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October 18, 1982

Samuel J. Chilk, Esq.
Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

DOCKET NUMBER **27** PR-50
PROPOSED RULE

(47 FR 35996)

Re: Proposed Authorization to Deviate
from Technical Specifications,
10 C.F.R. §§ 50.54 and 50.27

Dear Mr. Chilk:

On August 18, 1982, the Commission published a notice of proposed rulemaking to amend 10 C.F.R. Part 50 to permit licensees to depart from technical specifications in emergencies and to require notification of any such departure. 47 Fed. Reg. 35996. As attorneys representing a number of utilities and a fuel fabricator involved in the Commission's license and regulatory processes, we wish to offer our comments on the proposed amendments.

We support the adoption of the amendments as proposed.

As the Commission's notice indicates, the proposed amendments are based upon a recommendation contained in Section 3.5 of NUREG-0616. However, the Commission has departed from the recommendation in NUREG-0616 by omitting any requirement for concurrence of the most senior licensee and NRC personnel available at the time. We believe that these modifications are appropriate. With respect to a requirement for concurrence from licensee personnel, the proposed requirement for concurrence by a licensed senior reactor operator is appropriate. Normally, more senior personnel will be

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immediately available, and it can be anticipated that they will be consulted. However, if an emergency arises during operation on a back shift, no licensee representative superior to a senior reactor operator is likely to be immediately available. In those circumstances, requiring additional concurrences could defeat the purpose of the proposed amendments.

Similarly, any requirement for NRC concurrence could operate to defeat the purpose of the rulemaking. Obtaining NRC concurrence outside of normal working hours could seriously delay the completion of necessary action. In addition, it is likely that NRC personnel readily available at such times would not be qualified to understand the situation and to provide intelligent concurrence.

The Commission has specifically requested comments on two additional matters: whether to provide standards spelling out when deviations from license conditions or technical specifications are allowable and whether to provide standards governing enforcement actions. With respect to the first area of concern, we do not believe that it is feasible to provide detailed guidance as to when deviations are permissible. The whole purpose of the proposed amendments is to provide flexibility in situations that cannot be anticipated. Any effort to provide more detailed standards is likely to defeat that purpose by unintentionally excluding a situation in which a deviation is necessary or appropriate.

We agree that it would be appropriate to provide standards to be used by the Commission staff in determining whether to take enforcement action against licensees who deviate from license conditions or technical specifications. Such guidance could appropriately be included in the Statement of Considerations published with the final rule. Essentially, the standard for enforcement actions should be as stated in the Commission's notice, namely that enforcement action will not be taken unless the licensee's action was unreasonable considering all of the relevant circumstances. It should be made clear that a subsequent judgment as to whether an action was unreasonable must be made solely in light of the information available to the persons who made the decision at the time the decision was made.

Commissioner Gilinsky has separately requested comments as to whether the decision to deviate should be made by a senior reactor operator. We do not understand this concern. The proposed amendment to 10 C.F.R. § 50.54 would require concurrence by a licensed senior reactor operator. In practice, this means that the decision will be made by the senior reactor operator, because the senior reactor operator will be either the shift foreman or the shift supervisor, who is the control room operator's boss. Under those circumstances, there is no distinction (other than semantic) between concurrence and decision-making.

Sincerely,

Le Boeuf, Lamb, Leiby + MacRae

WISCONSIN PUBLIC SERVICE CORPORATION



P.O. Box 1200, Green Bay, Wisconsin 54305

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DOCKETING & SERVICE
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October 18, 1982

DOCKET NUMBER
PROPOSED RULE **PR-50**
(47 FR 35996)

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

Attention: Docketing and Service Branch

Gentlemen:

Docket 50-305
Operating License DPR-43
Kewaunee Nuclear Power Plant
Proposed Rule to 10CFR Part 50; 50.54 and 50.72

Reference 1) Federal Register Vol. 47, No. 160, August 18, 1982

We concur that a licensee should be able to take reasonable action in an emergency situation that departs from a License Condition or Technical Specification. However, a policy statement with the same intent would be more appropriate than a rule.

Rules should be definitive in regards to when they apply; at the same time, they should not limit the method for compliance. This rule is not definitive as to when it applies. A Policy Statement would be more appropriate due to the undefined applicability of the proposed rule.

A rule such as the one proposed would introduce ambiguities to Title 10 of the Code of Federal Regulations. 10CFR50.10 is explicit in that all nuclear power plants shall comply with their operating license, and the operating license requires compliance with the Technical Specifications. It is contradictory that one rule requires compliance with the Technical Specifications and another rule allows deviation. Issuing a Policy Statement with the same intent as the Proposed Rule would cover immediate concerns. A rigorous solution to the problem requires a reevaluation of Technical Specifications to determine which Specifications are in conflict with providing for the health and safety of the public during an accident. For instance, 10CFR50.36 states, "Limiting Conditions for Operation are the

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add Charles Trammell
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Acknowledged by card.. 10/27/82.. rmp

Secretary of the Commission

October 18, 1982

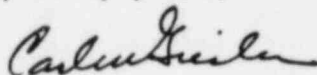
Page 2

lowest functional capability or performance levels of equipment required for safe operation of the facility." Specifications which could be in conflict with this statement should either be removed from the Technical Specifications or revised to meet the above definition of a Limiting Condition for Operation.

The Commission requested comments on whether to take enforcement action against Part 50 licensees who deviate from license conditions or Technical Specifications in an emergency situation. We feel that a licensee is responsible for their actions under all circumstances. If during the course of an accident actions taken in violation of Technical Specifications are not essential for mitigation of the accident, the licensee should be subject to enforcement actions.

We agree with Commissioner Gilinsky's comment that a Senior Reactor Operator (SRO) should make the decision to operate outside of Technical Specifications.

Very truly yours,



C. W. Giesler
Vice President - Nuclear Power

smv

cc: Mr. Robert Nelson, NRC Sr Resident Inspector
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October 18, 1982

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

DOCKET NUMBER
PROPOSED RULE

(29)
PR-50
(47 FR 35996)

Attention: Docketing and Service Branch

Subject: Proposed Rule Change 10CFR50:54 New Paragraphs (y) and (z)
and 50.72 New Paragraph (c)

Dear Sir:

General Atomic Company is in agreement that the proposed rule change is needed and concurs in the exact wording as proposed. We definitely agree that, as a minimum, the concurrence of the licensed senior operator should be obtained prior to departing from a license condition or a technical specification in an emergency for the protection of public health and safety. Further, it is our belief that the rule as proposed provides sufficient safeguards for its proper utilization by requiring notification of the NRC Operations Center and possibly requiring written statements from the licensee concerning its actions after the use of the provisions of the rule.

If you have any questions regarding the above comments, please contact me at (714)455-3821.

C. R. Fisher
Manager,
Licensing, Reliability, and Systems Dept.

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October 18, 1982

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

DOCKET NUMBER **PR - 50**
PROPOSED RULE

(28)

(47 FR 35996)

Dear Mr. Chilk:

Subject: Proposed Change to 10 CFR Part 50--
Applicability of License Conditions
and Technical Specifications in an
Emergency

The staff of GPU Nuclear Corporation herewith submits comments on the subject proposal. Comments were requested in an August 18, 1982 Federal Register notice (47 FR 35996).

We regard the philosophy that is embodied in the proposed rule as one that has always been implicit in NRCs regulatory approach, but heretofore has not been explicitly stated in the regulations. We endorse the philosophy that a licensee should take any action in an emergency that is needed to protect the health and safety of the public, even in those rare cases where such action deviates from specific requirements of the license. Therefore, we support the thrust of this rule.

We do however, have some specific comments on, and a few suggestions for improving, the rule as proposed.

1. We believe it is important that any deviation from a license condition or technical specification that is contemplated in an emergency should be properly considered by well qualified people. Thus we concur with Commissioner Gilinski's desire, as reflected in the proposed 50.54(z), to have a Senior Reactor Operator concur in any decision to deviate from the license or technical specifications.

2. In our opinion the rule should explicitly recognize injury to personnel and damage to the facility as situations under which deviations would be permissible, if they are considered to pose a possible adverse effect on public health and safety.

3. Situations may also arise that may justify deviation from the regulations themselves to protect public health and safety. It would be desirable to expand the rule to cover such situations. We note for example that recent NRC drafts of proposed changes to 10 CFR Part 20 contain provisions that would allow deviations from the regulations in emergencies involving personnel injury.

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3.1.3 Procedures for accident response cannot be sufficiently detailed to encompass every possible sequence of events. They are based on the assumption that a particular set of conditions exists; a deviation from this set of conditions may make it necessary to depart from this procedure. The operator, guided by the written procedures, his training and available technical advice must use his best judgement to return the plant to a stable condition so that procedures again apply while maintaining the core covered, cooled and pressurized; insuring heat sink availability and maintaining flow through the Core. Under this circumstance, where the plant condition falls outside of the procedures the operator must:

1. Believe his instruments.
2. Notify management that the plant is outside of procedures.
3. Return the plant to a stable condition within the limits of the procedures.