

TMIA: THREE MILE ISLAND ALERT, INC.

315 Peffer St., Harrisburg, Penna. 17102 (717) 233-7897

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Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Rulemakings and Adjudications Staff

Nuclear Energy Institute's Petition for Rulemaking, 10 CFR 51,
Docket No. PRM. 51-7, Nuclear Regulatory Commission,
Re: Severe Accident Mitigation Alternatives
(September 2, 1999: Volume 64, Number 170, pp. 48117-48120)

PDR PRM 51-7

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Dear Secretary:

The Nuclear Energy Institute (NEI; Petitioner) is asking the Nuclear Regulatory Commission (NRC) to amend its regulations and rule making by deleting the evaluation of the Severe Accident Mitigation Alternative (SAMA) as mandated by the National Environmental Policy Act (NEPA). The NEI's proposal is a naked financial maneuver, and a brazen attempt to further erode the Nuclear Regulatory Commission's statutory authority. The Nuclear Regularly Commission has recently promulgated a series of rules changes designed to reduce on-site oversight (1), and establish a self-policing industry. For their part, the nuclear industry has criticized the NRC's laissez-faire formula for not going far enough. (2) Now the NEI proposes a rule change based on economic incentives and specious legal reasoning. Not only should this rule making proposal be rejected, but the NEI must be sanctioned for instigating a frivolous and capricious petition.

1 On July 30, 1998, Dr. Shirley Jackson testified before the Senate Oversight Subcommittee for the Nuclear Regulatory Commission. She admitted that there will be a net decrease in dedicated inspector hours at nuclear stations from 3,100 to 2,500. Sam Collins from the Nuclear Reactor Regulation confirmed that the new reactor oversight process would lead to a 10-15% reduction in inspection hours. Dr. Jackson further stated; "Nuclear oversight will always require inspection." In addition, the SALP and the "Watch List" (May 5, 1999) have been abolished, and "Non-Cited" Violations have supplanted Severity Level IV Violations saving the "average plant about \$300,000 annually in violation response processing expenses." (*Public Utilities Fortnightly*, April 1, 1999, p. 29.)

2 "A report from the Center for Strategic & International Studies calls on the NRC to move rapidly to 'risk-informed' regulation in improving its assessment and licensing procedures. The report calls on the NRC to be 'flexible' in transferring licenses expeditiously between parties whose qualifications are well-known to the NRC, and simplify license renewal. While acknowledging that the NRC already had made changes, the report says that reform needs to be competitive in a deregulated utility industry." (*Public Utilities Fortnightly*, October 1, 1999, p. 17.)

Please note that on August 10, 1999, Cinergy's inability to "manage risk" was the primary reason the company announced cash losses of \$73 million after taxes.

At the industry's behest, the NRC has methodically amputated and dismantled its statutory authority by instigating wide scale safety retreats at nuclear power generating stations.

On parallel fronts, other NRC action could be seen as helping the industry face the competitive energy market. The commission amended regulations pertaining to financial assurance requirements for decommissioning nuclear reactors (3) (RIN 3150-AF41, Nov. 23, 1998) and streamlined the hearing process for license transfers (RIN 3150-AG09, Dec. 3, 1998.) (4) The NRC has extended this policy of "regulatory subtraction" into 1999 at a frenzied pace: *Change to Quality Assurance Programs; Final and Proposed Rules*, Federal Register: February 23, 1999 (Volume 64, Number 35); *Improvements to the Oversight Process for Nuclear Power Reactors*; Federal Register: April 19, 1999 (Volume 64, Number 74); Revision to NUREG-0800, *Standard Review Plan For the Review of Safety Analysis Reports for Nuclear Power Plants -- LWR Edition*; Federal Register: June 3, 1999 (Volume 64, Number 106); *Emergency Core Cooling System Evaluation Models*: October 1, 1999 (Volume 64, Number 190); and, *Final Standard Review Plan on Foreign Ownership, Control, or Domination*, Federal Register: September 28, 1999 (Volume 64, Number 187.) And these initiatives are just a brief sampling of the NRC's retreat from sensible regulation

The NEI argues that a nuclear generating station's technical requirements are exempt from an environmental review during a license renewal transaction. The Petitioner believes that there is generic veil of certainty that permeates each licensee transfer and renewal transaction. In other words, since all nuclear power plant are operated by licensed companies, then all licensed companies must have a level of nuclear expertise, therefore all nuclear power plants are operated by experts who need no additional oversight. Possessing a license to operate a nuclear power plant does not guarantee a seamless bond of excellence. This presumed measure of "status quo" craftsmanship is a fictitious device created by industry wide hubris.

3 Please refer to the GAO's criticism of the NRC's decommissioning funding formula: *Nuclear Regulation: Better Oversight Needed to Ensure Accumulation of Funds to Decommission Nuclear Power Plants*, GAO/RCED-99-75.

4 "At the Core: The Effects of Nuclear Competition," *Public Utilities Fortnightly*, April 1, 1999.

Would the Nuclear Energy Institute accept similar rule modifications in other regulated technological marketplaces based on their proposed syllogism? If Donald Trump acquired Micro Soft, is there an inherent technological compact that assures the same level of service or innovation? Would NEI members be willing to risk the health and safety of their families based on a false syllogism? Are the engineers that designed the Pinto predisposed to manufacture school buses if Ford acquired Greyhound?

Even if a corporate team remains intact, a new manager can change the atmosphere, corporate culture, direction, and, commitment to safety. (5) Simply put, a company's performance paradigm and priorities are not directly linked to generic industry wide actions or standards. In fact, the NEI would be the first to admit that nuclear generating stations operated by different companies are not indelibly linked as universal parts of a perfect whole. Would the NEI or NRC argue that there is no discernible difference in the expertise and performance levels achieved at Limerick and Oyster Creek? Would the NRC seriously entertain a petition by Northeast Utilities to purchase Duke Power without undergoing exhaustive and intrusive proceedings?

The Nuclear Energy Institute demands that the public accept their contention that each and every license transfer and plant renewal pose "no additional safety challenges." The Petitioner's version of verity is that an "equivalent level of safety" is a *fait accompli* communicated through a commercial transaction. This a grotesque example of ornate silliness.

Technical requirements are fluid and linked to the the changing marketplace, *and* mechanical and engineering challenges embedded in aging and embrittled reactors. The marketplace is virgin territory for nuclear utilities accustomed to the protected and isolated domains of state sanctioned monopolies. Nuclear riddles have consistently confounded the industry and government, including, but not limited to:

5 In addition, to traditional nuclear structures, the NEI's argument allows for new companies that specialize in nuclear power plant life cycle management and license renewal services to be exempt also. And on August 2, 1999, such an entity filed to incorporate as Constellation Nuclear Services, a subsidiary of Baltimore Gas & Electric.

core shroud cracks; decommissioning funding and technologies; fire protection (Appendix R commitment schedules and Thermo-Lag replacement); grid stability and reliability and transmission contracts; spent fuel isolation; steam generator corrosion; water chemistry and biological challenges.

Numerous site-specific and generic challenges have precipitated "beyond design basis" events, and demonstrate that it is imperative to maintain Severe Accident Mitigation Alternative evaluations. Historical data has clearly demonstrated that unplanned "incidents", "events" and "accidents" are highly probable. For example, nobody "planned" the explosion that caused the deaths of three technicians in Idaho Falls on January 3, 1961. The partial core melt at Fermi on October 5, 1966, clearly went beyond the experiment's "design basis." The Loss of Coolant Accident at Three Mile Island 2, which began on March 28, 1979, was deemed "non-credible" by the industry.

The Petitioner acknowledges that the rulemaking proposition their constituents are advancing is predicated on financial considerations. However, their argument that their clients have invested billions in capital expenditures is spurious since the licensing, construction and decommissioning of nuclear reactor is under written by rate payers. In addition, many of their clients have been granted generous rate making relief as the industry transitions to electric competition. (6) Furthermore, the NEI's primary motivation is their clients' profitability. This proposal is obscene. (7)

6 In Pennsylvania alone, two nuclear utilities, PECO Energy and Pennsylvania Power & Light, recouped over \$14 billion in "stranded costs" after Negotiated Settlements were brokered by the Pennsylvania Public Utility Commission. "Including a pretax return of 10 percent to 11 percent on the \$12.2 billion of stranded costs that have been approved for recovery, Pennsylvania's electric utilities will receive at least \$21 billion in stranded cost payments over the next seven to 12 years." (John Hanger, Senior Research Fellow, Center for Competitive Markets, *Public Utilities Fortnightly*, October 1, 1998, p. 49.) These costs were passed through to rate payers and collectible even if a consumer choose to purchase electricity from another generator.

7 The NEI failed to mention the adverse uneconomic impact of premature plant closures inflicted on hostage rate payers, e.g., Shoreham. Currently, rate payers have become victimized by inequitable rate distribution based on excess electric reserves, i.e., Wolf Creek (*Kansas Corporation Commission, Docket No. 97-WSRE-676-MER, Sept. 28, 1999*).

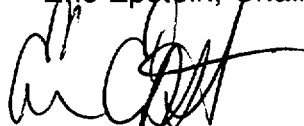
The Nuclear Energy Institute is advancing a disingenuous legal precedent that posits "regulatory efficiency" as being inexorably linked to cost-benefit analyses. The NEI's petition would make the rulemaking process less "focused" and "stable". SEMA's are necessarily more important for an aging nuclear fleet, and reinforce the nuclear industry's fundamental credo of "safety-in-depth." (8) The NRC must not surrender to political and economic pressures. If this petition is adopted, then modification compliance procedures will become the domain of internal industrial actors who will act only when they feel it is "reasonable;y necessary". This petition should be categorically rejected.

Moreover, as the NRC's budget is shrinking (9), this type of frivolous legal action must be indexed to punitive damages. The NEI must be held accountable, and reimburse the NRC for all legal and administrative costs associated with this malicious petition.

8 "NRC allowed safety problems to persist because it was confident that redundant design features kept nuclear plants inherently safe and because it relied heavily on assurance from plant operators about their intentions to make changes. Moreover, NRC lacks a process for ensuring the plant operator uses competent managers. (*Nuclear Regulation: Preventing Problem Plants Require More Effective NRC Action*, GAO/RCED-97-145, May 30, 1997).

9 The NRC's budget for fiscal year 1999 was slashed by 17 million by the Senate Appropriations Committee.

Eric Epstein, Chair



Three Mile Island Alert
315 Pepper Street
Harrisburg, PA 17102

Enclosure

HISTORY OF THREE MILE ISLAND ALERT

Three Mile Island Alert (TMIA) is a non-profit citizens' organization formed in 1977 after the construction and licensing of Three Mile Island Unit-1 and after TMI-2 was constructed. TMIA is the largest and oldest safe-energy group in central Pennsylvania. TMIA has enjoyed widespread public and political support in its role as a watchdog of the Three Mile Island Nuclear Generating Station. In the spring of 1987, TMIA was recognized by the Pennsylvania House of Representatives for 10 years of community service. The House, along with the City of Harrisburg, formally applauded TMIA's efforts on behalf of the community at their 20th anniversary.

Since the March 1979 accident at TMI-2, TMIA has been actively involved with many Three Mile Island related issues including: active intervener before the Nuclear Regulatory Commission (NRC) in hearings involving safety, technical and managerial issues; monitoring and tracking chronic safety, technical and managerial problems at Unit-1 and Unit-2; tracking adverse health effects as a result of the TMI-2 accident and the normal operation of Unit-1 (since 1974); participating in two radiation monitoring networks; evaluating security problems at the Island; and, providing information, research and educational materials to the general public, media and elected officials.

TMIA also serves as regional clearinghouse on a broad spectrum of issues relating to nuclear power production including problems at Peach Bottom-2 and -3, Susquehanna-1 and -2 and the proposed siting, licensing and construction of a low-level radioactive waste dump in Pennsylvania.

TMIA's policy is generated by a seven member planning council which meets quarterly. TMIA meets regularly with the NRC and Pennsylvania Department of Environmental Resources to discuss issues and problems relating to TMI-1 and -2. The organization has two part-time volunteers who staff the office. In addition, several individuals write, edit and mail TMIA's newsletter which is issued five to six times a year. All of TMIA's funding comes from membership dues, private contributions and fund raising events.

TMIA's office is open Monday through Friday from 10:00 am to 6:00 pm. Weekend visits are available by appointment. The public and all interested parties are encouraged to stop by or contact the group by phone or mail.