September 30, 1982

SECY-82-399

POLICY ISSUE
(Commission Meeting)

For: The Commissioners

From: James R. Tourtellotte, Chairman
Regulatory Reform Task Force

Subject: STATUS REPORT ON LEGISLATION

Purpose: To inform the Commission of the status of "The Nuclear Standardization Act of 1982" and a proposed plan for legislative proposals in 1983.

Discussion: Attached is an analysis of the public comments received on the proposed "Nuclear Standardization Act of 1982" published at 47 Fed. Reg. 24044, June 2, 1982. Since it now appears that it would be impractical to revise the legislation for this Congressional term, it is appropriate to prepare a new legislative package for 1983.

The suggested schedule for preparation and submission of the proposed new legislation is as follows:

November 15, 1982 - Present to the Commission and the Ad Hoc Committee

Contact:
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Ext. 43300

December 15, 1982 - Report of the Ad Hoc Committee to the Commission

January 14, 1983 - Commission decision on final product

January 31, 1983 - Submit to Congress

Substantively, the new proposed legislative package would be comprehensive and not limited to standardization. The subjects of the bill will approximate but in some instances may be broader than the proposed DOE legislation of 1978 and 1982. Among other things, it may include:

1) Combined CP/OL for all plants

2) Require hearings only upon proper request (abolish mandatory CP hearings)

3) Change section 189a. of the Atomic Energy Act to provide for hybrid hearings

4) Modify section 189b. of the Act to fix venue in the Circuit Court where the plant is sited or to be built

5) Early site approval for all plants

6) Backfitting provisions for all plants

7) Discretionary ACRS review

8) Elimination of the quorum rule

9) Interim licensing authority

10) Standardization

Enclosure:
As Stated

This paper is tentatively scheduled for consideration at an Open Meeting on Thursday, October 7, 1982 .

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COMMENTS ON ANALYSIS OF PROPOSED "NUCLEAR STANDARDIZATION ACT OF 1982"

Pursuant to the Federal Register Notice issued on June 2, 1982 (47 Fed. Reg. 24044) a number of comments were received on the proposed Nuclear Standardization Act (NSA) which was published for comment. Comments were provided by representatives of the nuclear industry and industry groups (17 submittals), by intervenors and representatives of intervenors or intervenor organizations (19 submittals), and by others who cannot be properly categorized as either industry or intervenors (9 submittals).

Industry comments were generally favorable to the concepts embodied in the NSA but, by and large, indicated industry's view that the proposals do not go far enough and took issue with specific provisions of the NSA. In general, industry commentators indicated that:

- The proposed legislation should also address existing operating plants and plants currently under review ("in the pipeline");

- Backfit standards should be revised now and should apply to all facilities, not just those involving standardized designs;

- The proposed legislation should address the hearing process in greater detail and clarity;

- Appropriate state entities, rather than FERC, should be relied upon regarding need for the facility;

- The NSA proposal to eliminate completion of construction dates in CPs should be adopted;

- The NSA proposal to eliminate the Commission quorum requirement should be adopted; and,

- There is a need for a better statutory definition of "standardized design".

Intervenors' comments were generally unfavorable to the concepts embodied in the NSA (with the notable exception of provisions for early finalization and consideration of standardized designs) and were most concerned with, and opposed to, any provisions that would affect full, formal, trial-type adjudicatory hearings on any aspect of licensing. Intervenors' comments also generally opposed any statutory standards that would modify the requirements for imposing design changes or backfits relative to today's requirements for backfitting under the currently exisiting 10 CFR § 50.109.

Comments by others (non-industry and non-intervenor entities) cannot be generally characterized. The major, significant and recurring comments on

the NSA are set out below. General comments are recounted first, followed by the comments on specific sections of the NSA.

GENERAL COMMENTS ON LEGISLATIVE PROPOSALS

I. General

Several individual intervenors (Hafner, Vadas, Clift, O'Neill, Fraser, Holden, Kountnils) as well as intervenor organizations (Indiana Sassafras Audubon Society, Environmental Law Project of the University of North Carolina) strongly oppose the entire NSA bill on the grounds that, in their view, it would generally streamline and speed-up the licensing process to the benefit of the nuclear industry at the expense of intervenors. They have provided no specific comments or objections except as noted infra. The Wisconsin Public Service Commission expressed the view that, in light of the current financial climate and the demand growth for electricity, the legislation proposed in the NSA is unnecessary now.

In contrast, industry groups in general favor the general licensing reform concepts set out in the NSA but would go further. The American Nuclear Energy Council/Atomic Industrial Forum/Edison Electric Institute (ANEC/AIE/EEI) as well as the Committee on Regulatory Assessment of Scientists and Engineers for Secure Energy (SE_2) and Commonwealth Edison Company expressed the view that the proposed legislation, which is directed to future licensing concepts, inappropriately fails to address overall

licensing reform and the more pressing problems of licensing for existing operating plants and those currently "in the pipeline." These industry organizations suggest that the NRC substantially expand its proposed legislation to encompass reform of the licensing process for the current facilities.

II. Hearings

The bulk of the general comments are addressed to hearings and the hearing process and to backfitting (covered infra).

As to the hearing process, both General Electric and a law firm representing nuclear utilities expressed the view that revisions to hearing requirements should be done systematically, that the bill should clearly define all licensing actions (CP, OL, combined CP/OL, standard design approvals, site approval) for which an opportunity for hearing is available and not be limited to addressing hearings simply for the new licensing concepts proposed in the NSA, and that the legislation should clearly define the hearing requirements in all instances, rather than leave the development of hearing requirements to administrative processes. The suggestion is also made that Section 189a of the Atomic Energy Act should be amended to allow informal hearings for all licensing actions and that hearings should be limited to the resolution of matters in controversy among the parties.

San Diego Gas and Electric Company commented that for all licensing processes, generic NEPA issues should be resolved and excluded from hearings

and that licensing boards should be statutorily restrained in the admission of contentions and in the scope of questioning permitted at hearing. Further industry comments suggest that legislation should raise the threshold for contentions to require a showing that contentions are valid before they are admitted, and that admissible contentions should be limited to issues not previously resolved such that litigation of issues with generic applicability that have been resolved in other proceedings is precluded.

Intervenors on the other hand strongly oppose any changes to the hearing process.

As to the proposals in the NSA which would allow the use of informal hearing procedures for those hearings on combined CP/OLs, site approvals and standardized design approvals provided by the NSA, industry commentators generally favor the proposed statutory provisions based on industry views that such a process would be fair and more efficient than the present process with its oral presentation of evidence and cross-examination, which industry believes to be exceedingly time-consuming and of little value from a safety standpoint. Counsel for the Pa. P.U.C. similarly favors legislative, rather than adjudicatory, hearings on the ground that it is better suited to the resolution of complex technical issues. The primary comment of industry is that the NSA, as proposed, provides little or no guidance on the hearing process and format that should be used and should be modified to be very explicit in allowing informal hearing procedures rather than the formal trial type hearings NRC traditionally uses under Section 189a of the Act.

ANEC/AIF/EEI, the Nuclear Utility Backfitting and Reform Group (NUBARG) and SE_2 specifically recommend that the NSA be modified and Section 189a be amended to explicitly provide for "hybrid" hearings, in accordance with those under consideration in the Regulatory Reform Act (S.1080, 47th Congress, 1st Session), for all licensing under the Atomic Energy Act.

In contrast, nearly all intervenor commentators (UCS; Doggett; Audubon Society of New Hampshire; Hiatt; Southwest Research and Information Center (SRIC); New England Coaliton on Nuclear Pollution (NECNP); Nuclear Information and Resource Service (NIRS); Center for Law in the Public Interest (CLPI)) indicated their view that formal trial type adjudicatory hearings with all rights of cross-examination have contributed much to identifying problems and assuring safety in licensing and provide the only method, in many cases, of meaningful public participation in, and input to, the licensing process. Intervenor commentators indicate that intervenors generally are ill-equipped, financially and technically, to participate in an informal proceeding in which the decision is based on written submissions rather than evidence developed orally and through cross-examination. They argue that an informal hearing process with little or no oral presentation will effectively preclude intervenors and the public from participation. Accordingly, intervenors, as well as the New York State Department of Law which provided comments, strongly oppose any legislative provisions that would allow, in any licensing action, anything other than the formal trial type adjudicatory hearings presently used by the NRC. UCS believes that allowing informal hearing procedures for combined CP/OLs, site approvals and

standardized designs, (which will have more generic and far reaching significance than licensing single, custom plants) but not for the licensing of single custom plants, as proposed under the NSA, makes no sense.

The request for comments on mandatory CP hearings elicited the views of industry commentators (ANEC/AIF/EEI; NUBARG; SE_2; LeBoeuf, Lamb, Leiby & MacRae) that the Atomic Energy Act should be amended to eliminate mandatory CP hearings and to provide for a hearing only when the CP is contested. Other commentators did not provide explicit comments on this matter.

Similarly, while others provided no comments on hearing opportunities for license amendments, industry commentators (ANEC/AIE/EEI; NUBARG; LeBeouf, Lamb, Leiby & MacRae; Yankee Atomic Electric Company) favor amending Section 189a so as to make license amendments immediately effective with no opportunity for prior hearing (going beyond the proposed Sholly amendment) when the license amendment does not involve a significant hazards consideration.

III. Backfitting

A large number of comments from industry was directed to backfitting. Overall, industry commentators indicated their views that the most immediate need for licensing and regulatory reform is the need for the immediate modification of backfitting policy and regulations applicable to currently operating plants and those in the licensing "pipeline" (ANEC/AIF/EEI, NUBARG,

CRA-SE_2, Yankee Atomic Electric Co.). Some industry commentators expressed the view that the backfit provisions implied in relation to site permit renewals and proposed for approved standardized designs in the NSA are inadequate and should be applied neither to the new licensing concepts in the NSA nor to existing operating plants or those currently in licensing review.

NUBARG proposed that backfitting be given first priority and that a new backfitting standard be promulgated and made applicable to all modifications, whether imposed by regulation or order, and to changes in procedures and organization. The standard for backfitting proposed by NUBARG would:

> require consideration of whether the modification will be effective in substantially increasing the level of overall safety of operation and is necessary to keep or bring the plant within an acceptable level of overall safety for the remaining life of the plant.

SE_2 expressed the view that a backfit standard based on "acceptable levels of risk" is a desirable goal but appears impractical at the present time. Yankee Atomic Electric Company on the other hand believes that a backfit standard should be promulgated which:

> creates the presumption that existing licensed designs are adequate unless the NRC rebuts such presumption with a clear and substantial showing that additional safety provisions are needed with the cost of

equipment, analysis and testing considered and balanced against benefits of the backfit.

Intervenors who commented on backfitting generally did so in the context of backfit type provisions in specific sections of the NSA (discussed infra) and generally favored application of the backfit standard currently set out in the exisitng 10 CFR § 50.109.

III. COMMISSION QUORUM REQUIREMENTS

SE_2 favors eliminating the Commission quorum requirements as addressed in the Federal Register Notice for the NSA. The single intervenor commentator (Hiatt) who addressed the matter opposes any legislative amendments that would delete the quorum requirements based on her view that such action is an attempt to silence dissenting Commissioners.

IV. OTHER GENERAL COMMENTS

Two additional comments from industry are directed to the general concepts embodied in the NSA. NucleDyne Engineering Corporation suggested that reform legislation should establish a mechanism for evaluating the licensability of safety improvements or new and unique design concepts for parts of plants independent of any application for a CP or OL. In essence, what is proposed is a statutory framework for "pre-licensing approval," before detailed designs are completed, so as to give assurance that when a

novel design appears in a license application, it would not be summarily rejected because it is new. The commentator opined that such provisions would give incentive to the development of new, safer, cost-saving concepts.

Finally, San Diego Gas and Electric Company suggested that to provide additional incentive for the development of standardized designs, the NRC should seek legislation relaxing antitrust restrictions on NSSS vendors so as to allow cooperation among such vendors on standardized designs.

SECTION BY SECTION COMMENTS ON NSA

I. Section 101/185

One industry commentator (ANEC/AIF/EEI) addressed the provision eliminating the earliest and latest completion dates in CPs. That commentator favored the proposal. Intervenor commentators (UCS, NECNP, CLPI, Environmental Law Project) generally opposed deletion of the latest completion date in a CP based on their view that a CP should not be issued in perpetuity. In particular, UCS notes its view that deletion of the latest completion date in a CP, along with certain other provisions in the NSA, might allow a permittee to grandfather a plant against safety-related changes indefinitely.

As to the provisions for a combined CP/OL and one-step licensing process, two independent commentators (Phillips, Davis) support the proposal based on their views that it would speed licensing and reduce the costs of

licensing. Industry commentators generally favor the proposal although a number of industry representatives (ANEC/AIF/EEI; SE_2; Sargent and Lundy) as well as one intervenor (NECNP) strongly suggest that the provision be modified so that a combined CP/OL is not limited to standardized plants but is also available for other facilities. UCS supports the provision for combined CP/OL for all facilities and suggests that the legislation be modified to require the submission of complete, final, detailed designs as part of the initial application for all facilties. In contrast, Baltimore Gas and Electric Company favors the proposed provision for a combined CP/OL for standardized plants but suggests that the provision be modified to allow applicants for standardized plants to use the traditional two-step licensing if they so choose.

Several intervenors (Spiegel, Leight, Lewis, Environmental Law Project) strongly oppose one-step licensing based on their view that it would inappropriately speed licensing at the expense of safety and a full airing of safety issues in hearings.

Industry commentators (SE_2; Bechtel) consistently expressed the concern that the level of design detail (as expressed in the section-by-section analysis of the NSA) required for the initial application for a combined CP/OL is too great and impractical. Thus, San Diego Gas and Electric indicated that, to provide such a large volume of detail at the outset, applicants will be required to incur large expenditures in design and development without any indication of licensability. To alleviate the risk, this commentator believes that applicants will first seek an early site

approval, then a combined CP/OL resulting in a modified two-step licensing process in any event. ANEC/AIF/EEI also view the level of design detail for a combined CP/OL as being too great and impractical and suggests that a workable level of detail be established through rulemaking. General Electric suggests that it be established that the level of design detail for a combined CP/OL application should be something more than that in an FSAR, something less than that in an FSAR, and based on the use of design envelopes.

As to hearing requirements on a combined CP/OL, ANEC/AIF/EEI suggest that, in addition to the proposals in the NSA, § 189 of the Atomic Energy Act should be amended to provide that the sole opportunity for hearing on a combined CP/OL application would be prior to issuance of the CP/OL and any issues previously resolved could not be considered in such a hearing unless significant new information substantially affecting conclusions on the previously resolved issues were shown to exist.

Several industry commentators (ANEC/AIF/EEI; SE_2; GE) expressed a concern that the requirement for a Commission "finding" before operation that the applicant has completed construction and will operate in accord with the terms of the CP/OL might be interpreted as a second stage of NRC review and as a second stage of authorization or licensing, thus defeating the one-step licensing concept. These commentators suggest that Section 101/185 be modified to make it clear that the "finding" is limited to inspection and testing to verify compliance with the CP/OL. ANEC/AIF/EEI suggest that an

alternative provision should be inserted allowing the licensee to certify to the NRC that it has complied with the CP/OL and then begin operation unless the NRC issues an order prohibiting or restricting operation.

All industry entities that commented on the matter (ANEC/AIF/EEI; SE_2; GE) expressed a concern that the provision for a Commission "finding" before operation could be read to require a second hearing, beyond that held on the issuance of a CP/OL, and suggested that the legislation be modified so as to clearly state that no further hearings, beyond that held regarding initial issuance of the combined CP/OL, is required. In contrast, a number of intervenor commentators (UCS, NECNP, NIRS, Center for Law in the Public Interest) expressed the view that the public should be given the opportunity for a hearing on the Commission finding that the facility was constructed in accord with the CP/OL and on concerns regarding the adequacy of construction. Accordingly, most of these intervenor groups suggested that Section 101/185 should be modified to provide for a second hearing on the findings with regard to adequacy of construction and compliance with the CP/OL. On this matter, the comments on the interpretation as to whether the current version of section 101/185 allows for a second hearing are sufficiently diverse as to indicate some confusion on the question and the need for clarification.

On the provision in Section 101/185 for FERC certification of need for power, two industry commentators (Black & Veatch; Baltimore Gas and Electric Company) favored the proposal. One intervenor (Environmental Law Project) also favored it provided that the section is modified to require periodic

re-review of need for power by FERC. By and large, however, the majority of industry (American Public Power Association; ANEC/AIF/EEI; SE_2; Sargent & Lundy) and intervenor (Lewis; Indiana Sassafras Audubon Society; UCS; Hiatt; NIRS; New York State Department of Law) commentators expressed the view that FERC is neither currently authorized nor qualified to make such a certification and that the proposal in the bill is inappropriate and, to some intervenors, unacceptable. These commentators generally all suggest that the bill be modified to provide for NRC reliance on state PUCs and energy facility siting councils which are claimed to have the required experience, expertise and knowledge to make certifications on need for power.

II. Section 102/193

As to the concept of statutory early site approvals, there was no explicit opposition among the commentators except for the Environmental Law Project which indicated its view that Section 102/193 is defective as written in that it fails to prohibit the performance of site work after site approval is given but before a combined CP/OL is issued. Marvin Lewis also expressed his view that legislation providing for early site review is unnecessary since there are currently no new proposals to build nuclear plants.

Several industry commentators questioned the provision designating who could apply for early site approvals. Black & Veatch suggested that the section be modified to eliminate federal, state and local governments as applicants on the ground that these governmental entities would not apply for

an early site approval in any event. The American Public Power Association, noting its view that qualifying sites will likely be scarce and monopolized by large utility holding companies to the detriment of smaller systems, suggested that the legislation should be modified to give preference in early site approvals to public agencies and systems (as is done for hydroelectric permits under the Federal Power Act) and to apply the antitrust provisions of Section 105 of the Atomic Energy Act to site applications. ANEC/AIF/EEI expressed their view that proposed Section 193a inappropriately limits those persons who can apply for a site approval and suggest that the section be modified to allow applications by any "person" as defined in Section 11s of the Atomic Energy Act.

Finally, Baltimore Gas & Electric Company suggests that a provision be added allowing early site approvals for sites with existing operating reactors, with the existing plants at the site to be unaffected by the review and approval process or by subsequent reviews for new plants at the site.

Two industry commentators (San Diego Gas and Electric; ANEC/AIF/EEI) expressed concern over the complexity of the early site approval application implied in the section-by-section analysis accompanying the NSA. ANEC/AIF/EEI indicate that, at the early site approval stage, the detailed plant design seemingly called for in the application may be impossible to provide and suggest that Section 193c be modified to make it clear that only an acceptable "environmental impact envelope", without the need for a

detailed plant design, will be required in the application for early site approval.

As to deferral of fees for site approvals, Black & Veatch suggests that fees should be waived altogether as an incentive to applicants. ANEC/AIF/EEI support fee deferral but question the method of allocation and suggest that Section 193b be modified to simply provide that fee allocation will be resolved in rulemaking. Baltimore Gas & Electric suggests that the fee deferral provisions should be modified to allow further fee deferral into the site permit renewal period and to provide a reasonable assessment of interest on deferred fees.

A number of intervenor commentators (UCS; Hiatt; NECNP; Center for Law in the Public Interest) indicated their views that NRC licensing fees are small relative to an applicant's other costs in preparing a site application and that fee deferral is thus unnecessary and is, in any event, at least a temporary subsidy to the industry. These commentators, therefore, suggest that the fee deferral provision be deleted.

On the ten-year length of an early site approval, two intervenors (UCS; NECNP) expressed concern that this provision, in combination with elimination of the latest completion dates from CPs, could result in a site permit of unlimited duration. These intervenors, therefore, support the provision in Section 102/193 on effective dates of the site approval only if the latest

construction completion date in CPs is not deleted from Section 185 of the Atomic Energy Act.

As to renewal of site approvals, ANEC/AIF/EEI urge that Section 193e(2) be modified to provide that renewal will be presumptive. They suggest further provision to the effect that a renewal application will not occasion re-review of previously resolved problems but NRC will be limited in its review to new site information and may not require changes to the site permit except pursuant to backfit standards.

Several intervenors (UCS, Hiatt, NECNP, Center for Law in the Public Interest) commented that the proposed Section 102/193 implies that site permit renewal will be automatic. These commentators urge that Section 102/193 be modified to make it clear that renewal is not automatic and that renewal can only be granted after a full re-review and a demonstration by the permittee that there have been no significant changes since issuance of the site permit. One intervenor suggests that Section 102/193 be modified to provide an opportunity for a hearing on the renewal application.

Two intervenors (UCS; Center for Law in the Public Interest) commented on Commissioner Gilinsky's suggestion that a provision be added to Section 193e(1) to require a match of site parameters and plant design in the CP hearing. Both intervenors see such a provision to be necessary to assure a proper match of site and facility and urge modification to Section 193 to

provide a separate hearing, independent of the CP or combined CP/OL hearing, on matching the site and the plant.

III. Section 103/194

There were no comments opposing the general concept of standardized design although one industry commentator (Sargent & Lundy) questioned the need for statutory provisions on standardized design approvals in view of the current lack of interest in the nuclear option. Sargent & Lundy also indicated its view that standardized designs of the sort contemplated in the NSA may be impractical for the balance of plant (BOP) portion of a facility design because the AE must rely on NSSS vendors to assure the proper interface and would be constrained to develop a large number of standardized BOP designs to match the NSSS standardized designs of the reactor vendors.

ANEC/AIF/EEI note that the stated basis for approval of a standardized design differs in language from that in the Atomic Energy Act and current regulations for issuance of a license. They suggest that since current standards have long been in existence and interpreted by the courts, Section 103/194 should be modified to use current standards in the Atomic Energy Act for license issuance.

As to the length of a standardized design approval, one commentator (Phillips) suggested that the NSA be modified to provide a 20 year effective term, whereas another (New York State Department of Law) objects to any

"long-term" (undefined) approval on the ground that it would allow use of an approved design even if safer designs are available. In any event, ANEC/AIF/EEI suggest that the NSA be modified to explicitly provide that an approved standardized design will be assumed valid and will not be re-reviewed in connection with a CP or CP/OL application.

Numerous commentators urged that a definition of standardized design be set out in the statute itself and made suggestions as to the definition. SE_2 noted that the portion of the definition in the section-by-section analysis referring to a design "useable at multiple sites" disregards the potential for use of a standardized design in multiple units at the same site. A number of industry commentators (GE; ANEC/AIF/EEI) urged that the statute contain a definition of standardized design that would allow approval not only of entire plants but also of major and significant portions of plants. They argue that in the absence of such a provision, a significant restructuring of the entire nuclear industry would be required. Bechtel suggests that the definition of standardized plants be revised so that replicate and duplicate plants, as well as replicated and duplicated major plant systems, previously reviewed and approved, would be recognized as "standardized" designs. UCS believes that the definition of standardized design proposed by Commissioner Gilinsky should be incorporated into the NSA. On the other hand, the Center for Law in the Public Interest urges a statutory definition for standardized design simply as "an essentially final design for the complete nuclear facility."

Industry commentators expressed concern over the amount of design detail that might be required in a standardized design approval application. SE_2 believes that requiring a detailed design to be submitted is too inflexible and suggests that, to provide incentive to industry, NRC should give generic approval to major segments of the overall design. San Diego Gas & Electric and ANEC/AIF/EEI similarly comment that requiring submission of an overall, complete design presents an impossible task. Black & Veatch urge that the NSA be modified to require the NRC to develop and define the level of design completeness and detail necessary for an application through rulemaking.

As to fees for standardized design approvals, ANEC/AIF/EEI support fee deferral, argue that actual fees must be based on NRC costs of review, and urge that the allocation of fees be determined in rulemaking and not addressed in the legislation itself. Black & Veatch suggest that NRC fees for standardized design approvals simply be waived so as to provide an incentive to industry.

With regard to the renewal of standardized design approvals, industry and intervenor commentators were at opposite extremes. On the one hand, some industry commentators (San Diego Gas & Electric; ANEC/AIF/EEI) view the renewal provisions of Section 194 to allow NRC to condition renewal on the incorporation of significant changes in the approved standardized design without any cost-benefit determination by NRC. They accordingly urge that Section 194e(2) be modified to provide that renewal of a standardized design approval is presumptive and that NRC's review will be a review only for significant new informatio..

In contrast, intervenors (UCS; NECNP; NIRS; Center for Law in the Public Interest) view the NSA provisions as making renewal almost automatic and as establishing stricter standards for denying renewal than currently exist for requiring backfitting of operating plants. Both intervenors (UCS; NIRS) and at least one industry commentator (ANEC/AIF/EEI) view the standard for renewal which takes into account "overall risk" and an "acceptable level of risk" as being impractical to implement and unreliable at this time and suggest that risk concepts be deleted from the renewal standard. UCS suggests that, instead, Section 194 should be modified to establish that renewal of a standardized design approval must be conditioned on design changes found to be necessary based on the now existing backfit standard of 10 CFR 50.109.

IV. Section 104/196

Most commentators utilized their comments on Section 104/196 of the NSA to express their views on NRC's backfitting. In this regard, ANEC/AIF/EEF was of the view that all aspects of the NSA should be modified to provide a single, unified backfit standard applicable to all situations (including operating plants and those currently in the licensing pipeline). They also noted an absence in the NSA of any backfit standard to be applied to standardized design approval holders (versus licensees and applicants using approved standardized designs). Yankee Atomic Electric Company suggested that Section 196 be modified by deleting the word "standardized" from that

section so that the proposed "backfit" standard applies to currently operating plants.

Most intervenors who expressed a view on the matter appeared to disagree with the basic concept of standardized design stability as provided in Section 196. UCS objects on the ground that, in its view, licensees would not be required to make design changes even if the approved designs were found to violate the Atomic Energy Act or the regulations. Similarly, the Center for Law in the Public Interest believes that the proposed standard for requiring design changes is unachievable. UCS and NIRS believe that the burden regarding design changes is misplaced and that the legislation should require a licensee to demonstrate no need for design changes, rather than require the NRC to show a need for changes.

Many commentators disagreed with the substance of the proposed standard for "backfitting." UCS believes that "risk" concepts are unreliable and should not be used in the standard by which the need for changes in standardized designs are determined (UCS urges that Section 196 be modified to statutorily impose the current backfit standard contained in 10 CFR 50.109). Several industry commentators (ANEC/AIF/EEI; SE_2) believe that risk concepts are not sufficiently developed at this time and that incorporation of risk concepts into a standard for requiring design changes is now premature. SE_2 urges that Section 196 be modified to contain a backfit standard to the effect that:

backfits may be required where the Commission establishes that the backfit is justified by significantly improved overall plant safety accounting for all factors, and the benefits of the backfit outweigh the costs.

Provisions for voluntary design changes by a licensee are opposed by San Diego Gas & Electric Company which believes that such provisions would allow the NRC Staff to require "voluntary" changes and are destabilizing. The only other industry commentator (ANEC/AIF/EEI) on this matter did not oppose the provision but suggested that Section 196 be modified to provide that voluntary design changes could be made by licensees without prior NRC approval unless the change involves a license amendment or unreviewed safety question.

Intervenors' sole concern with the provision on voluntary design changes was whether such changes would bring with them the opportunity for hearing. A number of intervenors (UCS; NECNP; NIRS; Center for Law in the Public Interest) object to the provision on voluntary design changes if there is no opportunity for hearing and all suggest that Section 196 be modified to clearly provide a hearing on the sufficiency of licensees' voluntary design changes. In contrast, the counsel for the House Subcommittee on Energy Research and Production suggests that Section 196 should be modified by adding the word "only" after the work "subject" in the last sentence of Section 196 to make it clear that hearings on voluntary design changes are not necessary.

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Meeting Title: Briefing by Regulatory Reform Task Force

MEETING DATE: 10/7/82 Open X Closed ___

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