



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 17, 1998

Ms. Patricia Borchmann
176 Walker Way
Vista, CA 92083

Dear Ms. Borchmann:

Reference 1: Letter from the U.S. Nuclear Regulatory Commission (NRC),
S. Collins, to P. Borchmann, dated September 22, 1997

This letter responds to your letter of October 21, 1997, which replies to Reference 1. With respect to your assertion that additional information to support your petition must be submitted within 30 days to be included in your petition, this is not correct. Any additional information that you submit for consideration as part of your 2.206 petition will be reviewed and considered for inclusion.

In item 1 of your October 21 letter, you refer to a statement in Reference 1 that indicated there was no need for the NRC to grant your request for immediate action based on your concern that NRC fragments issues and does not address them in total. You suggest that this issue should be included in Enclosure 1 of Reference 1 in order to define the full scope of the future work. As you noted, we informed you that we will review this concern in our final evaluation pursuant to 10 CFR 2.206 and discuss whether the issues considered as a whole reveal trends or systemic problems. Therefore, there is no justification or need for revising Enclosure 1 of Reference 1.

In item 2 of your letter, regarding the function of the plastic membrane of the Unit 1 spent fuel pool (SFP), you refer to a July 31, 1997, letter from the NRC to the San Diego Regional Water Quality Control Board, which states that "neither the licensee nor the NRC credits the plastic liner to prevent leakage." You also cite a February 28, 1995, letter from Southern California Edison (SCE) to an individual that discusses the membrane's function and states that it controls leakage into and out of the concrete. You indicate that these letters are contradictory and support your assertion that the NRC fragments issues and displays a careless lack of attention to detail. As we noted in Reference 1, the issue concerning the function of the plastic membrane involves Unit 1 only (Units 2 and 3 do not have such a membrane) and, therefore, is not relevant to your petition related to Units 2 and 3. As a result, this issue will not be included in our final evaluation. With regard to your assertion that the referenced letters support your concern that the NRC fragments issues and displays a careless lack of attention to detail, the NRC was not a recipient of the SCE letter. The staff has conducted a search of licensing correspondence for SONGS and concluded that in its safety

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evaluations, the NRC has made no licensing decisions regarding SONGS Unit 1 for which credit was given for the membrane. We will, however, include our handling of this issue in our review to determine whether issues considered as a whole reveal trends or systemic problems associated with the safe operation of the SONGS units.

In Item 3 of your letter, you refer to concerns related to "manipulated data, and adjusted modeling techniques." In Reference 1, we informed you that you had not provided any specific examples to support your concerns. In your October 21 letter, you mentioned a concern of another individual about small-break loss-of-coolant accidents (SBLOCA) and also stated that since we did not provide the individual with the computer codes he requested (all computer codes used by the nuclear industry to obtain their clad temperature results), we knowingly withheld pertinent data. The referenced concern of another individual about SBLOCA and assertion that the NRC withheld certain information from that individual does not set forth sufficient facts to support addressing your concern about "manipulated data and adjusted modeling techniques" in an action concerning San Onofre Units 2 and 3 pursuant to 10 CFR 2.206.

In general, with regard to your SBLOCA concerns, the NRC uses the concept of a design basis accident approach to evaluate this accident. Analyses are performed on the design basis SBLOCA using certain assumptions and, as a result, the emergency core cooling systems must be capable of assuring with a high level of probability that fuel cladding temperature criteria would not be exceeded. For the design basis SBLOCA, NRC considers (1) the most limiting break flow, (2) limiting single failures, and (3) the consequences of a coincident loss of offsite power. The NRC is confident that if a SBLOCA of this nature occurred, fuel cladding temperature limits would not be exceeded. If additional failures occur or those failures are more damaging than the design basis event, as occurred at Three Mile Island (TMI) in 1979, unacceptable fuel temperatures may result. Such an event is very unlikely. However, if fuel damage occurred, the reactor building containment would limit the release and thus the health consequences of the accident, as demonstrated at TMI during the 1979 accident. Following the TMI accident, numerous actions, including design changes, were required of all licensees. We have documented these actions in NUREG-0660, "TMI-2 Action Plan," and NUREG-0737, "Clarification of TMI Action Plan Requirements." The NRC also continues, as part of an overall regulatory process, to investigate issues and concerns to determine whether any additional improvements are warranted.

Furthermore, with regard to the requested computer codes, such codes are not within the possession of the NRC. These codes are proprietary documents. As a result, if they were in our possession they would be exempt from public disclosure pursuant to 10 CFR 2.790. However, when a report is submitted to the NRC for generic review and approval, a non-proprietary version of the report and the NRC safety evaluation are available in the NRC Public Document Room. The evaluation related to the SBLOCA methodology used for SONGS can be

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found under accession number 9601030146. Accordingly, pertinent data that is in our possession and is available for public disclosure has not been withheld.

In item 4 of your letter, you raise a general concern about the production of tritium from nuclear power plant operation. In accordance with U.S. NRC Management Directive (MD) 8.11, a petition will be reviewed under the requirements of 10 CFR 2.206 if it meets certain criteria. A copy of this MD is enclosed for your information. One criteria is that the request is not simply a general assertion without supporting facts. The petitioner must provide some support beyond the bare allegation. Your discussion related to tritium does not provide the necessary supporting information to be considered under 10 CFR 2.206 and will not be included in our final decision.

In item 5 of your letter, you raise concerns regarding low-level radiation exposure based on a recent study by the University of California, Los Angeles (UCLA)¹ and assert that NRC standards for airborne and waterborn effluent (10 CFR 50.36a and 10 CFR Part 20) dismiss the cumulative effects of low level radioactive wastes. This matter is not within the scope of 10 CFR 2.206. Rather, such an issue must be raised with the NRC by petition for rulemaking pursuant to 10 CFR Part 2, subpart H, which governs the issuance, amendment and repeal of NRC regulations (copy enclosed).

In Item 6 of your letter, you refer to concerns regarding SCE's taking a greater interest in profits than in the public's health and safety. You state that an outage costs \$600,000 a day in revenue and, as a result, SCE strives to keep outages to a minimum. You suggest that because the NRC has access to the costs of outages, the staff should review factors used in the decision to return Units 2 and 3 to service. We have responded to these concerns in Reference 1. In that you have provided no new relevant information, we plan on taking no additional action pursuant to 10 CFR 2.206 to address these concerns.

In the last paragraph of your October 21 letter, you refer to deregulation of the electrical industry as noted in your letter of July 11, 1997. You state that this issue was omitted by the NRC by oversight or by deliberate design, and you oppose the absence of any response on this issue. A careful review of your letters of June 23, June 28, and July 11, 1997, revealed no discussion related to deregulation of the electrical industry. However, the NRC has discussed deregulation in NRC Technical Issue Paper (TIP) 38, "Effects of Industry Deregulation," which is enclosed for your review.

¹ Morgenstern, Hal, et al., "Epidemiology Study to Determine Possible Adverse Effects to Rocketdyne/Atomics International Workers From Exposure to Ionizing Radiation," unpublished report to the Public Health Institute, Berkeley, CA, June 1997.

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In conclusion, we have reviewed your letter of October 21, 1997, and found no new information that supports treating any additional concerns pursuant to 10 CFR 2.206. We will continue to review the issues as indicated in Reference 1 and will respond to you in a reasonable amount of time.

Sincerely,

Original signed by
Frank J. Miraglia

for Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket Nos. 50-361
and 50-362

Enclosures: 1. Management Directive 8.11
2. 10 CFR Part 2, Subpart H
3. Technical Issue Paper 38

cc w/encls: See next page

*For previous concurrence see attached ORC

DOCUMENT NAME: BORRESP.206

OFC	PDIV-2/PM	PDIV-2/LA	PDIV-2/PM*	PDIV-2/D*	TECH EDI*
NAME	BWestreich:ye	EPeyton	MFields	WBateman	BCalure
DATE	2/9/98	2/4/98	1/5/98	1/15/98	1/9/98

OFC	NRR:DRPM*	NRR:PERP*	NRR:PDND*	NRR:SR&D*	OGC
NAME	JLee	CMiller	Sweiss	TCollins	<i>NLRW/Conrad</i> McGurney
DATE	1/5/98	12/29/97	12/30/97	1/6/98	2/5/98

OFC	DRPW:D(A)*	ADP (A)*	NRR:D
NAME	EAdensam	RZimmerman	<i>SCOTT</i>
DATE	1/22/98	1/28/98	2/10/98

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*noted
corrected*

Patricia Borchmann

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cc w/encls:

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Mr. Sherwin Harris
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Public Utilities Department
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Patricia Borchmann

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DISTRIBUTION: (w/o enclosure 1)

Docket File 50-361 and 50-362 (w/incoming)

PUBLIC (w/incoming)

PDIV-2 Reading (w/incoming)

EDO Reading

EDO 970494

J. Callan

H. Thompson

P. Norry

J. Blaha

S. Burns

K. Cyr, OGC

J. Goldberg, OGC

E. Merschoff, Region IV

J. Lieberman, OE

S. Collins/F. Miraglia

R. Zimmerman

W. Travers

E. Adensam (EGA1)

W. Bateman

B. Westreich

M. Fields

E. Peyton

J. Kennedy

OPA

OCA

SECY

NRR Mail Room (EDO 970494 w/incoming)

T. Harris

M. Boyle (MLB4)

T. Gwynn, Region IV

K. Perkins, Region IV/WCFO

That information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.740(c).

Subpart H—Rulemaking

§ 2.800 Scope of rulemaking.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 553 of Title 5 of the U.S. Code.

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Rules Review and Directives Branch. A prospective petitioner may also telephone the Rules Review and Directives Branch on (301) 415-7158 or toll free on (800) 368-5642.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petitioner includes the information required by paragraph (c) of this section and is complete, the Director, Division of Freedom of Information and Publications Services, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the FEDERAL REGISTER, or, in appropriate cases, may be invited for the first time upon publication in the FEDERAL REGISTER of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rulemaking. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the *FEDERAL REGISTER* a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined in the Public Document Room;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission for good cause stated in the notice provides otherwise.

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest."

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the *Federal Register* containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

(b) The Commission may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

§ 2.806 Commission action.

The Commission will incorporate in the notice of adoption of a regulation a concise general statement of its basis and purpose, and will cause the notice and regulation to be published in the FEDERAL REGISTER or served upon affected persons.

§ 2.807 Effective date.

The notice of adoption of a regulation will specify the effective date. Publication or service of the notice and regulation, other than one granting or recognizing exemptions or relieving from restrictions, will be made not less than thirty (30) days prior to the effective date unless the Commission directs otherwise on good cause found and published in the notice of rule making.

§ 2.808 Authority of the Secretary to Rule on Procedural Matters.

When briefs, motions or other papers listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary are authorized to:

(a) Prescribe schedules for the filing of statements, information, briefs, motions, responses or other pleadings, where such schedules may differ from those elsewhere prescribed in these rules or where these rules do not prescribe a schedule.

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule, or regulation of the Commission unless good cause is shown for the late filing; and

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission.

§ 2.809 Participation by the Advisory Committee on Reactor Safeguards.

(a) In its advisory capacity to the Commission, the ACRS may recommend that the Commission initiate rulemaking in a particular area. The Commission will respond to such rulemaking recommendation in writing within 90 days, noting its intent to implement, study, or defer action on the recommendation. In the event the Commission decides not to accept or decides to defer action on the recommendation, it will give its reasons for doing so. Both the ACRS recommendation and the Commission's response will be placed in the NRC Public Document Room following transmittal of the Commission's response to the ACRS.

(b) When a rule involving nuclear safety matters within the purview of the ACRS is under development by the NRC Staff, the Staff will ensure that the ACRS is given an opportunity to provide advice at appropriate stages and to identify issues to be considered during rulemaking hearings.

§ 2.810 NRC size standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

(f) Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the NRC to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them. To help small entities obtain information quickly, the NRC has established a toll-free telephone number at 1-800-368-5642.

**Subpart I—Special Procedures Applicable
to Adjudicatory Proceedings Involving
Restricted Data and/or National
Security Information**

§ 2.900 Purpose.

This subpart is issued pursuant to section 181 of the Atomic Energy Act of 1954, as amended, and section 201 of the Energy Reorganization Act of 1974, as amended, to provide such procedures in proceedings subject to this part as will effectively safeguard and prevent disclosure of Restricted Data and National Security Information to unauthorized persons, with minimum impairment of procedural rights.

§ 2.901 Scope.

This subpart applies to all proceedings subject to subpart G.

§ 2.902 Definitions.

As used in this subpart:

(a) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(b) "Interested party" means a party having an interest in the issue or issues to which particular Restricted Data or National Security Information is relevant. Normally the interest of a party in an issue may be determined by examination of the notice of hearing, the answers and replies.

(c) The phrase "introduced into a proceeding" refers to the introduction or incorporation of testimony or documentary matter into any part of the official record of a proceeding subject to this part.

(d) "National Security Information" means information that has been classified pursuant to Executive Order 12356.

(e) "Party," in the case of proceedings subject to this subpart includes a person admitted as a party pursuant to § 2.714 or in interested State admitted pursuant to § 2.715(c).

§ 2.903 Protection of restricted data and national security information.

Nothing in this subpart shall relieve any person from safeguarding Restricted Data or National Security Information in accordance with the applicable provisions of laws of the United States and rules,

regulations or orders of any Government Agency.

§ 2.904 Classification assistance.

On request of any party to a proceeding or of the presiding officer, the Commission will designate a representative to advise and assist the presiding officer and the parties with respect to security classification of information and the safeguards to be observed.

§ 2.905 Access to restricted data and national security information for parties; security clearances.

(a) Access to restricted data and national security information introduced into proceedings. Except as provided in paragraph (h) of this section, restricted data or national security information introduced into a proceeding subject to this part will be made available to any interested party having the required security clearance; to counsel for an interested party provided the counsel has the required security clearance; and to such additional persons having the required security clearance as the Commission or the presiding officer determined are needed by such party for adequate preparation or presentation of his case. Where the interest of such party will not be prejudiced, the Commission or presiding officer may postpone action upon an application for access under this subparagraph until after a notice of hearing, answers, and replies have been filed.

(b) Access to Restricted Data or National Security Information not introduced into proceedings. (1) On application showing that access to Restricted Data or National Security Information may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data or National Security Information to the party upon his obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of his case upon their obtaining the required clearance.

(2) Where the interest of the party applying for access will not be prejudiced, the Commission or the presiding officer may postpone action on an application pursuant to this paragraph until after a notice of hearing, answers and replies have been filed.

(c) The Commission will consider requests for appropriate security clearances in reasonable numbers pursuant to this section. A reasonable charge will be made by the Commission for costs of security clearance pursuant to this section.

(d) The presiding officer may certify to the Commission for its consideration and determination any questions relating to access to Restricted Data or National Security Information arising under this section. Any party affected by a determination or order of the presiding officer under this section may appeal forthwith to the Commission from the determination or order. The filing by the staff of an appeal from an order of a presiding officer granting access to Restricted Data or National Security Information shall stay the order pending determination of the appeal by the Commission.

(e) Application granting access to restricted data or national security information. (1) An application under this section for orders granting access to restricted data or national security information not received from another Government agency will normally be acted upon by the presiding officer, or if a proceeding is not before a presiding officer, by the Commission. (2) An application under this section for orders granting access to restricted data or national security information where the information has been received by the Commission from another Government agency will be acted upon by the Commission.

(f) To the extent practicable, an application for an order granting access under this section shall describe the subjects of Restricted Data or National Security Information to which access is desired and the level of classification (confidential, secret or other) of the information; the reasons why access to the information is requested; the names of individuals for whom clearances are requested; and the reasons why security clearances are being requested for those individuals.

(g) On the conclusion of a proceeding, the Commission will terminate all orders issued in the proceeding for access to Restricted Data or National Security Information and all security clearances granted pursuant to them; and may issue such orders requiring the disposal of classified matter received pursuant to them or requiring the observance of other procedures to safeguard such classified matter as it deems necessary to protect Restricted Data or National Security information.

(h) Refusal to grant access to restricted data or national security information. (1) The Commission will not grant access to restricted data or national security information unless it determines that the granting of access will not be inimical to the common defense and security. (2) Access to Restricted Data or National Security Information which has been received by the Commission from another Government agency will not be granted by the Commission if the originating agency determines in writing that access should not be granted. The Commission will consult the originating agency prior to granting access to such data or information received from another Government agency.

§ 2.906 Obligation of parties to avoid introduction of restricted data or national security information.

It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data or National Security Information into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance.

§ 2.907 Notice of intent to introduce restricted data or national security information.

(a) If, at the time of publication of a notice of hearing, it appears to the staff that it will be impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding, it will file a notice of intent to introduce Restricted Data or National Security Information.

(b) If, at the time of filing of an answer to the notice of hearing it appears to the party filing that it will be impracticable for the party to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall state in the answer a notice of intent to introduce Restricted Data or National Security Information into the proceeding.

(c) If, at any later stage of a proceeding, it appears to any party that it will be impracticable to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall give to the other parties prompt written notice of intent to introduce Restricted Data or National Security Information into the proceeding.

(d) Restricted Data or National Security Information shall not be introduced into a proceeding after publication of a

notice of hearing unless a notice of intent has been filed in accordance with § 2.908, except as permitted in the discretion of the presiding officer when it is clear that no party or the public interest will be prejudiced.

§ 2.908 Contents of notice of intent to introduce restricted data or other national security information.

(a) A party who intends to introduce Restricted Data or other National Security Information shall file a notice of intent with the Secretary. The notice shall be unclassified and, to the extent consistent with classification requirements, shall include the following:

(1) The subject matter of the Restricted Data or other National Security Information which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret, or other);

(3) The stage of the proceeding at which he anticipates a need to introduce the information; and

(4) The relevance and materiality of the information to the issues on the proceeding.

(b) In the discretion of the presiding officer, such notice, when required by § 2.907(c), may be given orally on the record.

§ 2.909 Rearrangement or suspension of proceedings.

In any proceeding subject to this part where a party gives notice of intent to introduce Restricted Data or other National Security Information, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in his discretion:

(a) Rearrange the normal order of the proceeding in a manner which gives such interested parties an opportunity to obtain required security clearances with minimum delay in the conduct of the proceeding.

(b) Suspend the proceeding or any portion of it until all interested parties have had opportunity to obtain required security clearances. No proceeding shall be suspended for such reasons for more than 100 days except with the consent of all parties or on a determination by the presiding officer that further suspension of the proceeding would not be contrary to the public interest.

(c) Take such other action as he determines to be in the best interest of all parties and the public.

§ 2.910 Unclassified statements required.

(a) Whenever Restricted Data or other National Security Information is introduced into a proceeding, the party offering it shall submit to the presiding officer and to all parties to the proceeding an unclassified statement setting forth the information in the classified matter as accurately and completely as possible.

(b) In accordance with such procedures as may be agreed upon by the parties or prescribed by the presiding officer, and after notice to all parties and opportunity to be heard thereon, the presiding officer shall determine whether the unclassified statement or any portion of it, together with any appropriate modifications suggested by any party, may be substituted for the classified matter or any portion of it without prejudice to the interest of any party or to the public interest.

(c) If the presiding officer determines that the unclassified statement, together with such unclassified modifications as he finds are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, he shall direct that the classified matter be excluded from the record of the proceeding. His determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, he shall include his reasons in his determination. This determination shall be included as part of the record and will be considered by the Commission in the event of review of the determination.

(e) The presiding officer may postpone all or part of the procedures established in this section until the reception of all other evidence has been completed. Service of the unclassified statement required in paragraph (a) of this section shall not be postponed if any party does not have access to Restricted Data or other National Security Information.

§ 2.911 Admissibility of restricted data or other national security information.

A presiding officer shall not receive any Restricted Data or other National Security Information in evidence unless:

(a) The relevance and materiality of the Restricted Data or other National Security Information to the issues in the proceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data or other National Security Information would prejudice the interests of a party or the public interest.

§ 2.912 Weight to be attached to classified evidence.

In considering the weight and effect of any Restricted Data or other National Security Information received in evidence to which an interested party has not had opportunity to receive access, the presiding officer and the Commission shall give to such evidence such weight as is appropriate under the circumstances, taking into consideration any lack of opportunity to rebut or impeach the evidence.

§ 2.913 Review of Restricted data or other National Security Information received in evidence.

At the close of the reception of evidence, the presiding officer shall review the record and shall direct that any Restricted Data or other National Security Information be expunged from the record where such expunction would not prejudice the interests of a party or the public interest. Such directions by the presiding officer will be considered by the Commission in the event of review of the determinations of the presiding officer.

§ 2.914 [Deleted 40 FR 44124.]

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.106(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.709, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

TIP:38 - Effects of Electric Industry Deregulation

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Background

The electric industry's move away from traditional rate-based regulation towards increased competition in a deregulated marketplace could have adverse impacts on the long-term ability of utilities to adequately finance safe operation and decommissioning of their nuclear power plants. Traditionally, the electric utility industry has functioned as a regulated monopoly, providing essential electrical services under an exclusive franchise in exchange for having rates closely regulated by State Public Utility Commissions (PUCs) and the Federal Energy Regulatory Commission (FERC). This relationship has begun to change as PUCs and FERC have initiated actions leading to the deregulation of the electric utility industry, as allowed under the Public Utility Regulatory Policies Act of 1978 and the Energy Policy Act of 1992.

Although the Nuclear Regulatory Commission is not normally involved in economic or rate regulation, the agency has recognized over the years a possible relationship between adequate financing and safe operations. Licensees' efforts to reduce spending could result in smaller, less experienced workforces, reductions in maintenance and capital budgets, shorter refueling outages during which certain maintenance is performed and a decline in morale. The NRC must ensure that economic pressures do not result in reduced safety margins at operating nuclear plants and do not impair a licensee's ability to fully finance decommissioning of a nuclear plant after it is shut down.

Discussion

The NRC needs to ensure that licensees are able to provide adequate assurance of decommissioning funding for their nuclear plants, whether a plant is operated to the end of its licensed term or is shut down prematurely. In addition, licensees in a deregulated marketplace will likely lose the virtual guarantee of revenue that is provided under traditional rate regulation. To remain competitive, many licensees will also need to find ways to repay the initial costs of building their nuclear plants without causing undue financial stress. Consequently, the NRC is evaluating whether it should increase its monitoring of licensees' financial qualifications to operate their plants. The NRC requires that it be informed in a timely manner of any planned changes to ownership or control of licensed facilities that could affect safety or NRC safety oversight, and whether significant changes in the organizational and/or financial support for each plant are contemplated.

Primarily due to the established economic regulatory process, the NRC has exercised limited financial oversight of electric utility licensees. The NRC allows electric utility licensees, unlike most other licensees, to accumulate funds for decommissioning over the 40-year terms of their operating licenses without providing additional assurance for any unfunded balance. However, with the advent of deregulation, the NRC's assumptions regarding assurance of access to funds for decommissioning must be re-evaluated. Some policies may need to change as a result of this reassessment.

In fall 1995, the NRC initiated a re-evaluation of NRC policy regarding decommissioning funding. The staff was directed to develop a comprehensive action plan for this re-evaluation. One element of the action plan was to issue, in April 1996, an advance notice of proposed rulemaking that sought additional information on electric utility restructuring and comments on additional measures to ensure adequate decommissioning funding.

The NRC also issued a draft policy statement on September 23, 1996, and draft Standard Review Plans (SRPs) on December 27, 1996 for public comment. These issuances included: (1) a discussion of safety

concerns with respect to electric utility deregulation; (2) a discussion of the current regulatory framework with respect to the conduct of financial qualifications, antitrust, and decommissioning funding assurance reviews for the mergers, holding companies, and other restructurings seen so far; and (3) a discussion of the planned approach to future reviews as rate deregulation accelerates. This will include possible rule changes to NRC regulations covering evaluation of transfers of control, which may include asset transfers and restructurings.

In the draft policy statement, the NRC also addressed its responsibilities vis-a-vis State and Federal rate regulators and the NRC view of the responsibilities of co-owners of nuclear plants. The NRC recognizes the role of PUCs and FERC in rate matters, but also recognizes its own statutory mandate to protect public health and safety. The NRC is pursuing increased contacts with the PUCs, through the National Association of Regulatory Utility Commissioners, with FERC and with the Securities and Exchange Commission (SEC) to enhance cooperation in areas in which interests and responsibilities overlap.

Because of the complexity of new business arrangements that have been proposed or discussed, and because of NRC concern about when a licensee may plan to sell or transfer its assets in relation to rate deregulation, the NRC will be taking a more proactive role in informing licensees of their obligation to report new ownership arrangements. Where appropriate, the NRC will seek additional information to determine whether licensees remain electric utilities as the NRC defines that term. Alternatively, the NRC requires that licensees that no longer meet the NRC's definition of an electric utility to provide additional assurance that decommissioning funds will be available when needed and must meet additional financial qualifications standards.

HIGHLIGHTS

Economic deregulation and restructuring in the electric utility industry could have profound impacts on the long-term ability of power reactor licensees to obtain adequate funds to operate and to decommission their plants safely.

The NRC needs to ensure that adequate decommissioning funding is available whether nuclear plants operate to the end of their license terms, or they shut down prematurely. Also some increase in financial qualifications monitoring is appropriate as electric utilities are deregulated.

In April 1996 the NRC issued an advance notice of proposed rulemaking, seeking additional information on restructuring and comments on additional measures to ensure adequate decommissioning funding. There may be rule changes to NRC regulations covering evaluation of transfers of control, which include asset transfers and restructurings.

The NRC issued a draft policy statement and Standard Review Plans for public comment.

The NRC has increased its contacts with state PUCs through the National Association of Regulatory Utility Commissioners, and with FERC and SEC to enhance cooperation in areas in which interests and responsibilities overlap.

NRC will be taking a more proactive role in informing licensees of their obligation to report new ownership arrangements