

Chiles



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 2, 1999

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers *William Travers*
Executive Director for Operations

SUBJECT: CLARIFICATION OF COMMENTS MADE AT THE NOVEMBER 8, 1999,
COMMISSION MEETING REGARDING REACTOR DECOMMISSIONING
RULEMAKING

This memorandum provides additional information regarding Commissioner McGaffigan's question on backfit implications of new decommissioning regulations. In response to his question, the staff speculated that a possible outcome of the new integrated decommissioning rulemaking effort may afford a licensee a choice to implement revised regulations with some additional regulatory requirements not currently imposed by 10 CFR Part 50 or to follow the existing rules and seek plant-specific relief through license amendments or exemptions. We wish to clarify that the staff's position on backfit for new decommissioning regulations has not yet been determined. As the staff proceeds with the decommissioning regulatory improvement effort, we believe it would be premature to state that any additional requirements will be imposed on licensees during the decommissioning process. After the technical basis for regulatory decisionmaking for decommissioning is completed, the staff will develop proposed rules and will endeavor to reduce unnecessary regulatory burden as long as adequate protection to the public is maintained. When the entire scope of risks associated with decommissioning spent fuel pool accidents is well understood, we will be in a better position to evaluate what regulatory relief may be appropriate.

Thus, at this time our regulatory options remain open. We will continue to engage stakeholders in our deliberations and keep them informed of any regulatory implications resulting from our technical studies. We will make our recommendations to you on the regulatory options in our integrated decommissioning rulemaking plan to be submitted in May 2000.

cc: SECY
OGC
OCA
OPA
CFO
CIO

94, 209

CONTACT: Bill Huffman, NRR/DLPM/PDIV-D
301-415-1141

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backfit consideration and decommissioning regulations. The staff speculated that a possible outcome of the new integrated decommissioning rulemaking effort may afford a licensee a choice to implement revised regulations with some additional regulatory requirements not currently imposed by 10 CFR Part 50 or follow existing rules and seek plant specific relief via license amendments or exemptions. We went on to say that the additional requirements may not meet a backfit analysis on their own merit but that the regulatory choice should be acceptable to a licensee due to the overall reduction in regulatory burden that the new regulations would afford. Unfortunately, one may interpret this statement to imply that the staff would utilize this rulemaking as a means to add unnecessary regulations as some kind of trade-off for reducing other more burdensome regulations. As the staff proceeds with the decommissioning regulatory improvement effort, we believe it would be premature to state that any additional requirements will be imposed on licensees during the decommissioning process. As the technical basis for regulatory decision making for decommissioning is completed and proposed rules are developed, the staff will endeavor to reduce unnecessary regulations wherever possible as long as adequate protection to the public is maintained. When the entire scope of risks associated with decommissioning spent fuel pool accidents is well understood, we will be in a much better position to evaluate what regulatory approach should be taken.

Thus, at this time we are leaving our regulatory options open. We will continue to engage stakeholders in our deliberations and keep them informed of any regulatory implications resulting from our technical studies. We will make our recommendations to you on the regulatory options in our integrated decommissioning rulemaking plan to be submitted in May of 2000.

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COMMISSIONER McGAFFIGAN: I'll try to run through

7 a series of shorter questions, but I'll start off by saying
8 that my reaction to the question that you, Mr. Chairman,
9 raised for Commissioner Dicus, and that is that we probably
10 do need this study in final before we go.

11 It's been very controversial and the study that we
12 put out in January may not be the final word, depending on
13 what it says, and people, including myself, don't know what
14 it's going to say.

15 This whole area--we were on multiple tracks, each
16 of which needed this technical basis. And we didn't have
17 it, and that's why all those rulemakings came to a grinding
18 halt.

19 I think part of the answer to Commissioner
20 Diaz's--I'm sort of answering other Commissioners'
21 questions--I think part of the answer to Commissioner Diaz
22 as to why it's taking so long is that we have a lot of
23 precedents that aren't necessarily that aren't necessarily
24 the greatest precedents as we handled these things
25 one-by-one on an ad hoc basis.

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1 Mr. Zwolinski is sitting behind Mr. Greeves over
2 there, and Maine Yankee exercised its rights for a backfit
3 review on certain Staff decisions, and Mr. Zwolinski's panel
4 was quite critical of the Staff, and the Staff, in turn,
5 argued with Mr. Zwolinski. But it's clear that we had some
6 significant disagreement that needs to be worked through,
7 and in public and in an open, transparent way.

8 My questions, let me just run through them--

9 **COMMISSIONER MERRIFIELD:** Commissioner?

10 **COMMISSIONER McGAFFIGAN:** Yes?

11 **COMMISSIONER MERRIFIELD:** Just so it's a clear
12 record, if I may state that I agree with Commissioner
13 McGaffigan that this is an area which has engendered
14 significant interest and input from the Commission, and one
15 which I think we will need to continue to closely follow,
16 given the significant nature and impact on the licensees and
17 our Staff as we move forward.

18 **COMMISSIONER McGAFFIGAN:** Let me just run through
19 of series of what I think are bite-size questions:

20 Who is the independent contractor supporting your
21 group?

22 **MS. JACKSON:** The independent technical review
23 we're having done is done by many groups.

24 **COMMISSIONER McGAFFIGAN:** By many groups? It's
25 not a single contract?

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1 **MS. JACKSON:** It's not a single contract and
2 depends on their area of expertise. Then we went to
3 different groups.

4 COMMISSIONER McGAFFIGAN: The rule itself, you lay
5 out a group of areas -- I think it is on Slide 13 --that the
6 rule is going to cover, the comprehensive rule. And I will
7 tell you that I'm not sure you have them all yet.

8 I mean, these happen to be the rulemakings that
9 you had underway in one form or another, but things like
10 fitness for duty come up that isn't on the list, but I think
11 that it was promised at some point; that a technical error
12 we may or may not have made back in '96 might be corrected
13 in this rulemaking.

14 I don't know the process for tech-spec amendments.
15 Maybe that's something that you just transpose over, but one
16 of things that Oyster Creek was going to do before it
17 decided that it's going to run and be sold, but they were
18 going to come in for what they called Mode 7 tech-specs in
19 advance of shutting down.

20 It would have been the first time that had been
21 done, and it would have been an interesting experiment to
22 have done it.

23 But I don't know whether the integrated
24 decommissioning rule will deal with how one comes in and
25 gets their decommissioning tech-specs ahead of time, so that

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1 that process can be efficient.

2 Are there other things that you plan to cover in
3 this integrated decommissioning rule?

4 MR. HUFFMAN: No.

5 On page 14, the second rulemaking effort, which is
6 a longer-term effort, is where we had put in fitness for
7 duty, addressing criteria for decommissioning tech-specs and
8 other related things like quality assurance clarifications,
9 what the quality assurance should be at decommissioning
10 reactors.

11 COMMISSIONER McGAFFIGAN: That's all in the
12 longer-term?

13 MR. HUFFMAN: That's a longer-term effort.

14 COMMISSIONER McGAFFIGAN: It's not that much
15 longer-term, May 31st and July 2000.

16 MR. HUFFMAN: Longer term because it involves a
17 significantly larger cross section of rules, and we felt
18 that probably it would be more resource-intensive over the
19 long term.

20 We wanted to get something out more quickly that
21 addressed the near-term transition from operating to
22 decommissioning reactors where there seemed to be some
23 financial incentive on the part of the licensees to correct
24 these five areas.

25 COMMISSIONER McGAFFIGAN: But the Mode 7

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1 tech-specs will continue to be done just as a normal license

2 amendment under the current process? Is that how it's done?

3 MR. HUFFMAN: It is done as a license amendment.
4 It comes in and is actually done on a case-by-case basis.

5 MR. RICHARDS: Again, the reason we picked these
6 is that these are the ones that the industry typically
7 presses for, because the most resource savings occur there.
8 And then the others, we -- you know, we tried to prioritize
9 this based on, basically, I think, the industry preferences.

10 COMMISSIONER McGAFFIGAN: On the backfit piece of
11 this, that's responsive to -- again, that wasn't one you
12 were working on, but we have given you guidance that we do
13 want to apply a backfit rule in this area. We told you to
14 apply the current one, 5109, but it doesn't totally lend
15 itself at times.

16 The plain English clearly didn't have
17 decommissioning in total mind as it was drafted. So that's
18 part of this process?

19 MR. RICHARDS: Yes.

20 COMMISSIONER McGAFFIGAN: The technical analysis
21 itself is going to be required. Whatever requirements you
22 do put in in this rule, the technical analysis will have to
23 support a backfit analysis associated with this rule.

24 When does CRGR get involved in terms of -- you
25 know, whatever your technical results in, they're then going

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1 to draft a rule and you're going to have requirements, you
2 know.

3 CRGR will look at the requirements and decide
4 whether they meet, I guess, the 5109 backfit test. Will
5 they?

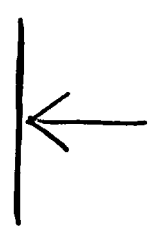
6 MR. HUFFMAN: Yes, that's true. The rulemaking
7 process is very prescriptive, and when we propose a rule,
8 we'll have regulatory analysis, backfit analysis, additional
9 packages to support the rulemaking.

10 And as the review of that proposal goes through
11 the process defined by our procedures, administrative
12 procedures, CRGR, we'll be involved, as well as the ACRS.

13 COMMISSIONER McGAFFIGAN: That's another thing.
14 The technical analysis, as I understand it, is going to make
15 judgments as to what -- how safe is safe enough, what the
16 risk is, the zirc fire.

17 In the backfit analysis, you'll do for the rule,
18 that will be another place where your analysis could be
19 challenged.

20 If individuals do not agree with the analysis -- I
21 remember that the shutdown rule was a classic case where
22 there was a wide range of views as to what the benefit of a
23 shutdown rule was, and that got adjudicated later in the
24 rulemaking. Indeed, I guess that on the second proposed
25 rule, we finally decided we wouldn't do a shutdown rule,



1 based on analysis that we had later.

2 MR. HUFFMAN: I think that when you get into the
3 --you get down the road a ways, I think you could probably
4 make the argument that changing these requirements and
5 requiring the plants to do a few things that they're not
6 doing right now, are not going to pass muster with the
7 backfit.

8 But I think our view is that we're going to
9 repackage this and offer it up to the utilities saying,
10 well, you know, here's a package deal that if you meet
11 certain requirements, you can get certain relief without
12 coming in with exemption requests, or you can do business
13 with us as a Part 50 licensee as people are doing now, which
14 is resource-intensive, and those are your two options.

15 And in that way we wouldn't backfit these new
16 requirements on licensees, though they would always have the
17 option.

18 COMMISSIONER McGAFFIGAN: This is a fairly
19 important point. This rule would probably be a voluntary
20 rule? Is it sort of like risk-informed regulation?

21 MR. HUFFMAN: Unless we can come up with a sound
22 basis to require them to do it -- and I'm having trouble
23 imagining that -- but I think there is a lot of incentive
24 for people to go to the straight-line rule, rather than
25 trying to provide a lot of correspondence back and forth

1 with us on a case-by-case basis.

2 COMMISSIONER McGAFFIGAN: On the human reliability
3 item I know that there has been some progress made. The
4 Staff today sent us this August 19th paper that had been
5 sent out for public comment, but I do want to note that I
6 think there was concern from the July discussions that we
7 were making very conservative assumptions. That one comes
8 particularly to mind and it is easier for a layman like
9 myself to try to grapple with how conservative the
10 assumptions were, but I hope that we are making some
11 progress in rationalizing because I don't think any sort of
12 risk analysis starts always with the worst or the
13 ultra-worst case and chooses all the parameters out there,
14 but I think it is clear from the August 19th paper that you
15 are soliciting views.

16 I will ask the industry later. I will warn them
17 why they have not commented on the August 19th paper, which
18 was put out for comment. I can see that lots of folks were
19 copied on it, and as I understand it you didn't receive
20 external comments from industry or other stakeholders on i
21 t.

22 MS. JACKSON: Yes, no technical comments.

23 MR. RICHARDS: One other point, Commissioner, I

24 would like to mention that the Office of Research is also an
25 organization inside the NRC that is providing us some

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1 independent review and I believe they have some comments on
2 that paper. Is that right, Diane?

3 MS. JACKSON: Yes. One of our human reliability
4 experts that I mentioned came through the Office of
5 Research. It was a consultant who said they had provided us
6 input.

7 COMMISSIONER McGAFFIGAN: There is one last
8 question and it is real short and I think the answer is
9 going to be no, but I will just ask.

10 Is there any help we can get from any other
11 foreign regulator who is going through this process or are
12 we ahead of them? You know, because people are
13 decommissioning reactors in Europe and I don't know whether
14 they are as rule-focused as the American jurisprudence,
15 thanks to all these lawyers we have got here, or they just
16 do it on a case-by-case basis and ad hoc it and get it done
17 but other -- are we aware of anybody who has gone through
18 this in France, Germany, Britain, et cetera, that could give
19 us any help?

20 MR. GREEVES: We have met with them on occasion
21 but I don't think they are as far along as we are and it is
22 really different country to country, so I don't have
23 anything I could feed back to you specifically.

24 I think lots of them are watching us.

25 COMMISSIONER McGAFFIGAN: That is the answer you

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1 gave John about four months ago when I asked about West
2 Valley and what if anything the British had to teach us at
3 Dunbury and your answer was no --

4 MR. GREEVES: -- sent you the same answer in
5 writing.

6 CHAIRMAN MESERVE: Commissioner Merrifield.

7 COMMISSIONER MERRIFIELD: First of all, I would
8 like to thank the Staff for responding relatively quickly to
9 my imploration. They addressed the cask issues.

10 I want to start off I think it is my understanding
11 that the reason we pursued limited certifications really
12 results from an immediate need on the part of the operating
13 fleet of reactors for certified casks and our inability for
14 resource and Staff purposes to resolve a lot of the
15 difficult technical matters in a timeframe that met the
16 industry's cask needs as it relates to these decommissioning
17 reactors.

18 In effect, it seems to me we were doing triage,
19 that we had a variety of reasons we had to deal with cask
20 issues and we were getting requests from industry and from
21 NEI to resolve a variety of them.