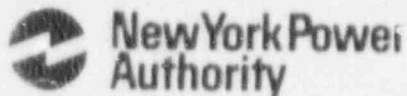


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John C. Brons
Executive Vice President
Nuclear Commission

January 28, 1991
JPN-91-005
IPN-91-002

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

ATTENTION: Docketing and Service Branch

SUBJECT: James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
Indian Point 3 Nuclear Power Plant
Docket No. 50-286
Comments on SECY-90-347, "Regulatory Impact Survey Report"

Dear Sir:

This letter provides comments on SECY-90-347, "Regulatory Impact Survey Report." The Authority has also provided input to and concurs with the comments provided by the Nuclear Utility Management and Resources Council (NUMARC).

The Authority strongly endorses NRC senior management's efforts to evaluate the effect of NRC regulatory activities on the safety of nuclear power plants. The information gathered in surveys of NRC and utility staff and presented in draft NUREG-1395, "Industry Perceptions of the Impact of the U.S. Nuclear Regulatory Commission on Nuclear Power", is excellent. The analysis of this information and the resulting NRC action plan which are presented in SECY-90-347 are insufficient to complete this evaluation.

Page 3 of SECY-90-347 contains a list of seven "themes" distilled from the NRC's surveys. On the same page the NRC concludes that most of the survey comments were caused by one of three factors; and, as the result of an evaluation which is not described, the NRC has identified three specific regulatory areas for improvement.

The seven "themes" are significant problems in the regulatory process, even to the extent that they may reduce safety. They are not included in the three areas identified by the NRC staff for improvement and their root causes have not been determined. Without an in-depth analysis, the potential benefits of the survey will be lost. The Authority recommends that NRC senior management perform a rigorous root cause analysis of the seven "themes", develop an action plan with industry input, and publish the analysis and plan for comment.

SECY-90-347 and draft NUREG-1395 indicate that licensees acquiesce to NRC requests to avoid confrontations or low SALP ratings. This is not discussed any further or included in the regulatory areas selected for improvement. Licensee acquiescence is a pervasive problem that has been identified in every forum that the NRC has provided for identifying regulatory problems. The hardened vent issue is a case in point. The NRC told utilities that if they did not volunteer to install a hardened vent, the NRC would issue an Order requiring them to do so. Almost all affected utilities acquiesced. This is exactly the regulation by intimidation that the backfit rule was intended to prevent.

Utilities are frequently intimidated into making commitments by the NRC. Inspectors and reviewers imply that not fully committing to NRC "requirements" (which are actually staff interpretations of the requirements) is unresponsive to NRC safety concerns. The unstated implication is that the utility may be subject to notices of violation, or other enforcement action, or that SALP ratings will be affected.

The SALP process is a significant problem when it becomes a tool for use by NRC staff at all levels to insert themselves in the process of managing licensee business. This effort is both uncoordinated and unguided. Inspectors who lack sufficient perspective to establish priorities, use the SALP to circumvent the regulatory process in the advancement of pet projects. SECY-90-347 simply ignores this issue.

The SALP process itself is a major cause of the problems identified in SECY-90-347 and draft NUREG-1395. Each SALP category is rated based upon several factors including licensee responsiveness to NRC initiatives. In the recent past, NRC initiatives have come to be initiatives "in pursuit of excellence." Licensees are now being rated in terms of how well they respond to the NRC staff's evolving definition of excellence. This helps to create a regulatory atmosphere in which utilities feel compelled to make commitments which they otherwise would not make. This is a principle cause of the discord between the NRC and the nuclear industry.

SECY-90-347 indicated that the NRC "...dominates licensee resources through its existing and changing formal and informal requirements" and that the NRC "...does not consider the cumulative effect of requirements on licensees..." Enclosure 1 of SECY-90-347 describes a staff "...initiative to better manage the impact of implementing generic requirements." The staff ignores the issue of whether or not the impact of the requirements is justified at all. In fact, citing a statement to the contrary in Enclosure 1, the Commissioners reminded the staff that generic letters do not constitute requirements (Staff Requirements Memorandum of November 29, 1990).

To address this issue the staff proposes an Integrated Regulatory Requirements Implementation Schedule (IRRIS) program. IRRIS seems to include only modifications to be implemented during outages. Analyses, evaluations, studies and responses to NRC generic communications are not addressed. Yet they consume enormous utility resources on an ongoing basis.

An IRRIS schedule does not include requirements to meet regulations or the adequate protection standard and need not include utility improvements. This leaves only those requirements justified by the backfit rule. A Nuclear Utility Backfit and Reform Group (NUBARG) analysis shows that about one half of all generic requirements imposed since the backfit rule took effect were issued by the NRC as

exempt from the rule. Before establishing IRRIS to control the impact of regulatory requirements, the staff ought to reexamine the need for those requirements.

Many NRC "requirements" beyond those resulting in physical modifications have a significant impact on licensee resources without commensurate improvement in safety. Often NRC generic and licensee specific communications require detailed analysis, evaluations, studies and responses. Interactions between staff and licensees on these issues are protracted. The NRC calls for enforcement or management conferences on a regular basis on issues that have been resolved and effective corrective action implemented. Often the principle result of these conferences is the intimidation of the licensee. The time allotted to the licensee to prepare for these conferences is usually short. Since the effort to prepare is great, preparation takes a priority for licensee resources out of proportion for effective action and/or future performance. In many cases, this effort on the part of the licensee results in little benefit.

SECY-90-347 states that the NRC is establishing a policy that no more than four planned major team inspections may be conducted during any SALP cycle without NRC senior management approval. This would amount to one planned major team inspection every four months or so, which would have an enormous impact on licensee resources. SECY-90-347 says nothing about team inspections which are not "major" or not "planned." In addition, the NRC staff may be conducting team inspections but calling them something else.

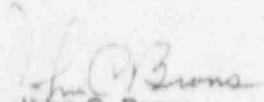
For example, a group of regional based inspectors were sent to "assist" the Resident Inspector to inspect the Indian Point 3 start-up from a refueling outage. Although the group held its own entrance and exit meetings and included items unrelated to the start-up in its scope, the NRC maintained that this was not a "team" inspection. Whatever its name, the impact of such an inspection is the same.

The Authority agrees that some of the regulatory improvements identified in SECY-90-347 should be implemented. This will not resolve the current regulatory crisis since the root causes have not been addressed. The findings of the NRC survey are virtually the same as those described in NUREG-0839, "A Survey by Senior NRC Management to Obtain Viewpoints on the Safety Impact of Regulatory Activities from Representative Utilities Operating and Constructing Nuclear Power Plant" [sic], dated August 1981.

The seven recommendations on page 8 of NUREG-0839 were developed by senior NRC managers. They are all related to senior NRC management involvement in the process of imposing regulatory requirements on licensees. The Authority considers the seven "themes" listed on page 3 of SECY-90-347 to be related to management control within the NRC. The staff's recommendations of NUREG-0839 support this conclusion. The Authority considers the lack of NRC senior management involvement in the process of imposing regulatory requirements to be the underlying cause of the problems identified in the NRC's 1981 and 1990 surveys. The Authority recommends that NRC senior management involvement be addressed in the analysis and planning recommended above. If it is not, SECY-90-347 will be another lost opportunity to make a lasting positive contribution to nuclear power plant safety.

If you have any questions, please contact J. A. Gray, Jr.

Very truly yours,


John C. Brons
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