

Approve. The attached comments replace my earlier comments on SECY-97-168.



Greta Joy Dicur
Greta Joy Dicur, 10/21/97

RULEMAKING ISSUE

(NEGATIVE CONSENT)

RELEASED TO THE PDR

1/30/98

date

DLW

Initials

July 30, 1997

SECY-97-168

FOR: The Commissioners

FROM: L. Joseph Callan
Executive Director for Operations

SUBJECT: ISSUANCE FOR PUBLIC COMMENT OF PROPOSED RULEMAKING PACKAGE
FOR SHUTDOWN AND FUEL STORAGE POOL OPERATION

PURPOSE:

This paper informs the Commission of the staff's intent to re-issue for public comment a proposed rulemaking package addressing shutdown and fuel storage pool operations at nuclear power plants.

BACKGROUND:

In SECY-94-176, the staff sought Commission approval to issue for public comment a proposed rule for shutdown and low-power operation at nuclear power plants. The Commission approved the request in the staff requirements memorandum dated September 12, 1994, and the proposed rule was published in the *Federal Register* in October 1994. The numerous comments received were considered along with Commission guidance regarding the use of a risk-informed, performance-based approach for new regulations. As a result, the staff made significant changes to the proposed rule and regulatory analysis. In addition, the staff's studies of spent fuel storage pool operations led to a decision to encompass spent fuel storage pool operations in the revised rule. Therefore, the staff intends to again issue the rulemaking package for public comment.

DISCUSSION:

The staff's revised regulatory analysis considered important safety functions and the controls currently in place to ensure these functions. For low-power operation, hot shutdown, and the transition period from hot to cold shutdown, the revised analysis concludes that for these periods important safety functions are protected by existing requirements in standard technical specifications. Accordingly, the revised proposed rule no longer addresses these modes.

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SECY NOTE: TO BE MADE PUBLICLY
AVAILABLE AT COMMISSION MEETING ON
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REVISED COMMENTS OF COMMISSIONER DICUS ON SECY-97-168

My original view, that we should release the proposed shutdown rule for public comment, continues to be my position on SECY-97-168. My purpose in approving that course of action was to use release of the proposed rule to further the debate on this issue. My approval of publication for comment, however, was never intended to indicate approval of the proposed rule in all its particulars. In fact, my current view is that, at a minimum, the fire protection portion of the proposed rule, if necessary, should be addressed in the fire protection rule and that spent fuel pool operations should be removed from the rule all together. Consistent with my belief that this rule is still in a state of evolution, I continue to support an SRM that would direct staff monitoring of the effectiveness of voluntary actions by the industry to address shutdown risks, as noted in my revised vote of 10/14/97.

It is apparent to me that risks exist in shutdown operations, which may not be addressed in regulations, technical specifications, or other enforceable vehicles. Licensees have recognized these risks in instituting voluntary programs in many instances. At the same time, concerns over these risks have been expressed by the ACRS, the NRC Staff, and foreign governments. As I will note in more detail below, countries such as France and Spain are actively addressing these issues and the staff is following up on these issues with some of these foreign governments.

With the above information in mind, it is my firm belief that the issue for consideration is not whether shutdown risks must be addressed, but rather what is the proper, effective and efficient way to address the acknowledged risks. I am not yet convinced that the maintenance rule alone can address these issues.

On Wednesday, October 21, 1997, I had the pleasure of meeting with Dr. Agustin Alonso, Commissioner of the Spanish Nuclear Safety Counsel. Dr. Alonso provided a copy of a presentation he had made earlier at the 25th WRSN conference entitled "Risk Informed Regulation in Spain." In his presentation, Dr. Alonso noted that Spanish utilities were close to completing two pilot PSA's addressing varying modes of operation that included shutdown risks. During our conversation, Dr. Alonso indicated that the PSA's were essentially complete and initial briefings indicated that there were serious concerns during shutdown. He also indicated that the Spanish were mindful of the French knowledge in this area, given that France had been looking at this issue for some time. Dr. Alonso stated that he would forward copies of the reports on the Spanish PSA analyses to NRC when they become available, but was not certain as to when the reports would be available.

The lack of a majority consensus on this issue results in our not being able to definitively dispose of this issue at this time. I, therefore, believe there continues to be a need for a robust discussion of alternatives, which includes the pro's and con's of each alternative, and which includes the issue of the appropriate role for voluntary actions. Consistent with the General Counsel's Memorandum on voluntary actions dated October 21, 1997, specific discussion of issues concerning enforceability would, of necessity, be included in

the evaluation of alternatives. Expected additional information from the Spanish efforts, and the efforts of other countries, may assist the Commission in reaching a consensus on the appropriate action to take to address shutdown risk. For example, we were recently informed that the staff is conducting meetings with Korean and Spanish representatives who are knowledgeable concerning the status and progress in regulation of shutdown operations in those countries.

Given the above concerns and comments, I would propose that the SRM to the staff reflect that: 1) the Commission has not reached a consensus on whether to publish the proposed rule; 2) the staff should closely monitor the effectiveness of voluntary actions pending a final Commission determination on this issue; 3) the staff should evaluate the information from the Spanish study when it becomes available, review any additional recent developments in foreign experience in this area, while engaging in a dialogue with stakeholders on the pros and cons of various alternatives for addressing shutdown risk; and 4) make recommendations to the Commission on whether the staff continues to support publication of a shutdown rule in its current or a modified form, or some other course of action, in light of any new information, taking into account OGC's October 21, 1997, analysis.