



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

PDR-016

October 7, 1982

OFFICE OF THE
SECRETARY

Robert R. Belair, Esq.
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, D.C. 20036

IN RESPONSE REFER
TO 82-A-19(82-308)

Dear Mr. Belair:

This letter responds to your August 17, 1982 Freedom of Information Act (FOIA) appeal. On July 14, 1982 you requested two categories of documents: (1) those "in which the Commission or the NRC Staff has 'focused on the risks associated with' fuel loading and low power operation," and (2) those "in which the Commission has 'chosen a level of emergency preparedness appropriate to assure the health and safety of the public' for fuel loading and low power operation." On August 5, 1982 the NRC responded to your request, identifying and withholding three documents. That response also referred you to the footnotes accompanying the notice published in the Federal Register at 47 Fed. Reg. 30232, where various Safety Evaluation Reports (SER) are referenced. Several other documents responsive to your request, including other SERs, have also been identified. They are listed in the attachment to this letter along with the previously referenced SERs. Items 1-20 listed in the attachment are already in the Public Document Room (PDR). Items 21 and 22 are enclosed. In addition, a further search of our files has turned up one additional document subject to your request that is being withheld in its entirety, an undated draft of SECY-82-185, "Final Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations Relating to Low Power Operation." In the margins of this draft paper are written comments on various aspects of the draft paper by Mark Chopko, an NRC attorney. This draft document and the written comments in the margins constitute advice, opinions and recommendations in an ongoing deliberation, i.e., adoption of a final version of the rule, and it is clearly withholdable as deliberative privilege under Exemption 5 of the FOIA and the Commission's regulations. 10 CFR 9.5(a)(5). Release of this document would not be in the public interest because it would impede open and frank communication within the agency on policy decisions. This document is being withheld in its entirety as it contains no reasonably segregable factual portions not already in the public record and release of the factual portions contained in the draft would reveal the

8211080293 821007
PDR FOIA
BELAIR82-A-19 PDR

agency's decision-making process. See Russell v. Department of the Air Force, ___ F.2d ___ (D.C. Cir. No. 81-2005, July 23, 1982).

With respect to your appeal from the withholding of the three documents originally identified, the Commission has determined that these documents are exempt from mandatory public release and that their release would be contrary to the public interest. Your appeal is accordingly denied.

The two memos to the NRC Commissioners from Dennis K. Rathbun, Acting Director of the Office of Policy Evaluation, were prepared at the Commission's direction to assist it in deciding whether low power licenses should be issued for the Diablo Canyon and McGuire nuclear facilities, respectively. They clearly constitute advice, recommendations and opinions which are part of the decision-making process and are withholdable under Exemption 5 of the FOIA and the Commission's regulations. 10 CFR 9.5(a)(5). These documents contain a summary and review of facts OPE believed relevant for the Commission's decision.

The Commission disagrees with your assertion that these factual portions must be released unless excision would impose significant costs on the agency and would produce an edited document of little value. "[A] staff-prepared summary of factual evidence on the record is within exemption 5 of FOIA. . . ." Montrose Chemical Corp. v. Train, 491 F.2d 63, 65 (D.C. Cir. 1974). See also Lead Industries Association, Inc. v. OSHA, 610 F.2d 70 (2d Cir. 1979); Washington Research Project, Inc. v. HEW, 504 F.2d 238 (D.C. Cir. 1974). As explained in Montrose Chemical, Exemption 5 protects the deliberative process of agencies as well as their deliberative materials, and the deliberative process includes the evaluation and analysis of multitudinous facts. In Montrose Chemical, as here, all the facts contained in the withheld documents are already in the public record. "What is not in, and should not be in, the public record is the administrative assistants' evaluation and selection of certain facts from the public record." 491 F.2d at 70.

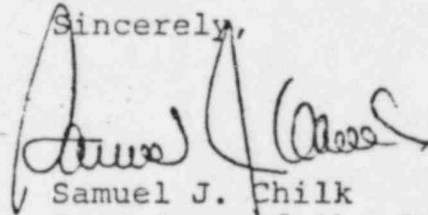
The third document is a one-page legal analysis of the litigative risks associated with adoption of the final rule on emergency planning requirements for low power testing. This document was prepared as part of the deliberative, decision-making process of adopting this rule. This document, which contains no reasonably segregable factual portions, clearly constitutes both attorney work-product and deliberative privilege and is withholdable under Exemption 5 and the Commission's regulations. 10 CFR 9.5(a)(5). See

Brinton v. Department of State, 636 F.2d 600 (D.C. Cir. 1980).

The Commission has determined that it would not be in the public interest to release these documents. Release of these documents would inhibit open and frank discussion between the Commission and its staff in the future. The Commission also believes there is sufficient information on the subject of your request already available in the Public Document Room to fully explain and justify the Commission's regulation. Accordingly, pursuant to 10 CFR 9.15(a), the Commission has determined that these documents should continue to be withheld in their entirety.

This letter represents the final agency action on your FOIA appeal. Judicial review of the decision is available in a federal district court in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chilk
Secretary of the Commission

Attachment:
As stated

Attachment

1. SECY-82-185: "Final Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations Relating to Low Power Operation" (May 3, 1982).
2. SECY-81-570: "Proposed Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations" (September 30, 1981).
3. Viewgraphs accompanying October 30, 1981 Commission meeting on proposed amendments to 10 CFR 50.47.
4. Transcript of October 30, 1981 Commission meeting on proposed amendments to 10 CFR 50.47.
5. September 30, 1981 testimony of G. Norman Lauben and Patrick D. O'Reilly in San Onofre Nuclear Generating Station Units 2 & 3 licensing proceedings. (Docket Nos. 50-361 OL, 362 OL; transcript at 11316-37).
6. NUREG-0712, Supplement No. 4 to Safety Evaluation Report (SER) related to San Onofre Nuclear Generating Station, Units 2 & 3, dated January 1982. (Docket Nos. 50-361 OL, 362 OL).
7. NUREG-0847, SER related to Watts Bar nuclear facility at Section 15.6, dated June 30, 1982. (Docket No. 50-390 OL).
8. NUREG-0675, Supplement 10 to SER related to Diablo Canyon, dated August 1980. (Docket No. 50-275 OL).
9. May 19-29, 1981 low power hearing testimony in Diablo Canyon Units 1 & 2 licensing proceedings. (Docket Nos. 50-275 OL, 323 OL; transcript at 10994-11139 and 11213-11349).
10. NUREG-0519, SER related to La Salle County Station, Units 1 & 2. (Docket Nos. 50-373 OL, 374 OL).
 - (a) Supplement No. 2 - Section 22, item III.A.2, dated Feb. 28, 1982.
 - (b) Supplement No. 3 - Section 15, dated April 30, 1982.
 - (c) Supplement No. 4 - Section 2, item III.A.2, dated July 31, 1982.

11. Letter dated April 17, 1982 from Harold R. Denton to Tyrone C. Fahner, Attorney General, State of Illinois, acknowledging receipt of show cause petition and advising that immediate suspension of low power operating license not warranted. (Docket Nos. 50-373 OL, 374 OL).
12. Letter dated June 2, 1982 from Harold R. Denton to Tyrone C. Fahner, Attorney General, State of Illinois, acknowledging receipt of amendment to request for show cause proceeding and finding that suspension of activities is not warranted. (Docket Nos. 50-373 OL, 374 OL).
13. Letter dated May 19, 1982 from Harold R. Denton to B.L. Rorem, Illinois Friends of the Earth, acknowledging receipt of 10 CFR 2.206 petition and declining to immediately suspend activities. (Docket Nos. 50-373 OL, 374 OL).
14. Letter from Harold R. Denton, dated August 6, 1982, to Edward M. Gogol, Executive Director, Citizens Against Nuclear Power, declining to suspend operating license. (Docket Nos. 50-373 OL, 374 OL).
15. NUREG-0831, Supplement No. 2, Sections 13.3 and 24, dated April 30, 1982, to SER related to Grand Gulf Nuclear Station, Units 1 & 2. (Docket Nos. 50-458 OL, 459 OL).
16. NUREG-0717, Supplement No. 4, Section 15.5, dated August 1982, to SER related to V.C. Summer Nuclear Station. (Docket No. 50-395 OL).
17. NUREG-0422, Supplement No. 4, Section 1, dated January 1981, to SER related to McGuire nuclear station. (Docket Nos. 50-369 OL, 370 OL).
18. Transcript of February 15, 1980 Commission meeting on Comparison of Risks of Plant Operation at Low Power Versus Full Power.
19. Viewgraphs accompanying February 15, 1980 Commission meeting on Comparison of Risks of Plant Operation at Low Power Versus Full Power.
20. Transcript of February 12, 1980 Commission meeting on Status of Sequoyah Licensing Review at 34-37.

21. Memorandum from T. Speis and M. Ernst to R. Tedesco, "Low Power Operation Risk Assessment," dated April 14, 1982.
22. Memorandum from Paul S. Check to Thomas Novak, "Three Mile Island Unit 1 Risk Reduction," dated March 11, 1981.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 5, 1982

Mr. Robert R. Belair
Kirkpatrick, Lockhart, Hill,
Christopher & Phillips
1900 M Street, N.W.
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-82-308

Dear Mr. Belair:

This is in response to your letter dated July 14, 1982, in which you requested, pursuant to the Freedom of Information Act, copies of all documents in which the Commission or the NRC staff has "focused on the risks associated with" fuel loading and low power operation, and (2) in which the Commission has "chosen a level of emergency preparedness appropriate to assure the health and safety of the public" for fuel loading and low power operation.

In response to your request it has been determined that documents one and two of Appendix A contain information which constitutes advice, opinions and recommendations of the staff. There are no factual or otherwise segregable portions of these memoranda related to assessment of risks associated with low power testing that are not addressed in the Diablo Canyon, McGuire, and San Onofre testimonies which are parts of the public record in those proceedings. Document 3 of Appendix A is an attorney-client communication and attorney work product, the disclosure of which could reveal the legal strategy of the agency prematurely. This information is being withheld from public disclosure pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5).

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for the denial of documents 1 and 2 of Appendix A is Mr. Dennis K. Rathbun, Acting Director, Office of Policy Evaluation, and for the denial of document 3 of Appendix A is Mr. Guy H. Cunningham, III, Executive Legal Director.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

~~820826004~~
PAR

Mr. Robert R. Belair

-2-

As suggested in your letter, Mr. Michael T. Jamgochian was contacted concerning your request. Mr. Jamgochian suggested that you may find the information you are seeking in the footnotes accompanying the Notice published in the FEDERAL REGISTER at 47 FR 30233.

Sincerely,

John Philipin for

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosure: As stated

APPENDIX A

1. 6/3/81 Memo to the NRC Commissioners, from Dennis K. Rathbun, "Issuance of Low Power License to McGuire". (5 pages)
2. 8/6/81 Memo to the NRC Commissioners, from Dennis K. Rathbun, "Issuance of Low Power License to Diablo Canyon".
3. 4/23/82 Note to William J. Dircks, from Guy H. Cunningham, III, Rulemaking On Emergency Planning Requirements For Low Power Testing. (1 page)

2. In § 92.11(f)(3)(ii)(C), footnote number 9 is removed and footnotes 10 through 16 and all references thereto are redesignated 9 through 15.

3. In § 92.11(f)(8), paragraph A.13 of the cooperative agreement, the first sentence is amended, to read: "To feed chlortetracycline to psittacine birds, upon their arrival in the facility, as prescribed in § 92.11(f)(3)(ii)(C)."

(Sec. 2, 32 Stat. 792, as amended; secs. 2 and 11, 76 Stat. 129 and 132; (21 U.S.C. 111, 134a and 134f); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 7th day of July 1982.

R. L. Kissler,

Acting Deputy Administrator, Veterinary Services.

(FR Doc. 82-1423 Filed 7-13-82; 8:45 am)
BILLING CODE 3410-34-4

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Emergency Planning and Preparedness

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify: (1) That emergency preparedness exercises are part of the preoperational inspection and thus required prior to operation above 5% of rated power, but not for a Licensing Board, Appeal Board, or Commission licensing decision; and (2) that for issuance of operating licenses authorizing only fuel loading and low power operation (up to 5% of rated power), no NRC or Federal Emergency Management Agency (FEMA) review, findings and determinations concerning the state or adequacy of offsite emergency preparedness shall be necessary.

EFFECTIVE DATE: July 13, 1982.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Human Factors Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone (301) 443-5942.

SUPPLEMENTARY INFORMATION: On December 15, 1981, the Commission published in the Federal Register two proposed rule changes (46 FR 61132 and 48 FR 61134). The proposed rule change in 46 FR 61134 was considered by the Commission as clarifying in nature. It proposed that 10 CFR 50.47(a)(1) be

emergency planning required prior to license issuance are predictive in nature and need not reflect the actual state of preparedness at the time the finding is made. The amendment to 10 CFR 50.47(a)(2) was proposed to emphasize the predictive nature of the review and to provide that licensing decisions need not include the results of an exercise. The Commission noted that preparedness connotes the actual state of implementation, is important during the life of the plant, and should be treated as an operational inspection matter. The proposed rule change would require that a full-scale exercise be conducted before operation above 5% of rated power and periodically thereafter.

The proposed rule change in 48 FR 61132 provided that in order to grant a low power license, only a finding as to the adequacy of onsite emergency planning and preparedness is required; that is, neither FEMA nor NRC must have evaluated the adequacy and capability of offsite preparedness organizations and plans prior to issuance of a low power license. While the proposed rule would eliminate the need to have any NRC or FEMA review, findings, or determinations on the adequacy of offsite agencies' emergency planning and preparedness, the NRC review of the licensee's onsite response mechanism would necessarily include aspects of some offsite elements: Communications, notification, assistance agreements with local law enforcement, fire protection, and medical organizations, and the like. Some examples, but not an exclusive list, where review of an applicant's emergency plan would involve aspects of some offsite elements may be found in pertinent portions of 10 CFR 50.47(b)(3), (5), (6), (9), and (12).

Extensive comments were received, all of which were evaluated and considered in developing the final rule.

Summary of Public Comments

The Commission received 40 letters commenting on the 46 FR 61134 proposed rule change and 68 letters commenting on the 48 FR 61132 proposed rule change. Many letters commented on both issues within the same letter. For 46 FR 61134, 27 letters opposed the rule change while 11 letters favored the rule change. In 48 FR 61132, 43 letters opposed the rule change, while 18 letters favored the rule change. For both rule changes, commenters favoring the rule changes were typically utilities, legal firms and consulting firms representing utilities, and one State health department. Commenters opposing the rule changes included

from New Hampshire and Suffolk County, New York, an Assistant Attorney General of Massachusetts, an Assistant Attorney General of New Hampshire, and representatives of various public groups.

All of the significant comments favoring the rule changes basically reiterated the Commission's rationale for promulgation of the proposed rule changes that was put forth in the Federal Register Notices, 46 FR 61134 and 48 FR 61132.

The following major issues against changing the regulations were raised in specific comments received. These major issues reflect the areas of concern of many commenters.

Issue 1: The NRC's credibility was so undermined by the handling of the TMI accident that the Commission should take pains to avoid even the appearance of relaxing safety standards. By relaxing the current emergency preparedness regulations, far more than the prestige of the agency or the Commissioners is at stake; indeed, it is believed that the credibility of NRC is a vital component of emergency preparedness. If another serious accident were to occur, many lives may be saved if people have enough faith in the dedication and truthfulness of the NRC. As things stand, substantial segments of the population are still alienated and cynical in their feelings about the agency to interfere seriously with the workability of any plans for managing an emergency.

Commission Response: When the Commission published the upgraded emergency preparedness regulations in August 1980, the subject of low power operating licenses was not addressed. At that time the Commission did not differentiate as to what emergency planning requirements would be applicable to the period of fuel loading and low power testing. The Commission has now focused on the risks associated with this level of operation and has chosen a level of emergency preparedness appropriate to assure the health and safety of the public at the stage. In doing so, the Commission does not alter the high standards applicable to the review of emergency preparedness at full power.

Issue 2: During low power testing there are higher risks due to unfamiliarity of the plant operators with their particular plant and due to undiscovered design and construction defects.

Commission Response: The Commission agrees that there may be slightly higher risks due to the plant operators having less experience with

potential for undiscovered design and construction defects. However, in the Commission's view, this risk is significantly outweighed by several other factors. First, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation. Second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full-power operation. Third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring. In the worst case, the additional time available (at least 10 hours), even for a postulated low likelihood sequence which could eventually result in release of the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site. Weighing all risks involved, the Commission has determined that the degree of emergency preparedness necessary to provide adequate protection of the public health and safety is significantly less than that required for full-power operation.¹

Issue 3: The rule changes would eliminate public participation in the review and assessment of exercises before a licensing board.

Commission Response: While it is true that the rule changes will have the likely effect of limiting litigation of the success of exercises in licensing hearings, it is the Commission's view that such assessments are not necessary to make the kind of predictive finding on emergency planning called for by the regulations prior to license issuance. The substantive emergency planning issues now being litigated in license hearings are largely focused on the 16 planning standards found in 10 CFR 50.47(b). These planning standards are unchanged by the rule changes and do not, in themselves, require a successful exercise. Thus the Commission does not regard the exclusion of the exercise

generally from the Licensing Board process as affecting in any fundamental way the manner of public participation on prelicensing emergency planning issues. Finally, the rule changes do not preclude public observation of and participation in the exercises themselves (to the extent consistent with the rules and policies of the Commission and the objectives of the exercise) and in the review and assessment critique meetings held after the exercise. The rule changes clarify that the emergency preparedness exercises are not required for a Licensing Board, Appeal Board, or Commission licensing decision.

Exercises will still be required before actual power above 5% and commercial operation. The conduct of full-scale exercises early enough in the licensing process to permit the outcome of the exercises to be fully litigated at the hearing is premature. Such exercises are best held at a later time, when the operating and management staff of the plant—who are central figures in an exercise—are in place and trained in emergency functions. The Commission believes that, while the actual exercise is not an issue in a hearing under these rules (except to the extent that an outline for the exercise may be involved), the exercise will be held before full power and all significant deficiencies will be properly addressed.

Issue 4: These rule changes would undermine public confidence in the adequacy of emergency planning, safe operation of the plant, and the licensing process.

Commission Response: As the Commission noted in the Federal Register notice which announced the upgraded emergency planning regulations on August 18, 1980 (45 FR 55403) that "The [TMI] accident also showed clearly that onsite conditions and actions, even if they do not cause significant offsite radiological consequences, will affect the way the various State and local entities react to protect the public from any dangers associated with the accident. In order to discharge effectively its statutory responsibilities, the Commission must know that proper means and procedures will be in place to assess the course of an accident and its potential severity, that NRC and other appropriate authorities and the public will be notified promptly, and that adequate protective actions in response to actual or anticipated conditions can and will be taken."

Given that no change is envisioned in the caliber of reviews for full-power licenses, and indeed, more resources in

Commission believes that the final rule changes announced herein do not change this responsibility or diminish in any respect the protection of the public health and safety. While the Commission understands the feelings expressed by these commenters, the Commission wants to state its continued commitment to the adequacy of emergency planning, safe operation of the plant, and in an efficient licensing process. These rule changes should not be cause for concern about this commitment.

Issue 5: Unlike some of the more technical issues, emergency planning is a subject upon which the average citizen is knowledgeable and can make a valuable contribution to the licensing proceedings. This is an important opportunity for public participation. Eliminating this consideration from licensing decisions in effect removes this vital experimental evidence from public scrutiny.

Commission Response: The proposed rule does not eliminate any important substantive aspect of emergency planning from the operating license hearings. Whether an applicant satisfies the requirements of 50.47(a) and 50.47(b) is still an issue that may be raised and litigated in those hearings. In cases where such issues are raised, applicants' and State and local jurisdictions' emergency plans should be available for examination in the hearing process prior to the issuance of an operating license. In addition, an outline of an exercise should also be available in order to assure that the requirement for the conduct of exercises (10 CFR Part 50, Appendix E, Section IV) can or will be met. Moreover, if the actual conduct of an exercise should identify fundamental defects in the way that the emergency plan is conceived such that it calls into question whether the requirements of 10 CFR 50.47 can or will be met, a party to a license proceeding may seek to reopen a concluded hearing or file a petition for action pursuant to 10 CFR 2.20, as appropriate. This is distinct from deficiencies identified by an exercise which only reflect the actual state of emergency preparedness on a particular day in question but which do not represent some basic flaw in emergency planning. Finally, it should be recalled that the full-scale exercises themselves involve participation by local and State governments. Both the NRC and FEMA attempt to make sure that all local and regional concerns expressed by representatives of these governments are fully addressed, and that any deficiencies brought to light are

¹ The level of risk associated with low-power operation has been estimated by the staff in several recent operating license cases: Diablo Canyon, Docket Nos. 75-OL 323-OL and San Onofre, Docket Nos. 307-OL 302-OL and LaSalle, Docket Nos. 373-OL 374-OL. In each case the Safety Evaluation Report concluded that low-power risk is several orders of magnitude less than full-power risk. These findings support the general conclusion in the text that a number of factors associated with low-power operation imply greatly reduced risk compared with

issued. The underlying feelings expressed by these comments, however, are addressed in the Commission Responses to Issues 3 and 4.

Issue 6: The public knowledge that no offsite protection exists could cause chaos in the event of an incident during fuel loading or low power testing.

Commission Response: Prior to issuing an operating license authorizing low-power testing and fuel loading, the NRC will review the following offsite elements of the applicant's emergency plan:

(a) Section 50.47(b)(3). Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned response have been identified.

(b) Section 50.47(b)(5). Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(c) Section 50.47(b)(6). Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(d) Section 50.47(b)(8). Adequate emergency facilities and equipment to support the emergency response are provided and maintained.²

(e) Section 50.47(b)(9). Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(f) Section 50.47(b)(12). Arrangements are made for medical services for contaminated injured individuals.

(g) Section 50.47(b)(15). Radiological emergency response training is provided to those who may be called on to assist in an emergency.³

Knowing that the above elements of the applicants emergency plan have been reviewed by NRC should assure the public that, for low-power testing and fuel loading, adequate protective measures could and would be taken in the event of an accident.

Issue 7: The rule changes are fundamentally not in the best interest of

the public health and safety but obviously in the interest of the utilities.

Commission Response: As explained in previous Responses, the Commission is convinced that the rule changes will not compromise the health and safety of the public. The Commission considers that the rule changes provide flexibility in its licensing procedures, thereby meeting its obligation to the public to conduct its business in a timely and efficient manner. This obligation includes the establishment of an efficient licensing process, while not adversely affecting the public health and safety.

Issue 8: The proposed rule changes contradict previous TMI policy statements.

Commission Response: In developing the upgraded emergency preparedness regulations (45 FR 55402 dated August 19, 1980) one of the policy statements that the Commission made was "that onsite and offsite emergency preparedness as well as proper siting and engineered design features are needed to protect the health and safety of the public [and] as the Commission reacted to the accident at Three Mile Island, it became clear that the protection provided by siting and engineered design features must be bolstered by the ability to take protective measures during the course of an accident."

This rulemaking will in no way deviate from previous policy statements but in fact will add flexibility and efficiency to the licensing process.

Issue 9: Include § 50.47(b)8 and § 50.47(b)15 in evaluating the coordination of offsite and onsite emergency preparedness. These elements require that:

(a)(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained, and

(b)(15) Radiological emergency response training is provided to those who may be called on to assist in an emergency.

Commission Response: The Commission agrees with this comment. See Commission Response to Issue #6.

Issue 10: The rule changes effectively exclude the public from the decisionmaking process on a matter of primary public concern, and create apprehension in the public mind as to whether "preparedness" will be a reality even after a full-scale exercise before operation above 5% of rated power. The public is unlikely to be granted a special hearing, before full-power operation is granted a utility, in order to assess the actual state of preparedness.

Commission Response: It is true that special hearings will not, in a typical case, be held following the full-scale exercise. The public should recognize that the Commission does not intend to authorize the issuance of a full-power operating license if there has been a full-scale exercise which raises serious and significant deficiencies which have not been compensated for and which go to the fundamental nature of the emergency plan itself. Such a deficiency calls into question whether reasonable assurance may be found that public health and safety will be adequately protected in a radiological emergency. However, some deficiencies may be found that only reflect the actual state of preparedness which may be easily remedied; these types of deficiencies should not delay licensing action. See 10 CFR 50.47(c).

Issue 11: No rationale sustains the requirement of offsite emergency preparedness for small research reactors possessing a fission product inventory equivalent to that generated up to 5% by a large reactor while eliminating offsite emergency preparedness for the large reactor.

Commission Response: Although research reactors present an inherently smaller risk than power reactors, they do not possess the accident mitigation features (e.g., large containments) required for power reactors. In addition, research reactors are often located in high population density areas. It is therefore prudent to have an offsite emergency plan for these reactors.

Summary: The Commission has evaluated all public comments, and has also fully considered the risks of operating a nuclear power reactor at low power. The risks of operating a power reactor at low power are significantly lower than the risks of operating at full power because: first, the fission product inventory during low power testing is much less than during higher power operation due to the low level of reactor power and short period of operation; second, at low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents compared to the required capacities under full-power operation; and third, the time available for taking actions to identify accident causes and mitigate accident consequences is much longer than at full power. This means the operators should have sufficient time to prevent a radioactive release from occurring; in the worst case, the additional time available (at least 10 hours), even for a postulated low likelihood sequence which eventually results in release of

the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site. On balance, the Commission has concluded that the rule changes are technically justifiable and will enhance the efficiency of the licensing process, without adversely affecting the public health and safety and therefore should be promulgated.

Commissioner Gilinsky's Separate Opinion

I disapprove both parts of the proposed amendment.

One part of the rule provides that no NRC or FEMA findings whatsoever concerning the state or adequacy of offsite emergency preparedness shall be necessary prior to issuance of a low power license. As I stated in my disapproval of the proposed rule, there should be some offsite preparedness, especially if there is to be an extended period of low power operation.

Moreover, emergency preparedness for full power should not be a hurried, last-minute affair. Some of the steps required for full-power should already be in place at the low power stage.

The other part of the rule excludes consideration of emergency exercises in an operating license proceeding, thereby eliminating an opportunity for public participation in this phase of decisionmaking. The exercises never completely follow the plan. And this area happens to be one in which the nuclear plant's neighbors have special competence, greater in some respects than that of NRC or FEMA. Their comments can be particularly useful. These need not be presented in formal hearings but we should have some means to receive and consider them. I would have modified the final rule to provide for such a brief comment period before NRC issuance of an operating license.

I would also note that the Simpson Report shows that FEMA findings will cause delays in only 2 plants: Shoreham and Byron 1. These delays are based on the applicants' construction dates. If NRC estimates are used, this amendment would have no effect on the dates for issuing operating licenses.

Commissioner Ahearn's Additional Views

In response to Commissioner Gilinsky's comment that "the rule provides that no NRC or FEMA findings whatsoever concerning the state or adequacy of offsite emergency preparedness shall be necessary prior to issuance of a low power license," I

licensees' onsite response mechanism would necessarily include aspects of some offsite elements: communications, notification, assistance agreements with local law enforcement, fire protection, and medical organizations, and the like" (Statement of considerations for this rule at 2).

With respect to his other point concerning consideration in the operating license proceeding, (1) it is important to hold the exercise close to completion of the plant since the operating personnel will then be on site and be able to learn from the experience, and the exercise will be more realistic since hardware and procedures will be closer to completion; and (2) there are public meetings after each drill and the state, local government and other emergency people do participate in these meetings and do provide comments and criticism.

National Environmental Policy Act Consideration

Pursuant to 10 CFR 51.5(d)(3) of the Commission's regulations, an environmental impact appraisal need not be prepared in connection with the subject final amendment because there is no substantive or significant environmental impact.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule changes concern a clarification of the elements and findings necessary for the issuance of an operating license for nuclear power plants licensed pursuant to Section 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133-2134b. The electric utility companies owning and operating these nuclear power plants are dominant in their service areas, and do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121. Accordingly, there is no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a preliminary determination that these rule changes do not impose new recordkeeping, information collection, or

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 is published as a document subject to codification. These rules are made immediately effective because restrictions on applicants are being relieved.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 958, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 262, 206, 68 Stat. 1243, 1244, 1248 (42 U.S.C. 5841, 5842, 5848), unless otherwise noted. Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 164, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 188, 68 Stat. 955 (42 U.S.C. 2236). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.54(i) issued under sec. 1811, 68 Stat. 849 (42 U.S.C. 2201(i)), §§ 50.70, 50.71, and 50.78 issued under sec. 1610, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)), and the laws referred to in Appendices.

2. In § 50.47, paragraph (a) is revised, the introductory text to paragraph (b) is revised, paragraph (c)(1) is revised, and a new paragraph (d) is added. All revisions to read as follows:

§ 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) of this section, no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(2) The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are

reasonable assurance that they can be implemented. A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability. Emergency preparedness exercises (required by paragraph (b)(14) of this section and Appendix E, Section F of this part) are part of the operational inspection process and are not required for any initial licensing decision.

(b) The onsite and, except as provided in paragraph (d) of this section, offsite emergency response plans for nuclear power reactors must meet the following standards:

(c)(1) Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the Commission declining to issue an operating license; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power operation may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this Part.

3. Section 50.54(q) is revised to read as follows:

§ 50.54 Conditions of Licenses.

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the applicable standards in § 50.47(b) and the applicable requirements in Appendix E to this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E to this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the applicable standards of § 50.47(b) and the applicable requirements of Appendix E to this part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E to this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish 3 copies of each proposed change for approval; and/or if a change is made without prior approval, 3 copies shall be submitted within 30 days after the change is made or proposed to the Administrator of the appropriate NRC regional office specified in Appendix D, 10 CFR Part 20, with 10 copies to the Director of Nuclear Reactor Regulation, or, if appropriate, the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Appendix E (Amended)

4. Section I of Appendix E to 10 CFR Part 50 is revised to read as follows [footnotes unchanged]:

I Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies.

This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness. These plans shall be described

report and submitted as part of the final safety analysis report.

The potential radiological hazards to the public associated with the operation of research and test reactors and fuel facilities licensed under 10 CFR Parts 50 and 70 involve considerations different than those associated with nuclear power reactors. Consequently, the size of Emergency Planning Zones (EPZs) for facilities other than power reactors and the degree to which compliance with the requirements of this section and sections II, III, IV, and V as necessary will be determined on a case-by-case basis.

Notwithstanding the above paragraphs, in the case of an operating license authorizing only fuel loading and/or low power operations up to 5% of rated power, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and the capability to implement State and local offsite emergency plans, as defined in this Appendix, are required prior to the issuance of such a license.

5. Section F of Appendix E to 10 CFR Part 50, item (b) is revised to read as follows:

F. Training

b. For each site at which a power reactor is located for which the first operating license for that site is issued after July 13, 1982, within one year before issuance of the first operating license for full power, and prior to operation above 5% of rated power of the first reactor, which will enable each State and local government within the plume exposure pathway EPZ and each State within the ingestion pathway EPZ to participate.

Dated at Washington, D.C. this 8th day of July, 1982.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-1296 Filed 7-13-82 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 223

[ER-1296; Economic Regulations Amdt. No. 13]

Free and Reduced-Rate Transportation; Persons to Whom Free and Reduced-Rate Transportation May Be Furnished

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its rules to clarify that transportation benefits received as compensation for goods or

file

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER & PHILLIPS

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1900 M STREET, N. W.

WASHINGTON, D. C. 20036

ONE (800) 452-7000
KIPPH
440909 NITE UT
'S DIRECT DEAL NUMBER

July 14, 1982

IN PITTSBURGH
KIRKPATRICK, LOCKHART, JOHNSON & HUTCHISON
1500 OLIVER BUILDING
PITTSBURGH, PENNSYLVANIA 15222
(412) 355-6000

452-7023

HAND DELIVERED

J. M. Felton, Director
Division of Rules and Records
Office of Administration
U. S. Nuclear Regulatory Commission
7735 Old Georgetown Road
Bethesda, Maryland 20814

Re: Freedom of Information Act Request

Dear Mr. Felton:

Pursuant to the Freedom of Information Act, as amended (5 U.S.C. § 522), and the rules of the Nuclear Regulatory Commission ("NRC") issued thereunder (10 C.F.R. § 9.3 et seq.), we request copies of the following written materials listed below. To assist the NRC in its search, please note that the documents sought are referenced in the Commission's responses to comments which accompanied the final rule regarding emergency planning requirements for the issuance of fuel loading and low power licenses. Such Commission responses and final rule were issued with an effective date of July 13, 1982. (A copy of the first page of such document is attached to assist the NRC Staff in identifying materials requested herein). The Commission has identified Michael T. Jamgochian, Human Factors Branch, NRR, as the individual to contact for further information on this matter.

1. All documents, reports, records, studies, memoranda, data, correspondence, analyses or any other written material in which the Commission or the NRC Staff has "focused on the risks associated with" fuel loading and low power operation. (The foregoing quotation is from page 4 of the above-referenced Commission responses. A copy of page 4 is attached).

2. All documents, reports, records, studies, memoranda, data, correspondence, analyses or any other written material in which the Commission has chosen a level of emergency preparedness appropriate to assure the health and safety of the public for fuel loading and low power operation. (The foregoing quotation is from page 4 of the above-referenced Commission responses).

8207050084
PDR

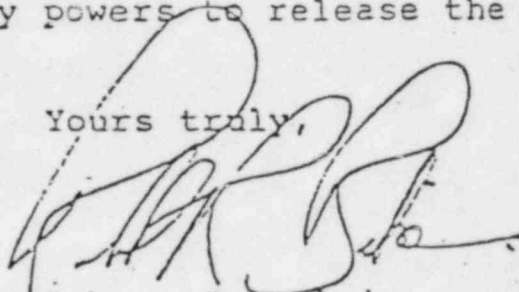
2.

We expect to receive your response to this request within ten (10) working days.

We will pay search and copying fees as set out in the NRC's regulations. If the search and copying fees to be incurred are expected to exceed \$200.00, please notify the undersigned before this sum is exceeded.

In the event that access is denied to any part of the requested materials, please identify and describe the withheld or deleted material in detail and specify the statutory basis for the denial and your reasons for believing that an exemption applies. We also request that your description of the deleted or withheld material include the title of the material, a description of its essence, the identity of its author, and the identities of any parties that have received copies or have had access to such materials. Please separately state your reasons for not invoking your discretionary powers to release the allegedly exempt materials.

Yours truly,



Robert R. Belair

Encls.