



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

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November 20, 1987

The Honorable Edward J. Markey  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Markey:

Your letter of October 27, 1987 asks questions about two documents related to emergency planning. The first is three pages of notes from January 1987 entitled "Dr. Ross's Comments." The second is an October 21, 1987 memorandum from Frank Congel (Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulation, NRC) to Richard W. Krimm (Assistant Associate Director, Office of Natural and Technological Hazards Programs, FEMA). The Commission does not agree with the suggestion that either document is evidence of impropriety on the part of NRC.

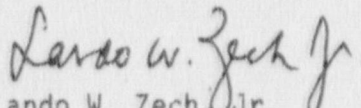
The notes were prepared by Dr. Denwood F. Ross (Deputy Director for Research, Office of Nuclear Regulatory Research, NRC) for his use at a January 20, 1987 meeting of the Committee for Review of Generic Requirements (CRGR) that was scheduled to discuss a January 13, 1987 preliminary draft of a memorandum proposing possible changes in the NRC's emergency planning rules. His notes identified a number of issues that he believed might deserve discussion. The CRGR discussion on January 20, the minutes of which have been in the Public Document Room since February 24, 1987, led to modifications of the draft which were reflected in the memorandum forwarded to the Commission on February 6, 1987 as SECY-87-35. With still further modifications, the Commission published the proposed rule for public comment on March 6, 1987. Thus Dr. Ross's comments were not on the proposal that was put out for public comment on March 6, but rather on a still earlier draft. There was thus no reason to place them in the docket that had been established for comments on the March 6 rule. The intent of the notice of proposed rulemaking was to solicit the views of the public on the proposal which the Commission was publishing. That purpose would not have been advanced in this or any other case by asking the public to comment instead on individual staff members' comments on preliminary drafts.

The October 21, 1987 memorandum from F. Congel to R. Krimm also is not evidence of any impropriety. On October 13, 1987, the General Counsel and the Executive Director for Operations sent the Commission a memorandum setting forth options for a final rule, including a recommended option. That recommendation, as the staff explained at the October 22 public briefing for the Commission, would have made no assumptions about the precise actions that state and local governments would take in the event of an actual emergency. Under the recommendation, the NRC would have had to make case-by-case determinations of what those governments would do.

In the days preceding the October 22 briefing, in discussions between NRC staff and FEMA, FEMA made clear that to evaluate the adequacy of a utility plan, it would need to know that the decision would be made, by someone other than FEMA, whether the state and local governments would follow the utility plan: in other words, if it could be assumed that the state and local governments would follow the utility plan in an emergency, then FEMA could offer a meaningful evaluation of the merits of the utility plan, but FEMA itself could not be in the position of deciding whether the plan would be followed. In accordance with that approach, the NRC staff sent a memorandum to FEMA on October 21, describing the assumptions to be employed in the FEMA evaluation. There was no inconsistency between SECY-87-257 and the October 21 memorandum to FEMA, since nothing in the memorandum to FEMA was inconsistent with a case-by-case finding as to whether the state and local governments would in fact follow the utility plan.

In approving the emergency planning rule at the October 29 affirmation session, the Commission modified the staff's proposal in SECY-87-257 to include explicitly a rebuttable presumption that state and local governments will follow the utility plan in an actual emergency in cases of state and/or local non-participation in emergency planning. To emphasize, that presumption may be rebutted in individual cases. Any party wishing to argue that the presumption is inaccurate with regard to state or local actions will have a full opportunity to make that case in an individual adjudication.

Sincerely,

  
Lando W. Zech Jr.