



North Carolina Department of Crime Control and Public Safety

James G. Martin, Governor
Joseph W. Dean, Secretary

Division of Emergency Management
116 W. Jones St., Raleigh, N. C. 27611
(919) 733-3867

January 19, 1987

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

Attention: Docketing and Service Branch

RE: Proposed Rule on Timing Requirements
for Pre-Licensing Full Participation
Emergency Preparedness Exercises
51 Fed. Reg. (December 2, 1986)

87 JAN 21 AM 1:50

DOCKETED
NRC

Dear Sirs:

The Nuclear Regulatory Commission ("NRC") recently published for public comment a proposed rule to amend its regulations at 10 C.F.R. Part 50, Appendix E, § IV. F. 1, to require that a full participation emergency preparedness exercise be conducted within two years (rather than one year) prior to issuance of a full power operating license for a power reactor. 51 Fed. Reg. 43369 (December 2, 1986). The North Carolina Department of Crime Control and Public Safety, Division of Emergency Management ("N.C. DEM"), is pleased to provide the following comments for the NRC's consideration.

I. Introduction

The Division of Emergency Management represents the Governor of North Carolina in emergency management matters, and is the State agency with primary responsibility for the development and implementation of emergency plans in support of fixed nuclear facilities. Because of the relatively high number of nuclear plants in and near the State (including Brunswick, McGuire, Catawba and Shearon Harris), North Carolina is among the states with the greatest expertise in radiological emergency response planning.

Because the proposed revision of NRC regulations to require a full participation exercise within two years (rather than one year) prior to full power licensing will not relieve utility operating license applicants of the requirement to conduct an onsite exercise within one year of full power licensing, the proposed revision will have its greatest effect on state and local governments. State and local government comments on the proposed revision are particularly

DS10
Add Mr. J. J. Gargan, 1130 SS
8701270297 870119
PDR PR
50 51FR43369 PDR

appropriate. Moreover, among state and local governments, North Carolina is uniquely qualified to address the proposed revision at issue, based on the exemption from 10 C.F.R. Part 50, Appendix E, § IV.F.1 which was recently granted for Shearon Harris. For the reasons stated below, N.C. DEM supports the proposed revision of the NRC's regulations on the timing of pre-licensing full participation exercises.

II. Specific Comments

The revision of NRC emergency planning regulations to require the conduct of a full participation exercise within two years (rather than one year) prior to full power licensing is consistent with the regulations of the Federal Emergency Management Agency ("FEMA"). Based on its experience in observing and evaluating exercises all across the country, FEMA's regulations require that affected state and local governments participate in a nuclear plant's exercises on a biennial basis. 44 C.F.R. § 350.9. The determination underlying FEMA's regulations -- that satisfactory exercise performance provides reasonable assurance that the requisite level of offsite emergency preparedness will be maintained for at least two years -- is applicable to both operating plants and plants yet to be licensed. FEMA's regulations on exercises therefore do not differentiate between operating plants and license applicants. The proposed revision of NRC requirements on the timing of exercises will thus enhance the consistency of NRC regulations with those of FEMA, and ensures adequate protection of public health and safety.

Moreover, the proposed revision will increase the internal consistency of the NRC's regulations. In 1984, relying in part on FEMA's adoption of a biennial exercise requirement, the NRC amended its regulations to require biennial (rather than annual) offsite participation in exercises for operating plants. The NRC found that annual exercises expended a disproportionate amount of federal, state and local government resources, and that "emergency response personnel at the State and local government level continuously respond to actual emergencies." The NRC therefore determined that biennial offsite participation in exercises at operating plants is adequate to protect public health and safety. 49 Fed. Reg. 27733 (July 6, 1984). But these findings are not specific to operating plants. As discussed more fully below, the same logic compels the conclusion that the conduct to a full participation exercise within two year prior to full power licensing provides the requisite assurance that the public health and safety can be protected.

Just as the NRC found annual exercises at operating plants to be disproportionately expensive for state and local governments, the NRC's existing one-year rule on pre-licensing exercises also unduly

burdens those governments. Compliance with the terms of the present one-year rule requires state and local governments to conduct more than one pre-licensing full participation exercise if a license does not (for any reason) issue within 365 days of the prior exercise. State and local resources should not be expended on such unnecessary, repetitive pre-licensing exercises when the NRC and FEMA have previously determined that satisfactory performance in an exercise provides adequate assurance that offsite preparedness will be maintained over a two year period.^{1/} Similarly, the NRC's reliance on state and local response to non-nuclear emergencies as a basis for biennial exercises at operating plants is equally relevant to plants not yet licensed.

The proposed revision will also ease the potential burden on state and local governments which has resulted from the decision in Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984), cert. denied, 105. S.Ct. 815 (1985). That case requires that the full participation exercise necessary for full power licensing be subject to the NRC hearing process. The combination of the UCS case and the NRC's one-year rule has created a "heads, you win -- tails, I lose" situation for state and local governments (as well as utilities).

Full participation exercises now must be conducted well in advance of the expected licensing date, to allow time for evidentiary hearings on the results of the exercise. But, given the difficulties inherent in precisely projecting plant schedules, there is a significant risk that -- by conducting an exercise early enough to accommodate hearings -- even minor subsequent delays in completion of

^{1/} The proposed revision also will allow state and local governments, and utilities, greater flexibility in planning exercises. That flexibility will be particularly welcome in states such as North Carolina, which must exercise with operating plants in addition to any pre-licensing exercises which may be required.

Indeed, as the NRC has recognized (at 51 Fed. Reg. 43370), the sole basis for regulating the timing of the pre-licensing exercise is to ensure "that the participants * * * [are] adequately in place and trained to make the exercise meaningful". As the NRC acknowledges, this could well occur two years before issuance of an operating license. If evaluation of an exercise should indicate that it was conducted too early, so that adequate preparedness could not be demonstrated, compensatory measures -- such as remedial exercise -- could be required. 10 C.F.R. Part 50, Appendix E, § IV.F.1.

construction or licensing of the plant may cause the exercise to fall outside the one-year window.^{2/} In fact, even where there are no such delays, in some situations (e.g., where NRC or FEMA reports on the exercise are not immediately available, or where exercise-related issues are hotly contested) it may be truly impossible for both an exercise to be conducted and litigation of that exercise to be completed within a one year period. The "one year window" is simply too narrow.

Finally, because the proposed revision will allow additional time for litigation of the results of an exercise, the potential burden on state and local response agencies (e.g., providing information for discovery responses, etc.) will be reduced. Indeed, because all participants in the NRC hearings will have more time to focus their positions, exercise-related litigation can be expected to be of a higher quality.

III. Conclusion

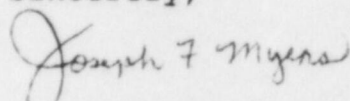
For all the foregoing reasons, the North Carolina Division of Emergency Management supports the adoption of the proposed rule. The revision of NRC regulations to require a full participation exercise within two years prior to full power licensing will afford state and local governments greater flexibility in the scheduling of exercises and the allocation while assuring the continued protection of public health and safety.

^{2/} While the NRC has the authority to grant relief from this regulation on a case-by-case basis, such exemptions are not issued until the license issues. The resulting inability to rely on the exemption -- and the possibility that it will be contested before the NRC and/or in the courts -- puts enormous pressure on state and local governments. Nor is the conduct of a second full participation exercise the easy answer. Where the NRC and FEMA have already determined that a successful exercise provides the necessary assurance that offsite preparedness will be maintained for a period of at least two years, the conduct of two exercises in two years or less is a poor allocation of precious state and local resources -- resources which are needed to respond to real emergencies, and which may well have been strained by earlier litigation of contentions on plans and on the first exercise. Moreover, under one possible interpretation of the UCS decision, a second pre-licensing exercise might also be subject to the NRC hearing process. Clearly, state and local resources should not be expended on such duplicative litigation.

Secretary of the Commission
January 19, 1987
Page 5

Thus, the NRC's discretion to grant exemptions does not obviate the need to revise its regulations on the timing of pre-licensing exercises.

Sincerely,

A handwritten signature in cursive script that reads "Joseph F. Myers".

Joseph F. Myers,
Director