



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

October 27, 1987

DOCKET NUMBER PR-50
PROPOSED RULE (52 FR 6980)
EMERGENCY PLANNING
DOCKETED
USNRC

87 OCT 29 10:13

The Honorable Chester G. Atkins
United States House of Representatives
Washington, DC 20515

Dear Congressman Atkins:

We have received your letter of October 23, 1987, and wish first to correct certain misapprehensions reflected in it. Commissioner Bernthal's reference to the Congressional letters received on the morning of the Commission's October 22 meeting was by no means "inadvertent," as your letter suggests. Rather, it was plainly made with the understanding that those letters, like every other written comment on the rulemaking would be placed in the Public Document Room and made part of the record. Nor was the request for those letters "refused by the NRC staff." One NRC staff member, asked for the letters by a Congressional staff member at the conclusion of the meeting, was initially unaware that the letters constituted comments on the rulemaking, and replied that ordinarily Congressional letters are released only when the Commission's reply is dispatched. He promised, however, to look into the matter. The release of the documents at the close of the meeting by the Public Affairs office mooted the issue. Copies of the several letters from members of Congress and Governor Dukakis that were received just prior to the Commission meeting are enclosed. Thus it would be wholly inaccurate to suggest that the Commission sought to conceal the letters, or that the NRC staff refused their release.

The Commission therefore stands by its letter of October 21, in which it declared that "the Commission could hardly have structured a more open process for addressing this issue," and declined to accept the imposition of procedural burdens of a kind Congress has never required in informal rulemaking. Nothing that has happened in the intervening days suggests a need to reconsider that response. Moreover, it would be inconsistent with the October 21 response to endeavor now to comply with your request for a chronology and summary of communications regarding the emergency planning rule between NRC and nuclear utilities or other Federal agencies. We believe that such a request, which resembles discovery between adversaries in judicial litigation, is wholly inappropriate for informal rulemaking. However, we again assure you that any final decision on the rule will be based on the public rulemaking record.

Sincerely,

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PDR PR
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Lando W. Zech, Jr.
Lando W. Zech, Jr.

Enclosures:
Letters from Congressional members
and Governor Dukakis

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

October 27, 1987

The Honorable Robert J. Mrazek
United States House of Representatives
Washington, DC 20515

Dear Congressman Mrazek:

We have received your letter of October 23, 1987, and wish first to correct certain misapprehensions reflected in it. Commissioner Bernthal's reference to the Congressional letters received on the morning of the Commission's October 22 meeting was by no means "inadvertent," as your letter suggests. Rather, it was plainly made with the understanding that those letters, like every other written comment on the rulemaking would be placed in the Public Document Room and made part of the record. Nor was the request for those letters "refused by the NRC staff." One NRC staff member, asked for the letters by a Congressional staff member at the conclusion of the meeting, was initially unaware that the letters constituted comments on the rulemaking, and replied that ordinarily Congressional letters are released only when the Commission's reply is dispatched. He promised, however, to look into the matter. The release of the documents at the close of the meeting by the Public Affairs office mooted the issue. Copies of the several letters from members of Congress and Governor Dukakis that were received just prior to the Commission meeting are enclosed. Thus it would be wholly inaccurate to suggest that the Commission sought to conceal the letters, or that the NRC staff refused their release.

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Sincerely,

Lando W. Zeck Jr.
Lando W. Zeck Jr.

Enclosures:
Letters from Congressional members
and Governor Dukakis



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

October 27, 1987

CHAIRMAN

The Honorable Nicholas Mavroules
United States House of Representatives
Washington, DC 20515

Dear Congressman Mavroules:

We have received your letter of October 23, 1987, and wish first to correct certain misapprehensions reflected in it. Commissioner Bernthal's reference to the Congressional letters received on the morning of the Commission's October 22 meeting was by no means "inadvertent," as your letter suggests. Rather, it was plainly made with the understanding that those letters, like every other written comment on the rulemaking would be placed in the Public Document Room and made part of the record. Nor was the request for those letters "refused by the NRC staff." One NRC staff member, asked for the letters by a Congressional staff member at the conclusion of the meeting, was initially unaware that the letters constituted comments on the rulemaking, and replied that ordinarily Congressional letters are released only when the Commission's reply is dispatched. He promised, however, to look into the matter. The release of the documents at the close of the meeting by the Public Affairs office mooted the issue. Copies of the several letters from members of Congress and Governor Dukakis that were received just prior to the Commission meeting are enclosed. Thus it would be wholly inaccurate to suggest that the Commission sought to conceal the letters, or that the NRC staff refused their release.

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Sincerely,

Lando W. Zech Jr.
Lando W. Zech, Jr.

Enclosures:
Letters from Congressional members
and Governor Dukakis



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

October 27, 1987

The Honorable George J. Hochbrueckner
United States House of Representatives
Washington, DC 20515

Dear Congressman Hochbrueckner:

We have received your letter of October 23, 1987, and wish first to correct certain misapprehensions reflected in it. Commissioner Bernthal's reference to the Congressional letters received on the morning of the Commission's October 22 meeting was by no means "inadvertent," as your letter suggests. Rather, it was plainly made with the understanding that those letters, like every other written comment on the rulemaking would be placed in the Public Document Room and made part of the record. Nor was the request for those letters "refused by the NRC staff." One NRC staff member, asked for the letters by a Congressional staff member at the conclusion of the meeting, was initially unaware that the letters constituted comments on the rulemaking, and replied that ordinarily Congressional letters are released only when the Commission's reply is dispatched. He promised, however, to look into the matter. The release of the documents at the close of the meeting by the Public Affairs office mooted the issue. Copies of the several letters from members of Congress and Governor Dukakis that were received just prior to the Commission meeting are enclosed. Thus it would be wholly inaccurate to suggest that the Commission sought to conceal the letters, or that the NRC staff refused their release.

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Sincerely,

Lando W. Zech Jr.
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Enclosures:
Letters from Congressional members
and Governor Dukakis



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

October 27, 1987

CHAIRMAN

The Honorable Thomas J. Downey
United States House of Representatives
Washington, DC 20515

Dear Congressman Downey:

We have received your letter of October 23, 1987, and wish first to correct certain misapprehensions reflected in it. Commissioner Bernthal's reference to the Congressional letters received on the morning of the Commission's October 22 meeting was by no means "inadvertent," as your letter suggests. Rather, it was plainly made with the understanding that those letters, like every other written comment on the rulemaking would be placed in the Public Document Room and made part of the record. Nor was the request for those letters "refused by the NRC staff." One NRC staff member, asked for the letters by a Congressional staff member at the conclusion of the meeting, was initially unaware that the letters constituted comments on the rulemaking, and replied that ordinarily Congressional letters are released only when the Commission's reply is dispatched. He promised, however, to look into the matter. The release of the documents at the close of the meeting by the Public Affairs office mooted the issue. Copies of the several letters from members of Congress and Governor Dukakis that were received just prior to the Commission meeting are enclosed. Thus it would be wholly inaccurate to suggest that the Commission sought to conceal the letters, or that the NRC staff refused their release.

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Sincerely,

Lando W. Zech Jr.
Lando W. Zech, Jr.

Enclosures:
Letters from Congressional members
and Governor Dukakis



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

October 20, 1987

Mr. Lando W. Zech, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 21555

Dear Chairman Zech,

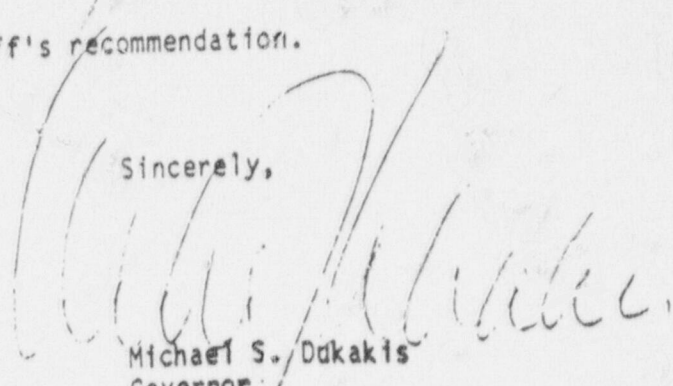
The staff recommendation currently under consideration by the NRC Commissioners to approve the proposed rule change regarding the licensing of nuclear power plants in the absence of state approved emergency response plans, requires that I once again, in the strongest terms, voice my opposition to this proposed rule change. The Commission should not subjugate the well being of Massachusetts citizens to the interests of a handful of utility company owners.

On February 24, 1987 I testified before the Commission to register my opposition to this proposed rule change. In my oral and subsequent written testimony I argued that Commission approval of this proposal would ignore not only the lessons learned from the radiological emergency that occurred at Three Mile Island but would undercut the basic commands of the Atomic Energy Act and other statutes governing the NRC. No arguments have been presented to shake my firm belief that emergency response plans, proposed and approved by state and local governments, are essential to protect the health and safety of the public.

In my view, the Commission now stands poised to disregard its mandate to protect the public health and safety. Its approval of this proposed rule would not only serve to jeopardize the public health and safety of people in Massachusetts but would signify a willingness to run roughshod over the traditional interests of sovereign states. The Commission should not approve this proposed rule change.

I urge the Commission to reject its staff's recommendation.

Sincerely,


Michael S. Dukakis
Governor

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 20, 1987

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Chairman:

As you know, we have strongly supported your efforts to amend the Commission's emergency planning regulations. We also strongly approved of the approach proposed by the Commission in March and the efforts of the Commission's staff in developing that approach for your consideration. We therefore were surprised and disappointed to see the staff's recommendation for a final Commission rule on this matter. While it is clear that substantial thought and effort have gone into the staff proposal, we believe that the recommendation is seriously deficient.

It is also seriously at odds with what we had viewed as a major purpose of the Commission in proposing its rule: to get the Commission out of the business of reading the minds of State and local officials. On repeated occasions the Commission has expressed that purpose. Yet the staff proposal contemplates hearings that will amount to lengthy exercises in just such mind-reading. In the language of the staff's recommended rule, the "likely response of ... (State and local) officials" will be probed in hearings in which such officials will be absent entirely or will testify that they intend to respond differently from the way in which the utility applicant predicts they will respond. According to the proposed statement of considerations, "the precise actions which state and local governments would take" would be "resolved in individual adjudicatory proceedings" that frequently will not include those governments. These are precisely the sorts of inquiries that we had understood the Commission wished to avoid.

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The Honorable Lando W. Zech, Jr.
October 20, 1987
Page 2

The inquiries come about under the proposal because the staff is reluctant to engage in assumptions and to circumscribe adjudicatory hearings so as to make the rule workable. It is of course the case that where states and localities will not cooperate in the planning process, a licensing board will have only a utility plan before it. No matter how effective that plan is, it will be most difficult to establish the adequacy of preparedness without some understanding--assumed or established--as to the adequacy of actions of State and local officials with respect to the plan. The staff is prepared to assume that such officials will use their best efforts in the event of an accident. But such an assumption, confined as it is, leaves unanswered such questions as: Will the officials make use of the utility plan? Will the officials develop their own? Will they carry out either in an actual emergency? Exactly how will they do so? All these questions are left for the licensing boards to resolve in hearings that may well be boycotted by the officials whose conduct is at issue. Such hearings inevitably will be unwieldy and inconsistent with any sense of an orderly regulatory process. Most significantly, no reasonable guidance will be provided to licensing boards and hearing participants as to how they are to proceed in such hearings or as to what will suffice to provide assurance of an adequate governmental response.

Finally, given that licensing boards will have available to them only a utility plan (which state and local officials probably will ignore and thus view as irrelevant) and an understanding that such officials will do their best ad hoc in an emergency, it will be difficult to make the finding that adequate protective measures can and will be taken. Even a hearing demonstrating that the utility plan is exceptionally strong may well not support such a finding. Under these circumstances, the staff recommendation may effectively restore the veto threat that the original proposed rule was designed to remove.

One possible cure for these problems is to make the assumptions and to establish the elements of guidance that are now missing from the rule. As to assumptions, the Commission could reasonably provide that it should be assumed not only that states and localities will exert their best efforts in times of an accident but also (i) that they will exert their best efforts to plan and prepare for the accident, and (ii) that until they develop their own plan, they will rely on the only plan available, i.e., the utility's, if an accident occurs. These assumptions are dictated by common sense, are consistent with previous Commission decisions, and undoubtedly are supported by the rulemaking record. Moreover, as guidance to licensing board and hearing participants, the Commission could provide

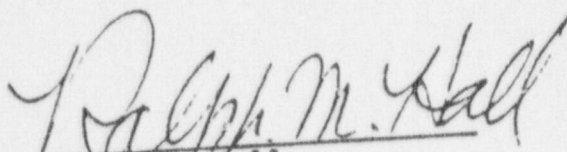
The Honorable Lando W. Zech, Jr.
October 20, 1987
Page 3

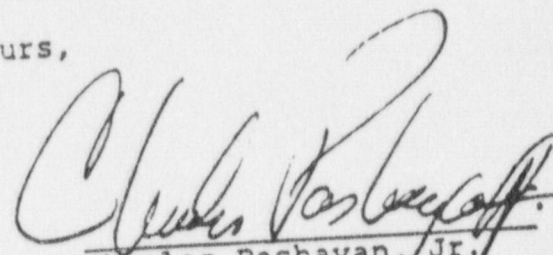
that where it can be shown that emergency planning is feasible at the geographical site and that adequate resources are available to State and local officials, these showings will be sufficient to establish that state and local best efforts will be adequate. This would appear to be all that could reasonably be demonstrated under these conditions and, in light of that, the provision would almost certainly survive any legal challenge. We are attaching proposed language to effect these changes.

In short, if it is your purpose entirely to vitiate the State and local veto, we feel strongly that the clearest way to achieve that purpose is to do away entirely with the "and will" requirement. While your original proposal would not have removed the "and will" language, it would have achieved the same result. If, however, you feel bound to include an "and will" requirement in your final rule, we feel that the Commission must provide itself a broad set of assumptions that will allow it to make a logical conclusion that adequate protective measures can and will be taken. It is our strongly held opinion that the assumptions in the staff's recommendations are not broad enough, and therefore will leave alive the possibility of State and local vetoes.

Therefore, we urge you to augment the staff's recommendations with the additional assumptions and guidance noted above and expressed in the attachment hereto.

Sincerely yours,


Ralph M. Hall
Member of Congress


Charles Pashayan, Jr.
Member of Congress

Attachment

cc: The Honorable Thomas M. Roberts
The Honorable Frederick M. Bernthal
The Honorable Kenneth M. Carr
The Honorable Kenneth C. Rogers

PROPOSED LANGUAGE FOR EMERGENCY PREPAREDNESS RULE

In the second sentence of paragraph (c)(1)(iii) of the staff's proposal, after "based upon the plan," add "and the assumptions and showings outlined in this paragraph."

Strike the last sentence of the paragraph and substitute in lieu thereof: "In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that (i) in an actual emergency state and local government officials will exercise their best efforts to protect the health and safety of the public, (ii) such officials will exercise their best efforts to prepare and plan for an emergency, and (iii) until such officials develop a plan of their own, such officials will rely on the utility plan in the event of an emergency. Moreover, where it can be demonstrated on a case-by-case basis that emergency preparedness is feasible at the geographical location of the facility and that adequate resources are available to state and local officials, such showings will be sufficient to establish that state and local best efforts will be adequate."

QUENTIN N. BURDICK NORTH DAKOTA CHAIRMAN
DANIEL PATRICK MOYNIHAN NEW YORK
GEORGE J. MITCHELL MAINE
MAX BAUCUS MONTANA
FRANK R. J. TENBERG NEW JERSEY
JOHN B. BREWER LOUISIANA
BARBARA A. MURKIN MARYLAND
BOB GRAHAM ALABAMA
ROBERT T. STAFFORD VERMONT
JOHN H. CHAFFE RHODE ISLAND
ALAN K. JAFFSON WYOMING
STEVE SYMMS OREGON
DAVE DUNNBERGER MINNESOTA
JOHN W. WARNER J. ARIZONA
LARRY PRESSLER SOUTH DAKOTA

PETER D. PROWITT STAFF DIRECTOR
SAILEY GUARD MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON DC 20510-6175

October 21, 1987

Honorable Lando W. Zech, Jr.
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Zech:

In March of this year, the Nuclear Regulatory Commission issued a proposed rule that would amend its emergency planning regulations. I support this initiative to resolve the current impasse on emergency planning. You personally deserve substantial credit for this effort.

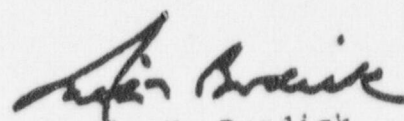
I am disturbed, however, by several aspects of the final rule. I sincerely hope that these concerns will be addressed.

As the Commission staff notes in its recommendations on the final rule, the proposed final rule "gives the appearance of addressing the emergency planning impasse without fully resolving the really difficult issue--whether utility plans will be found acceptable on the basis of an adjudicatory record in a particular case." This creates the prospect of lengthy litigation without any certainty as to the ultimate licensability of the plant in the face of non-cooperation by state and local officials.

I hope the Commission will be able to avoid this potential uncertainty. It would be unfortunate indeed if the Commission were to adopt a rule that did not solve the current problem.

With kind regards, I am

Sincerely,


Quentin N. Burdick
Chairman

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QUENTIN N. BURCK NORTH DAKOTA CHAIRMAN
 DANIEL PATRICK MOYNIHAN NEW YORK
 GEORGE J. MITCHELL MAINE
 MAX BAILEY MONTANA
 FRANK R. LAUTENBERG NEW JERSEY
 JOHN B. BREAUX LOUISIANA
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 JOHN W. WARNER VIRGINIA
 LARRY PRESSLER SOUTH DAKOTA

AFTER D. PROWITT STAFF DIRECTOR
 SAULEY GUARD, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
 WASHINGTON, DC 20510-6178

October 21, 1987

Honorable Lando Zech, Jr.
 Chairman
 Nuclear Regulatory Commission
 1717 H Street, N.W.
 Washington, D.C. 20555

Dear Mr. *Lando*

Knowing that the Commission is scheduled to receive a briefing, tomorrow, from the staff on SECY 87-257, relative to the emergency planning rule, I want to first apologize for the last-minute nature of this letter. I would also like to request that this letter be noted on the Commission's docket and made available to interested parties.

While I do not wish to prejudge the decision of the Commission, my review of the SECY paper raises some questions in my mind that I would hope you and your fellow Commissioners will raise with the staff in your discussions.

As I understand the Commission's original proposed rule, it acknowledged that its 1980 regulatory actions were premised upon the assumption "that all affected state and local governments would continue to cooperate in emergency planning throughout the life of the license." The Commission also has acknowledged that its 1980 regulations were not designed nor intended to create possible state and local vetoes of full power operation. The proposed rule, as I understood it, was intended to address the situation that has arisen with respect to the Shoreham and Seabrook plants by, in essence, permitting the issuance of a full power operating license in the face of the refusal to fully participate in the emergency planning exercise by state and local governments if the applicant could satisfy four tests delineated in the proposed rule.

Now, the Commission's staff, after consultation with the Federal Energy Management Agency, has recommended a variation of the proposal contained in SECY-87-257, which does not appear to correct the regulatory problems inherent in the Commission's 1980 amendments. First, the Staff's recommendation does not spell out how the NRC is to deal with a situation in which state and local officials argue that they will respond to an actual radiological emergency, but will not utilize the utility's plan. Hence, following the Staff's recommendation, it may be extremely difficult to reach the conclusion that adequate protective measures "can and will" be taken based on the utility's plan.

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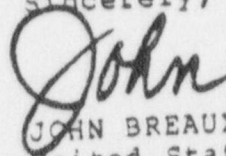
The Honorable Lando Zech
October 21, 1987
Page Two

Second, the Staff's recommendation seems to be premised upon an overly restrictive interpretation of the "realism doctrine," which appears to require first, that the utility, and then the NRC, read the minds of how state and local governments will respond in the future and then litigate the effectiveness of that response. This would appear difficult to do in instances where there is no communication between the state and/or local officials and the utility.

I do not believe that Congress regarded the concept of utility plans as including a request that the utilities read the minds of how non-cooperating state and local officials will respond and then litigate the effectiveness of that response. Certainly, this was not an element of the most recent debates over the emergency planning rule which have resulted in votes in both the House and the Senate that many have interpreted as supporting the Commission's proposal.

I request that this letter be circulated to your four fellow Commissioners as well as be placed in the NRC's Public Document Room.

Sincerely,



JOHN BREAU
United States Senator