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December 21, 1990

Mr. Samuel J. Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attention: Docketing and Service Branch

Subj: Notice of Proposed Rulemaking:  
Emergency Response Data System  
55 Fed. Reg. 41095 (October 9, 1990)

Dear Mr. Chilk:

In accordance with the above-referenced Notice of Proposed Rulemaking (the Proposed Rule), the following comments are submitted on behalf of the Nuclear Utility Backfitting and Reform Group (NUBARG).<sup>1/</sup> In brief, NUBARG supports the comments filed by the Nuclear Management and Resources Council, Inc. (NUMARC) and believes that continuation of a voluntary program is preferable to rulemaking. In our view, the requisite backfitting justification has not yet been provided by the NRC to support issuance of a rule mandating implementation of an Emergency Response Data System.

On August 21, 1989, the NRC issued Generic Letter 89-15, "Emergency Response Data System," which requested the voluntary cooperation of each nuclear power reactor licensee regarding the implementation of an ERDS program at each operating nuclear power facility. To date, approximately half of the nuclear power facilities have volunteered to participate in the ERDS program. Notwithstanding the level of industry cooperation in this matter, the NRC has determined that all operating reactor

1/ NUBARG, which consists of twenty-four utilities, actively participated in the development of the NRC backfitting rule (10 C.F.R. § 50.109) and has followed its implementation closely.

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licensees should have an ERDS, and has proposed a Rule in that regard. The Proposed Rule would require all licensees<sup>2/</sup> to: (1) install an NRC-supplied communication link, (2) provide the software necessary to format available selected critical plant condition data for NRC use, (3) provide the necessary hardware for the in-plant computer to interface with the NRC-supplied communication link, (4) provide support for the periodic testing of the ERDS (initially on a quarterly basis), (5) develop necessary ERDS procedures, and (6) report to the NRC any configuration changes to a licensee's ERDS-related hardware and software.

As required by 10 C.F.R. § 50.109, the NRC completed a backfit analysis for the Proposed Rule. The analysis concludes in part that:

[t]he proposed rule will provide a substantial increase in the overall protection of the public health and safety by ensuring far more accurate and timely flow of data for the NRC to fulfill its role during an alert or higher emergency. The direct and indirect costs estimated for the implementation of this rule are justified in view of this increased protection.

55 Fed. Reg. at 41097.

NUBARG has two primary comments regarding the backfitting implications of the Proposed Rule. The first comment involves whether the NRC has adequately substantiated its claim that "the Proposed Rule will provide a substantial increase in the overall protection of the public health and safety." The second comment relates to the fact that the NRC's backfitting analysis has not addressed certain potential adverse effects of the ERDS.

#### Comment 1

NUBARG does not believe that the NRC has adequately substantiated its claim that the Proposed Rule will provide a substantial increase in the overall protection of the public health and safety. The NRC's backfitting analysis does not quantify the costs and benefits of the proposed ERDS, but rather presents only a recitation of qualitative

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2/ Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, or units that do not have selected data available on the onsite computer, would be exempted from the majority of the Proposed Rule's requirements.

considerations. In this regard NUBARG provides the following specific comments:

- o The NRC notes that a mandated ERDS would "improve the NRC's understanding of an event and allow the NRC to perform its role more effectively and efficiently." 55 Fed. Reg. at 41097, Item 1. We do not believe that a purely subjective goal of this type is an adequate basis for the NRC's conclusion that there will be a substantial increase in the overall protection of the public health and safety. NUBARG believes that the NRC must provide more than a conclusory qualitative statement regarding the substantial public benefit.
- o The NRC states in the Proposed Rule that the presently existing Emergency Notification System (ENS) is "adequate." 55 Fed. Reg. at 41096. The Staff adds, however, that the ENS has, on occasion, "proven to be unreliable." *Id.* It is axiomatic that any system will occasionally be unreliable. Moreover, since the ERDS will not be a safety-related system (and should not be), its reliability is not necessarily significantly better than that of the ENS. In that light, the reliability aspect of the NRC's regulatory analysis does not provide any significant support for the backfit.
- o The NRC has not provided a quantitative or qualitative discussion of an off-site dose benefit for the public. The reason why this information was not provided appears to be that reduction in off-site radiation exposure to the general public was beyond the scope of the regulatory analysis for the Proposed Rule. See NUREG-1394, "Regulatory Analysis of the Proposed Rule Concerning the Emergency Response Data System," at § 4.2.1., p. 15. Without an analysis of the reduction in off-site dose, it would not appear that the NRC has adequate justification to show the requisite substantial increase in protection.

In short, the NRC's backfitting analysis is insufficient to warrant mandating the ERDS program by rule for all plants. For this reason, we urge a continuation of the present voluntary program.

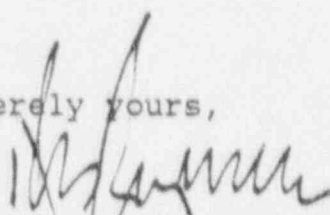
#### Comment 2

NUBARG is concerned that the Proposed Rule and backfitting analysis did not consider the potential adverse effects that could arise if the NRC were to use ERDS information inappropriately by imposing management-related preferences during a plant event. A similar concern was expressed by the Advisory Committee On Reactor Safeguards (ACRS) in a letter

dated June 12, 1990.<sup>3/</sup> Also, NUMARC's comment letter on the Proposed Rule (dated December 21, 1990) notes several instances where the NRC may have gone beyond its role as a regulator, and in some cases, may have attempted to compel a licensee to adopt an NRC position in response to an event. See also NUREG 1395, "Industry Perception of the Impact of the U.S. Nuclear Regulatory Commission on Nuclear Power Plant Activities," at p. 2 (March 1990). These potentially adverse effects of the ERDS should be taken into account in the backfitting analysis for the Proposed Rule. Moreover, this type of NRC involvement in an event could represent a backfit of great concern because the NRC would likely be "uncontrolled" due to the overriding need to respond to the ongoing event.

Generic Letter 89-15 noted that although the NRC will not require licensees to provide ERDS information to State agencies, the NRC, through a Memorandum of Understanding with a State, may provide the State with ERDS data. NUBARG recommends that the NRC provide clear direction to State agencies regarding State use of ERDS information. Because State agencies typically do not have personnel that would understand all of the ERDS data, the NRC should consider whether State inquiries directed to a licensee (during an event) could distract licensee attention from the event and adversely affect public health and safety. (This same concern would apply to NRC ERDS-related inquiries during an event.) Finally, if the ERDS information was incorrectly interpreted by State personnel, erroneous direction may be provided to citizens. Again, these considerations should be taken into account in performing the requisite backfitting analysis of the Proposed Rule.

Sincerely yours,



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Counsel to the Nuclear  
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<sup>3/</sup> Letter from Charles J. Wylie, Acting Chairman, ACRS to Kenneth M. Carr, Chairman, USNRC, "Proposed Rule To Implement An Emergency Response Data System."