



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

PDR

July 23, 1984

50-416

The Honorable Edward J. Markey, Chairman
Subcommittee on Oversight and Investigations
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Markey:

This is in response to your May 31, 1984 letter regarding the Grand Gulf nuclear power plant. You raised specific concerns regarding the NRC staff's May 22, 1984 order and the continued operation of the plant at low power notwithstanding outstanding issues of compliance with NRC's General Design Criterion 17 (GDC 17).

GDC 17 requires, among other things, that there be both offsite and onsite powersystems to assure operation of safety systems. At the present time, the qualification of the onsite emergency diesel generators at Grand Gulf, manufactured by Transamerica Delaval, Inc., is still under staff review. As part of the review process of the diesel generators, the staff issued an immediately effective Order on May 22, 1984 which required disassembly and inspection of one of the two diesels whose qualification is in question. The Order also modified one of the limiting conditions for operation in the technical specifications, so as to permit continued low power operation with the one diesel generator inoperable and being disassembled and inspected, and as a compensating measure, required operability of gas turbine generators that were installed by the licensee to augment the onsite power supplies.

The staff's May 22 Order was discussed by the Commission at meetings on May 24 and June 1. In both the May 24 and June 1 meetings, the Commission decided not to intervene in the staff activities. We would point out that in both cases the Commission was split in its decision. The majority view to allow the continued operation of the plant was based upon the staff's assessment that the risks to the public health and safety are low during low power operation of the plant. The Commission concluded that there was no immediate health and safety reason to require shutdown of the plant. While the Licensee was not technically in compliance with GDC 17, it has never been Commission policy that noncompliance with the regulations requires immediate shutdown of an operating reactor in every case. Instead, Commission policy has always been that immediate shutdown depends on the degree of risk to public health and safety.

Your letter raises a question whether the May 22 Order was consistent with the procedural requirements of the so-called Sholly Amendment, which provides for issuance of immediately effective license amendments if the Commission finds that no significant hazards consideration is involved. The Office of the General Counsel and the Office of the Executive Legal

Director both agreed that, in some circumstances, the Commission could issue an immediately effective order which imposed additional safety requirements while relaxing others, without following the Sholly procedures. While the two offices disagreed as to the nature of the circumstances that would justify this exception to the Sholly procedural rule, they agreed that a plant shutdown was not required in order to correct any procedural deficiency that might have occurred with issuance of the May 22 Order. The Commission majority then decided that no plant shutdown was required.

The Commission does not believe, as you have stated in your letter, that the NRC's activities in the Grand Gulf case have been unlawful. We do not agree with your implication that we will violate our own rules and place the public health and safety at a greater risk merely to expedite the licensing of a nuclear power plant. The staff's action did not result in reduction in the degree and margin of safety afforded the public.

Commissioner Asselstine adds:

I supported that portion of the NRC staff's May 22, 1984 order that required the immediate disassembly and inspection of one of the emergency diesel generators at the Grand Gulf plant. However, I could not support that portion of the staff's order which modified the plant's limiting conditions for operation in the technical specifications. In my view, the staff's issuance of an order to amend the technical specifications in the license, in the circumstances of this case, violates the Sholly Amendment provisions of section 189 of the Atomic Energy Act.

As a general matter, a finding that a plant fails to meet a particular requirement in our regulations does not automatically require the immediate shutdown of the plant. Normally, prompt shutdown of the plant will only be required if the NRC determines that the violation creates an immediate health and safety reason justifying shutdown. However, in the case of the Grand Gulf diesels, the technical specifications in the plant's license required shutdown of the plant if one of the emergency diesels is out of service for an extended period of time. Thus, continued operation of the plant during the inspection called for by the staff's order required an amendment to the plant's license to relax this element of the technical specifications. This is precisely the type of situation that the Sholly Amendment was intended to deal with. In such circumstances, the Sholly Amendment requires that the licensee request and support a license amendment, and that the NRC staff prepare, and seek public and state comment on, a formal, documented analysis of the significance of the safety issues involved in the requested amendment. Only after this process is complete can the staff proceed to issue the amendment.

In this case, the staff failed to prepare a formal safety analysis and failed to seek public and state comment. Instead, the staff simply sought to avoid the Sholly Amendment requirements by issuing the license amendment as part of its order requiring the diesel inspection. The Commission should have directed that the staff adhere to the requirements of the Sholly Amendment. By ignoring those requirements, the Commission sets a dangerous precedent for the future.

We hope that this responds to your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nunzio J. Palladino".

Nunzio J. Palladino