



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

PDR

September 14, 1984

The Honorable Carlos Moorhead
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Moorhead:

The enclosed material is in response to questions which you
raised in your letter to the Commission of June 28, 1984.

Sincerely,

Nunzio J. Palladino

Nunzio J. Palladino

Enclosure:
As stated

QUESTION I.A.(1):

I am sure that you are aware of the recent trend in many licensing proceedings for intervenor organizations to file large numbers of allegations just before Licensing Boards or the Commission are ready to render a final decision. This has happened at Diablo Canyon, where the NRC has been bombarded by literally hundreds of allegations. These allegations naturally delay decisions while they are investigated.

Have you investigated the possibility that these "last minute allegations" are not being filed to raise legitimate safety concerns, but are filed in bad faith solely for purposes of delay?

ANSWER:

In complex litigation it is always possible that some papers are filed for purposes of delay. Nevertheless, we have to look at the allegations for safety significance. Uncovering intent is difficult. We don't believe it would be as fruitful a use of resources to investigate the motives behind the filing of late allegations.

QUESTION I.A.(2). (a) Have you investigated whether the groups which are filing these allegations are actually saving up allegations until the last minute, and then filing them at the last possible moment?

ANSWER:

See answer to Question I.A.(1).

(b) Would you consider such action ethical?

ANSWER:

No. Section 2.708(c) of the Commission's Rules of Practice provides that the signature on a document of a person acting in a representative capacity in a formal licensing proceeding constitutes a representation by him or her that the paper is not filed solely for delay.

Commissioner Roberts adds: In addition to being unethical, the withholding of knowledge of significant problems until the eve of a licensing decision serves neither the public safety nor the public interest. For example, problems can often be corrected if they are reported as they occur rather than later when there is likely to be more structural or equipment interference.

QUESTION I.A.(3). Are you evaluating the steps you should take to protect the integrity of the administrative process from last minute allegations?

ANSWER:

Yes. The Commission currently has before it a policy paper on handling last minute allegations.

QUESTION I.A.(4). (a) Have you looked into whether the organizations filing the allegations have "screened" the allegations for substance before they file the allegations?

ANSWER:

No. See answer to Question I.A.(1).

Commissioner Roberts adds: Based on the large number of allegations in some cases compared to the relatively low number which are found to have merit or significance, we would have to conclude that the screening threshold is quite low.

(b) Should the NRC encourage such a "screening process"?

ANSWER:

Clearly, NRC should discourage the filing of allegations which contain nothing of substance. However, often the source of allegations cannot be expected to be aware of the full safety implications, or lack of safety implications, of the information they have. For this reason, NRC itself uses a screening process to distinguish those allegations that raise substantive safety concerns from those that do not.

(c) If so, what actions?

ANSWER:

See answer to Question (b).

Commissioner Roberts adds: NRC should require specific evidence to support the allegations prior to the NRC conducting a full fledged investigation into the allegation.

QUESTION I.A.(5). (a) Should the NRC take action to protect the administrative process from last minute allegations filed for the purpose of delay?

ANSWER:

Yes. As noted in response to Question I.A.(3), the Commission is currently considering a policy paper on handling last minute allegations.

(b) Or, is the process being burdened by a large number of allegations being filed late in a proceeding the price you are willing to pay to encourage the filing of allegations?

ANSWER:

See answer to Question I.A.(5)(a). While NRC should do what it can to remove unnecessary burdens on the licensing process, persons with substantive safety information should be encouraged to bring that information to NRC's attention as soon as possible, and this information cannot be ignored by the NRC even if it only becomes available late in the licensing process.

QUESTION I.B.(1): What happened to the Commission's decisionmaking process that led the Commission to give the opinion of one staff engineer, Mr. Isa Yin, equal weight with the opinion of the entire reviewing staff and NRC management in making the decision about reinstating the low-power license for Diablo Canyon?

ANSWER:

The Commission considered inputs from the Regional office, the Office of Reactor Regulation, special inspection teams and Inspector Yin in making the decision to defer reinstatement of the low-power license for Diablo Canyon. Mr. Yin is recognized in the NRC as an expert in the area of mechanical piping and support systems. The Commission deferred the decision until the ACRS could explore in a more detailed technical manner the issues surrounding the team inspections and Mr. Yin's concerns about the piping installations. As a result certain licensing conditions were established in order to have an orderly low-power testing program and prerequisite inspections prior to granting a full-power license.

Commissioner Roberts adds:

Although I respect Mr. Yin's point of view and technical expertise, I also believe that the Commission erred when it essentially gave Mr. Yin's views equal weight to those of the entire NRC staff reviewing Diablo Canyon issues. The NRC has well established procedures for handling differing opinions yet the Commission strayed from those procedures on this instance. The special inspection team assigned to investigate the issues arising from allegations and Mr. Yin's inspection findings was composed and managed by experienced technical personnel. The NRC should have allowed the team to make the technical findings and address their safety significance.

QUESTION I.B.(2a): Have you learned anything from this incident?

ANSWER:

The Commission should be better informed and informed earlier by the staff of differing professional opinions during cases where complex and contested issues are being considered by the staff.

QUESTION I.B.(2b): If so, what?

ANSWER:

See I.B.2(a).

QUESTION I.C.(1): What is the current schedule for obtaining a decision in TMI-1 restart?

ANSWER:

The Commission does not have a firm decisionmaking schedule at the present time. On May 24, 1984, an NRC Appeal Board, which was reviewing the record of the special restart proceeding, issued its decision (ALAB-772) finding the hearing record inadequate to permit an ultimate judgment on the management competence and integrity of the licensee, General Public Utilities, and remanding several issues to the original Licensing Board for further hearings.

On September 11, 1984, the Commission agreed to take review of ALAB-772. The Commission will not make any decision on whether or not to lift the TMI-1 shutdown order before it completes its review of ALAB-772 and decides whether further hearings are needed. In the interim, the management integrity hearings that have been ordered by the Appeal Board will be allowed to proceed.

The Commission's next step is to undertake and complete the review of ALAB-772 and the question and scope of further management integrity hearings. This step involves receiving written briefs from the parties to the restart proceeding and making a decision after review. Past experience indicates that the time involved might range from 90 to 150 days.

When the Commission has completed its review, it should be prepared to say whether and if so what further hearings are needed on management integrity or other related matters. At that time, the Commission should also be able to say at what point it would be prepared to make a decision on whether or not to lift the shutdown order.

Enclosed are copies of the two orders of the Commission, dated September 11, 1984, which relate to the restart proceeding.

QUESTION I.C.(2): What remains to be done before the Commission is prepared to make a decision on TMI-1 restart?

ANSWER:

See answer to Question I.C.(1).

QUESTION I.D.(1). Please report on the status of the Commission's initiative to expedite several licensing proceedings that Chairman Palladino began with his March 20 memorandum.

ANSWER:

In addition to NRC staff efforts to manage and focus resources in individual cases, the Commission itself held several open meetings in which the status of pending cases was discussed. Such meetings are expected to continue in the future. In addition, at the Commission's request, the Office of the General Counsel prepared a policy paper for the Commission's consideration dealing with late allegations.

QUESTION I.D.(1)(a)&(b): Were there any meetings, correspondence or other communications with members of Congress or their staff concerning the March 20 memorandum? If so, please describe these communications in detail and also provide copies of such communications for possible inclusion in the Hearing Record.

ANSWER:

The following correspondence concerns the March 20 memorandum. Copies are enclosed.

March 28, 1984 - Letter Markey to Palladino
April 5, 1984 - Letter Palladino to Markey
April 12, 1984 - Letter Markey to Palladino
April 23, 1984 - Letter Palladino to Markey
April 23, 1984 - Letter Bevill to Palladino
April 24, 1984 - Letter Markey to Palladino
April 26, 1984 - Letter Palladino to Markey
May 1, 1984 - Letter Kammerer to Udell
May 10, 1984 - Letter Markey to Palladino
May 15, 1984 - Letter Kammerer to Udell

The Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, U.S. House of Representatives, held a hearing on this subject on May 17, 1984.

QUESTION I.E.(1): What is the status of the Commission's implementation of the Regulatory Reform Task Force's recommendations on regulatory reform?

ANSWER:

The Regulatory Reform Task Force's (RRTF) recommendations included a legislative proposal and administrative proposals covering the subjects of backfitting, revisions to the NRC's hearing process, revisions to the NRC staff's role as a party in agency proceedings, and ex parte and separation of functions rules.

- A. Legislative proposal - A legislative proposal was approved by the Commission and was forwarded to the Congress in February 1983.
- B. Backfitting rulemaking - The RRTF's proposal to modify the agency's backfitting policy was issued for comment as an Advanced Notice of Rulemaking on September 28, 1983. Comments were received and the Commission discussed the matter at a May 22, 1984 meeting. At that time it was decided that the Chairman, with the advice of the RRTF, would redraft a proposal rule for Commission consideration. A proposed rule is in the process of being redrafted.
- C. Revisions to the Hearing Process - RRTF Proposals to modify the NRC's hearing process were published for comment on April 12, 1984. Comments were received and are presently being analyzed. When that analysis is complete the Commission will consider these proposals.
- D. Role of the Staff/Ex Parte - Separation of Functions - Proposals to modify the role of the staff were issued for public comment on November 3, 1983. Comments were received and analyzed. The Office of General Counsel provided its views and the Commission is now in a position to decide what option to adopt. The task force proposal on ex parte/separation of function were discussed by the Commission and subsequently revised by the Office of the General Counsel on April 6, 1984. The Commission has not yet acted on these proposals.

QUESTION I.E.2.(a): When did the Task Force make its recommendations?

ANSWER:

The Task Force's original recommendations were issued in 1982.

QUESTION I.2.(b): Why is it taking so long to act on these recommendations?

ANSWER:

The scope and complexity of the proposals have been such as to take a great deal of Commission deliberation. The controversial nature of some of the proposals have increased the difficulty in attempting to reach Commission agreement on the proper course of action.

Commissioner Asselstine adds: One reason it has taken so long to act on regulatory reform measures is that the Task Force has not been well managed and its efforts have not been terribly useful. It turns out that the Task Force "recommendations" did not reflect the views of the Task Force members and tended to represent only the thinking of the Task Force Chairman. It took the Commission literally months to find this out. Moreover, the recommendations of the Task Force Chairman have been so extreme and unsupported that most of the work has had to be redone by the Commission itself.

Chairman Palladino adds: I believe that Commissioner Asselstine's additional remarks require some response.

The efforts of the Task Force have been quite useful. For example, the Commission has produced a legislative package which has been introduced in both the House and the Senate. The management of the Chairman of the Regulatory Reform Task Force played a large part in making this possible. The suggestions that Task Force recommendations represent only the thinking of the Task Force Chairman is inaccurate. Recommendations were arrived at through a series of meetings among the Task Force, the Task Force Chairman, industry and intervenor groups, a Senior Advisory Group within the agency, an Ad Hoc Review Committee outside the agency and the Commission.

The recommendations which have been presented by the Task Force Chairman to date have been edited and revised through the collegial process but they still reflect fundamental consensus. Regulatory reform is very complex and in the collegial process we certainly have had disagreements. The introduction of fresh and innovative ideas is a valuable part of the process.

QUESTION I.E.(3): Why did the Commission put the recommendations out for public comment in the form of "proposed proposals"?

ANSWER:

The principal reason for issuing advanced notices of proposed rulemaking was to obtain public comment on proposals which the Commission could not otherwise agree upon. The Commission believed obtaining comments on alternative proposals would help the Commission determine a specific course of action.

QUESTION I.E.4(a): Is the Regulatory Reform Task Force still working on reform?

ANSWER:

Yes. The Task Force still exists. A number of rule changes have been presented by the Task Force to the Commission and subsequently published in the Federal Register for comment. These proposed rule changes deal with ex parte considerations, separation of functions, backfitting, and the hearing process. The Task Force intends to see these rule changes through to their final disposition. In addition, the Task Force will continue to meet and discuss the potential for reform in other areas.

QUESTION I.E.4(b): How many people are dedicated to this task?

ANSWER:

One full-time Task Force Chairman and six members who, depending on circumstances, can contribute up to 20% of their time.

QUESTION I.E.4(c): What is the Commission doing to support the Task Force's efforts?

ANSWER:

The Commission continues to consider important reform measures with the intent of eventually agreeing upon constructive changes.

Commissioner Asselstine adds:

The Task Force should be abolished, and any further regulatory reform efforts should be entrusted to more responsible officers in the agency.

QUESTION I.E.4(d): What action is the Commission taking to coordinate the reform effort and make sure the various divisions of the NRC are supporting each other's efforts and not acting independently of one another?

ANSWER:

The Chairman, in a recent note to the staff, has reemphasized the importance of the reform effort and urged their cooperation and participation.

QUESTION I.E.4(e): What is the Commission doing to ensure that each office of the NRC, which may be concerned with protecting their respective bureaucratic turf, are in fact supporting the reform effort?

ANSWER:

See answer to Question I.E.4(d).

QUESTION I.E.(5a): Please comment on whether the following reforms would improve the ability of the NRC to manage the licensing process. (All of these reforms are part of the package the Commission recently published for public comment.)

- (a) Raising the threshold of contentions.
- (b) requiring submission of complete cross-examination.
- (c) return to the immediate effectiveness rule.

ANSWER:

- (a) Raising the threshold of contentions would improve the efficiency of the hearing process and allow better focus of limited resources on more important safety questions.
- (b) The submission of complete cross-examination plans would also aid the efficiency of the hearing process.
- (c) A return to the immediate effectiveness rule would clearly reduce the uncertainty regarding the issuance of an operating license after a favorable licensing decision. On the other hand, it might appear to diminish the Commission's actual involvement in such an important decision.

Commissioner Asselstine's views on these and other changes to the hearing process were included in the Federal Register Notice on the Task Force proposals. A copy of his views is attached.

QUESTION I.E.(6): Why doesn't the NRC make greater use of generic rulemaking to decide factual issues which are repeatedly raised in licensing proceedings.

ANSWER:

In the RRTF proposal to modify the hearing process there is a recommendation to make greater use of generic rulemaking.

QUESTION I.F.(1): Please describe the Commission's efforts to ensure that the activities of the Office of Investigations are coordinated with licensing proceedings.

ANSWER:

The Office of Investigation (OI) has instituted various policies and procedures to ensure that its activities, including information which may impact on licensing proceedings, are made available to appropriate NRC officials, staff offices and Boards. There is a Commission approved agency-wide policy regarding the notification of Licensing Boards, Appeal Boards or the Commission of new and potentially important information which may be relevant to one or more proceedings pending before the Boards or the Commission. In accordance with this policy, OI investigative procedures require that all allegations received directly by OI investigators which may be subject to a Board Notification (BN) shall be promptly transmitted to the appropriate NRC staff office (NRR or NMSS) or regional office for their review, evaluation and recommendation for a BN. Additionally, any further information affecting a previously issued BN is expeditiously transmitted by OI to the appropriate staff office. Also, upon request, OI investigators discuss particulars of ongoing investigations before Boards during in camera ex parte sessions. The investigative efforts of OI are fully integrated with the NRC-wide allegation tracking system. Through coordination with staff personnel, OI investigations are prioritized to ensure they are completed in a timely manner for licensing proceedings. Further, whenever potentially significant safety issues are identified during an ongoing investigation, the cognizant Regional Administrator and other NRC components, as appropriate, are immediately furnished with all available information as set forth in Commission mandated policies and procedures.

QUESTION I.F.(2)(a):

Are there constitutional problems with the licensing boards being apprised of the status of OI investigations, and therefore having their decisions influenced, without the licensees and intervenors being given access to the same information and being able to respond?

ANSWER:

Information presented to an adjudicatory board but not to the other parties cannot be considered by the board in making a decision. The purpose of having their ex parte presentations is to allow the board to determine the relevance, if any, of the information to the adjudication, whether that information must be disclosed to the parties, and, if disclosure is required, to provide a mechanism for case management both to protect investigations and to allow for the timely provision of material and relevant information to the parties. The ex parte presentations of information under these circumstances does not pose any constitutional problems. Various offices within NRC, including the Regulatory Reform Task Force are working on a Congressional report on this subject.

QUESTION I.F.(2)(b):

Doesn't this violate at least the spirit of the ex parte provisions of the Administrative Procedure Act?

ANSWER:

The ex parte provisions are designed to prevent discussions regarding the substance of matters in controversy. They do not prevent a board from considering information ex parte to determine whether it is material and relevant to issues in controversy. Thus, for instance, the board can review information ex parte to resolve disputes about whether that information must be provided in discovery. Allowing the parties access to the disputed information prior to the board's determination would of course eliminate any privilege regarding the information.

The same rationale applies to investigatory information. There is no violation of the ex parte provision when a board reviews the information to determine whether it is material and relevant and must be provided to the other parties.

QUESTION II.A.

Why does the Commission feel it is superior management to have a number of offices essentially performing the same or overlapping functions?

EXAMPLES:

- (1) Offices of General Counsel and Executive Legal Director
- (2) Offices of Inspection and Enforcement, and Investigations

ANSWER:

As a general proposition, it is undesirable and wasteful for two or more offices to perform the same functions. However, in the examples you cited, there is little overlap. The role of the Office of the General Counsel (OGC) pertains to litigation before the courts, legislation, drafting of formal adjudicatory decisions, conflicts of interests and other legal advice to Commissioners and Commission legal offices. The Office of the Executive Legal Director (OELD) generally does not participate in court litigation, legislation, conflicts of interest, or drafting of Commission's adjudicatory decisions. In some areas both Offices may render legal advice on the same subject (OGC to Commissioners and Commission level offices, and OELD to staff offices). While there is some duplication here, such duplication has in the past been considered necessary to provide a basis for independent Commission review of staff proposals.

There is also a division of responsibility between the Office of Investigations (OI) and the Office of Inspection and Enforcement (IE). OI investigates possible instances of wrongdoing by licensees and others subject to NRC regulatory authority. IE does not perform such investigations. It conducts inspections and takes enforcement action on the basis of inspections or OI's investigative reports.

QUESTION II.B.: Wouldn't it be better to have a single legal office and a single investigations office, as suggested by the Appropriations Committee?

ANSWER:

This is a matter under continuing Commission review. It is not at all clear that a single office is preferable in these cases.

QUESTION III.A.(1): Please state what progress you've made since you testified before our Subcommittee last fall towards developing a new regulation to govern the imposition of backfits.

ANSWER

Since last fall, the Commission has considered the public comments on the backfit proposals, evaluated interim staff actions, and entertained an alternate proposal from the staff. At present the Commission is redrafting a final backfit rule with the assistance of the RRTF.

Commissioner Roberts adds:

When I first joined the Commission over three years ago, I became immediately aware that an informal and undisciplined backfitting process, institutionalized by past regulatory practice was one of the primary causes of regulatory uncertainty. I was initially encouraged that the NRC might take steps to resolve needless regulatory uncertainty. For example, during my first year in office, the Regulatory Reform Task Force (RRTF) and the Committee for the Review of Generic Requirements (CRGR) were created.

Subsequently, however, the majority of the Commission was unable to agree on steps that would significantly improve the problem, and in fact took steps to delay a revised backfit rule. In November 1982, the RRTF Chairman suggested publishing its licensing reform package, which included a revised backfit rule, as an Advance Notice of Rulemaking (ANPR). Rather than start the public comment period then, the Commission chose to delay action and waited until September, 1983 before publishing an Advanced Notice of Rulemaking on Backfitting. At that time, I reminded the Commission that it had already been provided with sufficient comments, information and alternatives to proceed directly with a proposed rule.

While awaiting rulemaking to stabilize the backfitting process, the Commission has relied on interim instructions to the Staff on how to manage backfitting for operating plants. We have not yet come to agreement on interim instructions for managing backfits for plants under construction.

When the interim guidance for managing backfits at operating plants were issued, I was concerned that the guidance was too weak, and that it would have little effect on backfit management. My concerns were recently confirmed after reading a status report on Current Backfitting Practices by the Chairman of the NRC Regulatory Reform Task Force. (See

attachment). That report indicates that responsible backfit management still has a long way to go at the NRC.

As responsible regulators, we must impose backfits when we find that changes are necessary for public health and safety, or that the change would result in substantial additional protection. Conversely however, a process which allows the NRC to initiate backfits by merely changing its position or drafting revised "guidance" creates additional regulatory uncertainty, economic instability, and even can adversely affect safety. I urge my fellow Commissioners to face this issue squarely, and publish a meaningful proposed backfitting rule in the near future.

(Note: the EDO's comments of 9/10/84 on NRR backfit practices are also attached for your information.)

QUESTION III.A.(2): When do you expect to publish a final backfitting rule in the Federal Register, and when do you expect this rule to become effective?

ANSWER:

Our present schedule anticipates the Commission reaching agreement on a backfit rule in the early fall, with an effective rule to follow the first of next year.

QUESTION III.A.(3): What are you relying on in the meantime?

ANSWER:

In the meantime the staff is implementing Commission policy guidance which was issued in the form of a staff requirements memorandum.

QUESTION III.A.(4): Is my understanding correct that the staff does not have to justify the backfit unless the utility formally files an appeal challenging the imposition of a backfit?

ANSWER:

Under the interim policy guidance, a backfit does not require formal justification unless a utility appeals its imposition.

QUESTION III.A.(5): What have you as a Commission and managers of the NRC done to ensure that the Office of Nuclear Reactor Regulation is faithfully executing the "interim" guidance on backfitting you provided last summer?

ANSWER:

The Commission is relying on the management of the Office of Nuclear Reactor Regulation to follow the Commission's guidance.

QUESTION III.A.6(a):

Do you know whether the Office of NRR has pressured utilities not to raise backfit issues by saying that challenges or opposition to certain backfits will lead to delay in the issuance of their Safety Evaluation Reports?

ANSWER:

The Commission is not aware of NRR having "pressured" utilities to not challenge certain backfits under threat of delay of SER's.

QUESTION III.A.6(b): I assume this is not the position of the Commission, is it?

ANSWER:

The Commission would not approve of such action if it were to occur.

QUESTION III.B.(1) Have you, as the managers of the NRC, evaluated the problems that new or modified regulatory requirements pose for nuclear construction projects and reactors already in operation?

ANSWER:

The NRC senior management staff conducted a survey of 12 representative licensees in April/May 1981 to obtain industry viewpoints on the safety impact of regulatory activities concerning reactors under construction and operating. The results of this survey (published as NUREG 0839) showed that the number and type of regulatory actions taking place in the post-TMI period did indeed necessitate a careful review of NRC policy and practice vis-a-vis the management of the promulgation of new requirements. One result of this work was the establishment, in November 1981, of the Committee to Review Generic Requirements (CRGR). Since that time the CRGR has discharged its responsibility to review and recommend to the Executive Director for Operations (EDO) approval or disapproval of requirements to be imposed by the NRC staff on one or more classes of power reactors. The CRGR objectives include assuring that requirements in place or to be issued (a) do in fact contribute effectively and significantly to the health and safety of the public, and (b) do lead to utilization of both licensee and NRC resources in as optimal a fashion as possible in the overall achievement of public health and safety. The CRGR has been and is the single agency-wide point of control for new generic requirements.

QUESTION III.B.(2)(a): If so, have you come to any conclusions as to how the imposition of new regulations can be tailored to facilitate the utilities' transition to stricter requirements?

ANSWER:

The consideration of how the imposition of new requirements can be tailored to facilitate the utilities' compliance with all NRC requirements has been one of the elements of the promulgation of new requirements for the last two years. New requirements are normally fit into an implementation schedule for each reactor plant that is mutually considered and acceptable to both NRC and the utility. Relative priorities of NRC requirements are considered in designing the plant schedule.

The NRC encourages each licensee to develop and coordinate with the NRC an integrated schedule which looks ahead several years and can be modified as circumstances warrant. Such a schedule projects an orderly implementation of both NRC and utility initiated requirements in a way that ensures public health and safety while effectively utilizing licensee resources.

QUESTION III.B.(2)(b): If not, don't you think this should be done in light of cases like Byron, where utilities' and their contractors quality assurance programs became caught in the development of ever more stringent quality assurance requirements?

ANSWER:

See response to III.B.(1).

QUESTION III.B.(3)(a): Has the Commission ever reduced or made more lenient a regulatory requirement:

ANSWER:

The Commission does reduce and has reduced requirements when justified by the development of information that was unavailable or unknown at the same the requirement was put in place. Some examples of significant reductions in the scope or difficulty of compliance with requirements are as follows:

1. 10 CFR 50 Appendix K - Staff now accepts applicant demonstrations of compliance with newer methods and assumptions that eliminate some conservatisms inherent in models used previously. Staff is also reviewing requests for exemption from that portion of Appendix K specifying the reactor decay heat versus time after shutdown. The current exemption requests are based on staff acceptance of a 1979 ANS 3.1 standard that specifies less decay heat than formerly accepted in a 1971 standard.
2. Licensee Event Reports - New 10 CFR 50.72 and 10 CFR 50.73 regulations have been issued that result in more efficient use of licensee resources in preparing LERs, and significantly upgrade the utility of the information gathered in the LER process.
3. Operator actions required for plant shutdown - Plants were formerly required to be taken to "cold" shutdown by operator actions only within the control room - certain operator actions are now allowed to be accomplished outside of the control room.

QUESTION III.B.(3)(B): How should NRC management conduct itself to re-evaluate the need for particular requirements, and perhaps reduce a regulatory standard?

ANSWER:

The need for a continuing review and reevaluation of existing requirements has been recognized and acted upon by the Commission. In the 1984 policy and program guidance to NRC management (NUREG 0885), the Commission has specifically directed that "existing regulatory requirements that have a marginal importance to safety should be eliminated." The staff, in response to this policy, has been directed by the EDO to submit a comprehensive agency plan in 1984 to identify and eliminate reactor licensing requirements which have a marginal importance to safety.

The Office of Research has been directed to submit to the EDO a plan for selecting existing rules for reexamination based on a comprehensive evaluation of their risk significance and to eliminate rules which have a marginal importance to safety, or rules that have become obsolete by implementation of other approved staff practices.

QUESTION III B(3)(c): Are you making any progress on redefining the source term for nuclear reactors?

ANSWER:

A great deal of progress has been made in the work of reestimating the source terms or severe accident releases from nuclear reactors. A series of reports have been prepared by NRC contractors who have examined the data base for source term predictions and reestimated the source terms for each major type of U.S. power reactor. These contractor reports have already received some peer review, been modified accordingly, and will be published this summer. In addition, an overall peer review of the scientific basis for these source term estimates is being conducted by the American Physical Society. This special peer review is expected to be complete by the end of 1984, after which the NRC expects to assess the application of reactor risk and regulatory significance of the revised source term estimates.

QUESTION III.B.4(a):

Have you evaluated the "hostage" problem which many critics of the NRC have said is the result of your regulations on emergency planning:

ANSWER:

While the NRC regulations place the burden of responsibility for ensuring the adequacy of offsite emergency preparedness on the licensee, State and local governments have, for the most part, recognized and accepted the responsibility for providing for the health and safety of their citizens. We recognize that there is always the possibility that the licensing of some reactors may be affected by the inaction or inability of State and local governments to develop adequate emergency response plans on a schedule which would not impact the licensing process. Experience to date has shown that given time, State and local officials, as partners in the undertaking to protect the health and safety of their citizens, will endeavor to provide fully for the protection of their citizens through the development and implementation of adequate radiological emergency response plans. We feel that it is in the utility's best interest to encourage the participation of offsite agencies in the planning process. This encouragement consists of providing both financial and technical assistance to State and local governments in upgrading their emergency response capabilities. In light of NRC's responsibility in assuring the health and safety of the public living in the vicinity of licensed nuclear power facilities, the demonstration of the capability to protect public health and safety must remain with the licensee.

QUESTION III.B.4(b):

What are you doing to develop a solution to the problem illustrated by Shoreham, where the State and counties refusal to participate in emergency planning could conceivably keep the utility from getting an operating license?

ANSWER:

A provision was included in the 1982/83 Authorization Act, Section 5, which permits the NRC to consider the adequacy of a utility's offsite emergency response plan in the absence of a State or local plan, if the NRC can make the finding that the utility plan provides reasonable assurance that public health and safety would not be endangered by operation of the plant. The Commission's regulations (10 CFR 50.47(c)(1)) are consistent with this authority. Also, although this act gives the NRC authority to issue a license in the absence of a FEMA approved plan, the NRC would face very practical difficulties in finding a rational basis to approve such a plan if FEMA determined that the plan was not workable, feasible, or adequate. Therefore, we are continuing to assist FEMA in the review and determination of the adequacy of offsite preparedness for Shoreham, including the review of a utility prepared offsite emergency response plan.

QUESTION III.B.5: Have you re-evaluated the imposition of fines as a means for encouraging corrective actions?

ANSWER:

The Commission is in the process of establishing an Advisory Committee to review the NRC's enforcement policy and determine whether the policy is (1) ensuring compliance with NRC regulations and license conditions, (2) obtaining prompt correction of noncompliance, (3) deterring future noncompliance, and (4) encouraging improvement of licensee performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems. The issue of whether imposition of fines is a means of encouraging corrective actions will be addressed by the Committee. On June 28, 1984 the NRC requested approval from the Administrator of GSA to establish this Advisory Committee.

On March 8, 1984, the Commission published a revision to its General Statement of Policy and Procedure for Enforcement action for public comment in the Federal Register. An important change incorporated in the policy statement was a step designed to encourage self-identification and reporting. A credit of up to 50% will be considered for any violation promptly reported and corrected by a licensee.