

UNION ELECTRIC COMPANY  
1901 GRATIOT STREET - ST. LOUIS

DOCKET NUMBER 50-35  
PETITION RULE PRM  
(47 FR 51889)

60

January 17, 1983

DOCKETED  
ULNRC

MAILING ADDRESS:  
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Mr. Samuel J. Chilk  
Secretary of the Commission  
Docketing and Service Branch  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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ULNRC-601

DOCKETING & SERVICE  
BRANCH

Dear Mr. Chilk:

Re: Docket No. PRM-50-35, Union of Concerned Scientists:  
Filing of Petition for Rulemaking, 47 FR 51889,  
November, 18, 1982

Attached are comments responding to the notice of November 18, 1982, regarding the question of litigation rights for the public on offsite radiological emergency planning in the NRC licensing process prior to issuance of a full-power operating license. We oppose acceptance of the petition.

Union Electric Company, and its ratepayers, could be greatly impacted by the NRC's decision regarding this petition and feels that acceptance by the NRC of the petition's proposed amendment to 10 CFR 50.47 and the premises set forth by the petitioner to support the petition would be inimical to our company, our customers, and the public interest. Our primary concern is the continued implication that offsite radiological emergency planning, and proper testing of such plans with exercises and drills, represents a major safety issue for nuclear power plant operation requiring special adjudicatory attention in the licensing process. Our direct experience to date indicates that public confidence in nuclear power regulation by NRC and in the ability of utilities to design, construct, and operate nuclear power plants is being seriously eroded by the perceived casting of offsite radiological emergency planning into a special, and higher, level of regulatory attention. This petition would, if accepted, impose more stringent standards but would not yield any improvements in nuclear power plant safety or improve public confidence in emergency preparedness.

Very truly yours,

Robert J. Schukai  
General Manager-Engineering

SJH/lkr  
Attachment

Acknowledged by card

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PDR

UNION ELECTRIC COMPANY  
COMMENTS ON EMERGENCY PLANNING PETITION (47 FR 51889)  
DOCKET PRM-50-35

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Background

The following are comments in response to 47 FR 51889, Docket PRM-50-35, a petition for rulemaking to amend 10 CFR 50, filed by the Union of Concerned Scientists (UCS) on October 14, 1982. The petition would amend 10 CFR 50.47(a)(3) to require licensing boards retain jurisdiction over operating license proceedings and maintain an open hearing record throughout any period of low-power operation or fuel loading, particularly on all contested emergency planning issues, including results of preoperational exercises.

Currently 10 CFR 50.47 provides that operating licenses for fuel loading and/or operation up to five percent of rated power may be issued without NRC or FEMA review findings. In July, 1982, NRC clarified that exercises were part of preoperational inspection required prior to operation above five percent of rated power but were not for a licensing board, appeal board, or Commission licensing decision, and that no NRC or FEMA review, findings, and determinations concerning offsite emergency planning would be necessary for fuel loading and low-power operation licenses (47 FR 30232). The July, 1982, final rule (10 CFR 50.47) was issued following NRC review of comments on the proposed rulemaking of December 15, 1981 (46 FR 61132). NRC will review licensees' onsite response plans for aspects of some offsite elements without the need for the NRC or FEMA review of off-site planning. These elements include: provisions have been made for state and local staff at the EOF; notification procedures have been defined, including follow-up messages to response organizations and the public within the plume exposure EPZ; communications among response groups exist; adequate emergency facilities and equipment are provided and maintained; medical services are arranged for contaminated injured people; and radiological emergency training has been provided to offsite emergency personnel. The Commission concluded that the rule changes were technically justifiable and will enhance the efficiency of the licensing process without adversely affecting public health and safety.

The Petition's Arguments

The petitioners express deep concern over the perceived loss of full public participation in NRC licensing decisions involving emergency planning issues. On September 10, 1982, they also filed an appeal of the final rule with the U.S. Court of Appeals for the District of Columbia. They state that they want to assure the public's right to litigate offsite emergency planning issues before full-power operating licenses are granted by NRC.

The petitioners had expressed these concerns in their comments on the December, 1981, proposed rule. UCS is a participant in the Indian Point emergency planning proceedings and claims a

strong interest in preserving the public's right to adjudicate off-site emergency plans. The petitioners argue that the July, 1982, rule is ambiguous as to the role of the licensing board to conduct or continue a hearing on contested emergency planning issues and, in that sense, threatens the public's right to fully litigate offsite emergency plans.

In a November 15, 1982, letter to NRC, UCS stated if the NRC does not agree to changing its rule to have exercises and the results of such exercises part of the licensing process, including litigation, UCS will pursue its lawsuit against NRC in the U.S. Court of Appeals.

### Comments

1. The NRC expressed particular interest in comments on "whether or not the offsite exercise need be held prior to the closure of the hearing record in the full-power proceeding." In response, the Commission is encouraged to consider and affirm its earlier rule that the exercise be held before operation above five percent of rated power. However, the exercise evaluation should continue to be treated as an operational inspection matter, with necessary input from other organizations and agencies such as FEMA.

In the situation where there may be contested emergency planning issues before an ASLB, with hearings still in progress or the hearing record still open, obviously the contested issues would be subject to litigation in such hearings. The UCS petition language would encourage intervenors to contest emergency planning issues, including defects found in plans after exercises, before full operating licenses are decided. Hence, the UCS petition would result in continuing litigation before ASLB's and does not accept the NRC conclusion that exercise results are an operational inspection matter. The two should remain separate, with the hearing record being closed regardless of the status of exercises.

2. There is no indication that the litigation rights of the public are denied by the NRC's July 13, 1982, rule. As clearly stated by the NRC in its response to Issue 5 (47 FR 30233), all aspects of emergency planning may be raised and litigated in operating license hearings. Moreover, as NRC added, "a party to a license proceeding may seek to reopen a concluded hearing or file an action pursuant to 10 CFR 2.206 as appropriate." UCS alleges that under the rule offsite emergency preparedness exercises would be treated differently than other licensing issues, implying a more restrictive approach. In effect, the UCS proposed change would provide a special, higher status for contested emergency planning issues over other licensing issues.
3. NRC intends to review key offsite elements of an applicant's radiological emergency planning even prior to authorizing fuel loading or low-power generation. Hence, the public will

be assured that adequate protection of the public's health and safety is in place in the event of the start of accident conditions during fuel loading or low-power operation. The radiological risks to the public from operating a nuclear power reactor at low power are very small because the radioactivity in the reactor at low power remains limited. In addition, the demands on accident mitigating systems within the plant are also very small at low power; and the time available to assess and take corrective action on possible accident conditions is considerably longer than during full-power operation. The combination of these factors allows for ample opportunity to have all necessary actions concluded before a radioactivity source term can be reached which would jeopardize public health and safety offsite.

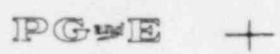
4. Implied in the petition is that public confidence in NRC's licensing decisions will be increased if public participation through ASLB adjudicatory hearings could litigate the results of emergency exercises. The public that participates as an intervenor party in ASLB hearings seems to be a special segment of the public. The Union of Concerned Scientists has commented on many NRC rules and has been an intervenor in litigation before ASLB. It, therefore, is petitioning to enlarge its right to adjudicate issues, as a self-appointed spokesman for a broader public. It cannot be documented that as a result of its previous history of participation in litigation, the UCS has increased its confidence in NRC's licensing process or increased the general public's confidence.
5. The fact remains that offsite radiological emergency preparedness, compared to plant operation and accident assessment and prevention, is a secondary nuclear safety issue, serving at best to help mitigate the possible consequences of a nuclear accident but contributing nothing to controlling the dynamics of plant operation. The TMI accident would not have triggered extensive radiological emergency countermeasures under current guidelines since the radioactivity released resulted in no significant impact on public health and safety. Had the TMI accident progressed, only under "worst case" assumptions could the releases have warranted evacuation of even nearby persons using current protective action guides. Beyond that, the post-TMI analysis of the accident indicates that the radiation source term previously used as the basis for developing NRC and FEMA guidelines is highly conservative and that the threat to public health and safety following a TMI-type nuclear accident is far less than postulated. Hence, the urgency for elevating litigation regarding offsite radiological emergency planning is far less than the UCS petition implies.

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DOCKET NUMBER  
PETITION RULE PRM 50-35  
(47 FR 51889)

# PACIFIC GAS AND ELECTRIC COMPANY



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KENNETH YANG

January 17, 1983

Secretary of the Commission  
US Nuclear Regulatory Commission  
Washington DC 20555

Attention: Docketing and Service Branch

Re: Union of Concerned Scientists;  
Docket No. PRM-50-35

Dear Sir:

Pacific Gas and Electric Company offers the following comments on the petition for rulemaking filed by the Union of Concerned Scientists (47 Fed. Reg. 51889).

Proposed rule 10 CFR 50.47(a)(3), by including emergency preparedness exercises in the adjudicatory process, would only serve to delay the conclusion of the hearings without providing additional protection to the public health and safety. It is our position that current regulations, especially 10 CFR 50.47(a) and 10 CFR 50.47(b), provide more than sufficient means to determine if there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The Commission's high standards applied to the review of emergency preparedness fully implement existing regulations. Further, this issue was previously addressed in detail by the Commission during consideration of proposed changes to 10 CFR 50.47(a)(1) and 10 CFR 50.47(a)(2). Note particularly the Commission responses to Issue 3 and Issue 5 published in the Federal Register (47 Fed. Reg. 30232) July 13, 1982.

Very truly yours,

*Philip A. Crane*

Acknowledged by card.....

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401  
400 Chestnut Street Tower II

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UNITED

DOCKET NUMBER ~~50-35~~

January 17, 1983

PETITION RULE PRM

(47 FR 51889)

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GENERAL INVESTIGATIVE  
DOCKETING & SERVICE  
BRANCH

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

Attention: Docketing and Service Branch


Dear Sir:

TVA is pleased to provide comments on the petition for rulemaking (PRM-50-34) filed by the Union of Concerned Scientists as noticed in the November 18, 1982 Federal Register notice (47 FR 51889).

The petitioner's position appears to be based in part on an incorrect reading of 10 CFR 50.47. The petitioner apparently believes that section 50.47 makes no provision for addressing the sufficiency of offsite planning in the operating license hearing before a full power license is issued. This is not correct. Section 50.47(b) specifically requires affirmative NRC findings on the sufficiency of offsite planning before issuance of the full power license. Section 50.47(b) merely states that NRC can issue an operating license authorizing low power operation and testing (up to five percent of rated power) without making affirmative findings about the sufficiency of offsite emergency preparedness. Thus, offsite emergency preparedness issues can be fully litigated. However, there is no requirement that offsite exercise be completed before litigating those issues.

To specifically respond to the NRC's question in the Federal Register notice, we believe an offsite exercise need not be held before the closure of the hearing record in the full-power operating license proceeding for the following reasons:

1. Emergency planning issues and ability to comply with 10 CFR 50.47(a) and (b) both onsite and offsite can be fully litigated in the operating license proceeding.
2. The Commission has found that holding the actual exercise later in the licensing process is most efficient because the operating personnel who have the responsibility for emergency response have been on site longer and thus have a better understanding of emergency preparedness requirements. The public can observe and participate in the actual exercises (to the extent consistent with the rules and policies of the Commission and the objectives of the exercise) and the reviews and assessment critiques which follow the exercises. If the exercises indicate deficiencies in emergency planning, any party to the proceeding can petition to reopen the record, or any person can seek relief under 10 CFR 2.206.

Acknowledged by card. 

Secretary of the Commission

January 17, 1983

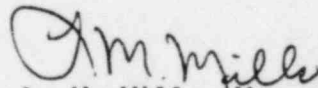
3. The Commission looked at this issue previously and found that the current rule adequately protects the public health while promoting the efficiency of the licensing process. The full scale exercise must be successfully completed before proceeding above five-percent power, and for various reasons the public risk of an accident below five-percent power is orders of magnitude smaller than after the plant has an operating history at significant power levels.

We believe the existing requirements in 10 CFR 50.47 are adequate with respect to health and safety issues. Therefore, the petition should be denied.

We appreciate the opportunity to comment.

Very truly yours,

TENNESSEE VALLEY AUTHORITY



L. M. Mills, Manager  
Nuclear Licensing

cc: Executive Secretary  
Advisory Committee on Reactor Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Mr. Tom Tipton  
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7101 Wisconsin Avenue  
Bethesda, Maryland 20814



**Commonwealth Edison**  
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 Chicago, Illinois 60690

DOCKET NUMBER **62**  
 PETITION RULE PRM **50-35**  
**(47 FR 51889)**  
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January 17, 1983 <sup>83</sup> JAN 20 10:48

DOCKETING & SERVICE  
 BRANCH

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

Attention: Docketing and Service Branch

Re: Union of Concerned Scientists Petition to  
 Modify 10 CFR 50.47-47 Fed. Reg. 51889

Dear Sirs:

The following comments are submitted on behalf of Commonwealth Edison Company ("Edison"). Edison is a holder of operating licenses for nine reactors and permits to construct four additional reactors, at Byron and Braidwood, Illinois. Hearings on Edison's application for operating licenses for Byron, which are scheduled to commence March 1, 1983, will likely involve litigation of the adequacy of offsite emergency plans. Consistent with the existing Commission requirements, the initial offsite planning exercise is not scheduled until sometime after the close of the hearing record. As such, Edison has a clear interest in the matters raised by the Union of Concerned Scientists ("UCS") petition.

The modification to 10 CFR 50.47 urged by UCS would, as a practical matter, lead to one of the following negative results. If the exercise were scheduled as close in time as possible to the commencement of commercial operation of the facility, then litigation of the adequacy of the exercise would almost certainly delay operation. Such delay would, in turn, impose severe economic penalties on the owner of the reactor and its ratepayers. The alternative would be to advance the date of the emergency exercise so as to avoid impinging on the commercial operation date. This alternative would, however, defeat the very purpose for conducting the exercise, since many of the plant personnel and government officials charged with emergency response responsibilities during plant operation would most likely not yet be present at the plant site. Thus, the most likely consequence of adopting the UCS proposal would be to impose significant economic penalties on license applicants, which, as we explain below, are simply not justified.

Acknowledged by card.....

The present regulatory scheme provides adequate means for bringing any serious safety considerations to light which might arise from the emergency exercise and avoids the unnecessary adverse economic consequences identified above. Under the Commission's existing regulations, a party can always seek to reopen the record, prior to the issuance of a final decision, if the emergency exercise gives rise to serious safety questions. If, on the other hand, a final decision is already issued by the time the exercise is conducted, a party can raise its concerns via the provisions of 10 CFR 2.206. Simply put, adequate measures now exist which address the concerns raised by the UCS petition.

Finally, contrary to the UCS assertion, the existing regulatory system is perfectly legal. In actuality, pre-operational emergency exercises are no different than any other pre-operational drills or tests conducted at nuclear facilities. These tests are generally run to demonstrate and verify that components, systems, and/or procedures are adequate to perform their intended function. There is no requirement that such pre-operational tests be conducted prior to operating license hearings or that licensing boards retain jurisdiction or keep the record open to permit litigation of the results of such tests or drills. However, if the pre-operational tests indicate that a finding made by the Board and necessary to the issuance of a license was in error, obviously, this would be sufficient grounds for re-opening the record or suspending or modifying the license. There is no reason why the pre-operational emergency exercise should be treated and differently.

For these reasons Commonwealth Edison Company respectfully requests that the UCS petition be denied. Thank you for the opportunity to comment on these important matters.

Respectfully,



L. O. DelGeorge  
Director of Nuclear Licensing

LOD/rap

DOCKET NUMBER 50-35 (64)  
PETITION RULE PRM (47 FR 51889)



**GULF STATES UTILITIES COMPANY**

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REGISTRATION  
DOCKETING & SERVICE  
BRANCH

January 17, 1983  
RBG-14,157  
File Code G9.23

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

Attention: Docketing and Service Branch

Gentlemen:

Gulf States Utilities (GSU) is pleased to submit its comments on the Union of Concerned Scientists petition for rulemaking, Docket No. PRM-50-35 (47 FR 51889). GSU is opposed to the October 14, 1982 petition for the following reasons:

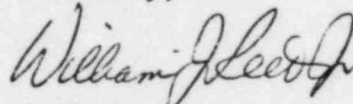
- a. The Commission has already determined that the fission product inventory at or below the five percent power level is not sufficient to affect the offsite community; therefore, there is no reason to include a review of the offsite emergency preparedness capabilities at that stage of the licensing process.
- b. Prior to fuel load, the Nuclear Regulatory Commission (NRC) conducts an onsite emergency preparedness appraisal to determine the adequacy of onsite emergency plans and the interfaces with offsite plans. All deficiencies are identified and corrective actions are required by the NRC within a designated time frame.
- c. The July 13, 1982 amendment to 10CFR50.47 specifically states, "That emergency preparedness exercises are part of the pre-operational inspection and thus required prior to operation above five percent of rated power..." Per the NRC/FEMA Memorandum of Understanding dated November 1, 1980, the NRC evaluates the onsite capabilities, while FEMA evaluates offsite capabilities. Both of these evaluations are considered in granting of the full-power operating license. Corrective actions of deficiencies observed during the onsite/offsite exercise are to be provided to the Commissions satisfaction.

Exempted from card... *[Signature]*

In view of the final regulations on emergency planning effective August 19, 1980 and subsequent amendments, sufficient mechanisms exist to determine the state of emergency preparedness both onsite and offsite and, therefore, this should not be included in the adjudicatory hearing process.

Finally, the proposed wording of paragraph 50.47(a)(3) provides no flexibility for the issuance of Licenses. This could result in long and costly delays in plant operation.

Sincerely,

  
for J. E. Booker  
Manager-Engineering,  
Nuclear Fuels & Licensing  
River Bend Nuclear Group

JEB/LAE/kt