

September 28, 2000

Mr. Steven A. Toelle
Director
Nuclear Regulatory Affairs
USEC
6903 Rockledge Drive
Bethesda, MD 20817-1818

Dear Mr. Toelle:

I am responding to your letter of June 14, 1999, to Dr. Carl Paperiello, regarding the interpretation of 10 CFR 76.68(a)(3). Your query was based on USEC's current programs to comply with the aforementioned section's requirements for plant changes not approved by the Commission. In the letter, you requested that the Commission provide you with an interpretation of the section, pursuant to 10 CFR 76.6, so that USEC is assured that it is in compliance with the section's requirements.

Before addressing your request I should first note that the Commission's regulations authorize the General Counsel to issue formal, written interpretations of laws, regulations and other sources of authority or guidance which are recognized as binding on the Commission. Following issuance, these interpretations are codified in 10 CFR Part 8 of the Commission's regulations. The General Counsel, however, exercises this authority very sparingly and only in instances involving major policy or legal questions. Accordingly, the views in this letter do not constitute a formal interpretation.

In your letter, you expressed USEC's view that performance of an unreviewed safety question ("USQ") determination, was sufficient to satisfy section 76.68(a)(3)'s requirement that the change not "decrease effectiveness of the plant's safety, safeguards, and security programs." Particularly, you stated "USEC believes performance of the USQ determination for changes to the SAR satisfies the requirements of 10 CFR 76.68(a)(3) by determining whether a proposed change to the safety programs described in the SAR involves unreviewed safety questions." It is our view, however, that the USQ determination and the "decreased effectiveness" review address different aspects of plant operation and are not coextensive.

When a USQ determination is performed, the Corporation engages in an analysis based on the effect of the change on Section 4 of the Safety Analysis Report ("SAR"). USQ determinations under Section 4, titled "Accident Analysis," focus on the effect of the change on previous accident considerations. Section 76.68(a)(3), however, calls for a decreased effectiveness review. In these reviews the Corporation should be referring to other sections of the SAR, including Section 3 of the SAR, entitled "Facility and Process Description," Section 5, "Nuclear Safety Programs," and Section 6, "Facility and Process Description." In a review based on Section 5, the Corporation would determine whether the change would make the safety program less effective as a whole. Therefore, there are some areas involved in the decreased effectiveness review that may fall beyond the scope of a USQ determination (e.g., changes to the radiation safety program or the nuclear criticality safety program).

Furthermore, section 76.68 criteria are purposefully detailed because, as the Commission stated in the Statement of Considerations for Part 76, “these plants will not have technical specifications as referenced in 10 CFR 50.59.” See 59 FR 48944, 48952 (1994). In fact, USEC, in a comment to the Proposed Rule, asked the Commission to revise section 76.68 because it was “overly restrictive” and recommended that the Commission closely model it after 10 CFR 50.59. See id. (summarizing the Corporation’s comments to the proposed rule). Nevertheless, the Commission found that the requirements were not overly burdensome and the rule was necessarily more detailed than 10 CFR 50.59.

You also relied on an attachment to SECY-96-079, “Alternatives for Regulating Fuel Cycle Facilities,” to support your position. That reliance was misplaced. First, SECY-96-079 related to a proposed revision to Part 70, a revision containing language different from that contained in 10 CFR 76.68. Furthermore, SECY-96-079 was superseded by SECY-97-097, “Additional Alternative for Regulating the Safety of Fuel Cycle Facilities: Nuclear Energy Institute Petition for Rulemaking.”

In sum, your interpretation of 10 CFR 76.68 is not correct. Compliance with section 76.68 requires that each of the six paragraphs in section 76.68(a) be met. We understand that the staff is willing to meet with you to address this issue.

If you have any questions regarding this response, please contact Antonio Fernández at (301) 415-8339 or Melanie Galloway at (301) 415-7266.

Sincerely,

/s/

Stuart A. Treby
Assistant General Counsel for
Rulemaking and Fuel Cycle

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Stuart A. Treby
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