversion of personnel resources at a critical time.

A third commenter, a legal firm representing five utility licensees, stated that even if the petitioner's statement that the TMI accident would not have occurred had operators complied with technical specification and operating license conditions were true, this conclusion did not support elimination of 10 CFR 50.54 paragraphs (x) and (y). As the Kemeny Commission found, "[t]he accident at . . . TMI occurred as a result of a series of human, institutional, and mechanical failures." The commenter further stresses that "10 C.F.R. §§ 50.54(x) and (y) were promulgated subsequent to TMI." Furthermore, the commenter pointed out that one of the lessons learned from TMI is that the range of circumstances addressed by the technical specifications is limited and that strict adherence to them in an emergency can actually be hazardous to public health and safety.

The petitioner has not shown that the requested rule change to rescind paragraphs (x) and (y) of 10 CFR 50.54 would enhance the public health and

safety or lessen the impact on the environment. Hence, the Commission has decided to deny the petition for rule making.

Dated at Rockville, Maryland this \_\_\_ day of \_\_\_\_\_ 1990.

For the Nuclear Regulatory Commission.

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Samuel J. Chilk  
Secretary of the Commission

Mr. Charles Young  
262 Sheffield Lane  
Glen Ellyn, Illinois 60137

Dear Sir:

On April 18, 1988 you filed a petition for rulemaking (PRM-50-50) requesting that the Commission rescind its regulation 10 CFR 50.54 paragraphs (x) and (y) which authorizes nuclear power operators to deviate from technical specifications during an emergency. Notice of the receipt of the petition and request for public comment was published in the Federal Register on August 26, 1988 [53 FR 32624]. On October 20, 1988 the original notice of receipt of PRM-50-50 was corrected in response to your letter of September 3, 1988 to provide additional information in support of your intent by revising two sentences in the Grounds for the Petition. The correction had the effect of increasing the number of plants included in the basis for the petition [53 FR 40432]. Public comments were received in response to the notices in the Federal Register of August 26 and October 17, 1988.

For the reasons set forth in the enclosed notice, the Nuclear Regulatory Commission has denied the petition for rule making.

Sincerely,

Samuel J. Chilk  
Secretary of the Commission

Enclosure: Notice of Denial  
of Petition for Rulemaking

Enclosure 5

The Honorable Robert Graham, Chairman  
Subcommittee on Nuclear Regulation  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The enclosed Notice of Denial of Petition for Rule Making is forwarded for the information of the Subcommittee on Nuclear Regulation. The Commission would be pleased to respond to any questions the Subcommittee may have on this Notice.

Sincerely,

Dennis Rathburn,  
Director, Congressional Affairs

Enclosure: Notice of  
Denial of Petition for  
Rulemaking

(Similar letters to be sent to the Chairmen of the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs, and the Subcommittee on Environment, Energy, and Natural Resources of the House Committee on Government Operations.)

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