

May 18, 1999

SECY-99-135

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: INTERIM ENFORCEMENT POLICY REGARDING ENFORCEMENT
DISCRETION FOR NUCLEAR POWER PLANTS DURING THE YEAR
2000 TRANSITION

Purpose:

To obtain the Commission's approval to revise the NRC Enforcement Policy for nuclear power plants to include an interim policy to exercise enforcement discretion for noncompliance with license conditions, including technical specifications (TSs), during year 2000 (Y2K) transition or rollover periods. In addition, Commission approval is requested for the staff to obtain public comments on the proposed interim policy. This interim policy is submitted in response to the attached staff requirements memorandum (SRM) dated February 19, 1999, and would remain in effect through three Y2K transition or rollover periods (December 31, 1999, through January 3, 2000; February 28, 2000, through March 1, 2000; and December 30, 2000, through January 1, 2001).¹

CONTACT:
Richard Wessman, NRR
415-3298
Herbert Berkow, NRR
415-1485

¹ The extension of the Y2K transition period through Monday, January 3, 2000, is necessary to account for the expected increase in the electrical load at the beginning of the work week; the period of February 28 through March 1, 2000, has been chosen to bracket February 29, an uncommon leap day; and the period of December 30, 2000, through January 1, 2001, has been chosen to bracket December 31, the 366th day of an uncommon leap year.

Background:

The staff has been developing a contingency plan for regulatory response to the Y2K issue in the nuclear industry. As part of this plan, the staff has been considering the approach toward dealing with situations in which a Y2K issue may result in noncompliance with license conditions, including TS requirements. In the SRM dated February 19, 1999, related to COMSECY-98-036 on the draft NRC contingency plan for the Y2K issue in the nuclear industry, the Commission acknowledged that the use of enforcement discretion may be preferable to the use of 10 CFR 50.54(x) when licensees intend to deviate from license conditions, including TSs, in situations arising from Y2K complications that would otherwise require a plant shutdown. The Commission requested the staff obtain stakeholder input on this issue and forward a recommendation to the Commission for review and approval as part of the package accompanying the final contingency plan. The final Y2K contingency plan is being submitted to the Commission separately.

The staff obtained initial stakeholder input (public comments on the draft NRC "Contingency Plan for the Year 2000 Issue in the Nuclear Industry") and considered this input in the preparation of this interim policy. In addition, the staff reviewed proposed Senate Bill S.723, "Y2K Regulatory Amnesty Act of 1999," provided by the Office of Management and Budget to NRC on March 30, 1999, and determined that this interim policy does not conflict with S.723 as currently proposed.

The NRC recently modified its enforcement policy to further address the exercise of enforcement discretion in certain situations to allow continued plant operation when it does not present an undue risk to public health and safety and is in the public interest. Pursuant to the SRM on COMEXM-98-004 issued on July 28, 1998, the NRC's Enforcement Policy (NUREG-1600, Rev. 1) has been revised to allow the staff to exercise enforcement discretion (without consulting the Commission) in cases involving severe weather or other natural phenomena. The staff's determination would be based on balancing the broader impacts on public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with continued operation, and a determination that safety will be maintained while exercising this discretion. A similar recognition of the broader public interest in a reliable and stable electrical grid during times when there is potential for Y2K-related challenges to the grid provides the basis for this proposed enforcement discretion policy specifically developed for application in Y2K transition or rollover periods. Where an appropriate safety determination can be made, continued plant operation could make a significant contribution to grid stability and reliability, providing necessary reserve power if there are major losses at other generating facilities. Also, requiring an unnecessary plant shutdown could result in an undesirable transient during the licensee's response to a Y2K-related challenge.

Discussion:

The staff proposes to amend the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, Rev. 1, by adding Appendix E to the policy (see attachment). Appendix E describes the interim enforcement policy for exercising enforcement discretion for noncompliance related to Y2K transition or rollover problems. It would be published in the Federal Register and become effective 30 days after publication. Comments received within 30 days will be accepted and will be considered prior to the next revision of the

Enforcement Policy. Similar to cases involving severe weather, the staff proposes to exercise enforcement discretion without consulting the Commission, but would subsequently inform the Commission of its action.

After becoming effective, Appendix E will remain in effect through January 1, 2001. The policy would apply only during Y2K transition or rollover periods as previously described. During these periods, a licensee may contact the NRC Headquarters Operations Center and seek NRC enforcement discretion with regard to the potential noncompliance with license conditions, including TSs, if a licensee has determined that:

- a. Complying with license conditions, including TSs, in a Y2K-related situation would require a plant shutdown; and
- b. Continued plant operation is needed to help maintain a reliable and stable grid; and
- c. Any decrease in safety as a result of continued plant operation is small (considering both risk and deterministic aspects).

A licensee would be expected to follow the existing guidance as stated in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. A licensee seeking NRC enforcement discretion must provide a written justification, or in circumstances in which good cause is shown, oral justification followed as soon as possible by written justification, which documents the need and safety basis for the request and provides whatever other information the NRC staff deems necessary for making a decision regarding whether the exercise of enforcement discretion is appropriate. The staff may grant enforcement discretion on the basis of balancing the public health and safety or the common defense and security of not operating against potential radiological or other hazards associated with continued operation, and a determination that safety will not be unacceptably affected by exercising the discretion. The Director of the Office of Nuclear Reactor Regulation, or his designee, will advise the licensee that the NRC has approved the licensee's request and will subsequently confirm the exercise of discretion in writing. Enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting public health and safety and is warranted in the circumstances presented by the licensee.

Consistent with the Agency's "Contingency Plan for the Year 2000 Issue in the Nuclear Industry," the NRC Headquarters Operations Center and the Region IV Incident Response Center will have augmented staff during the Y2K transition. If the volume of requests to the NRC Headquarters Operations Center is such that the NRC staff cannot review and approve all licensee requests in a timely fashion, the NRC staff will obtain the safety-significant information from the licensee to enable the NRC staff to make a prompt initial assessment. Unless the assessment is unfavorable, the licensee would be permitted to proceed with its planned course of action. The NRC staff will complete these assessments as time permits, and the licensee will be advised of the results orally, if possible, and then in writing. If the staff's prompt initial assessment or subsequent assessment determines that a licensee's actions raise safety concerns, the licensee would be so informed. The licensee would then be required to follow its license conditions, including TSs.

Although it is considered highly unlikely, if, upon making reasonable efforts, communication with

the NRC staff is not possible, the licensee may make the decision to continue plant operation. If a licensee has opted to continue operations, it must have shown that complying with license conditions, including TSs, in a Y2K-related situation would require plant shutdown, continued plant operation is needed to help maintain a reliable and stable grid, and any decrease in safety would be small. The licensee would be expected to continue in its efforts to contact the NRC as soon as possible to permit the NRC staff to conduct an assessment of the licensee's actions to determine if the exercise of enforcement discretion is warranted.

To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was granted. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification and in those cases in which determinations made by the licensee, and not initially approved by the NRC, were clearly unreasonable considering all the relevant circumstances. The latter provision is consistent with the Commission's view expressed in the final rulemaking for 10 CFR 50.54(x). The NRC does not desire for licensees to hesitate to continue operations, when it is appropriate, out of concern for overly critical after-the-fact NRC reviews. Therefore, the policy statement is clear that it will consider enforcement action only when the NRC concludes that a licensee's actions were clearly unreasonable considering all the relevant circumstances. Enforcement action could include assessment of civil penalties and the issuance of orders.

Resources:

The resources required to implement this interim enforcement policy are included in the resource estimate for the NRC "Contingency Plan for the Year 2000 Issue in the Nuclear Industry," and are included within the offices' approved budgets.

Coordination:

The Office of the General Counsel has no legal objection to this paper. The Office of Enforcement has reviewed this paper and concurs. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed this paper and has no information technology or information management concerns.

Recommendation:

The staff recommends that the Commission approve publication of Appendix E to the Enforcement Policy as attached.

Notes:

1. Appendix E to the Enforcement Policy will be published in the *Federal Register* and will become effective 30 days after publication. Comments on this revision will be accepted for 30 days after publication, and will be considered prior to the next revision of the Enforcement Policy.
2. This change does not contain information collection requirements that are subject to the Paperwork Reduction Act.
3. The staff has determined that this is not a "major" rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

William D. Travers
Executive Director
for Operations

Attachments:

1. SRM dated February 19, 1999
2. *Federal Register* notice with draft Appendix E to the Enforcement Policy

NUCLEAR REGULATORY COMMISSION

[NUREG-1600, Revision 1]

Policy and Procedure for NRC Enforcement Actions; Draft Interim Enforcement Policy

Regarding Enforcement Discretion for Nuclear Power Plants

During the Year 2000 Transition

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, Revision 1 (Enforcement Policy), by adding Appendix E. This amendment adds an interim enforcement policy that the NRC will follow to exercise enforcement discretion for noncompliance with license conditions, including technical specifications (TSs), because of year 2000 (Y2K) related situations.

DATES: This action is effective [30 days after publication in the Federal Register]. Comments on this revision should be submitted within 30 days of publication in the Federal Register and will be considered by the NRC prior to the next Enforcement Policy revision.

ADDRESSES: Submit written comments to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6 D59, U. S.

The Commissioners

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Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Wessman, Deputy Director, Division of Engineering, 301-415-3298 or Herbert Berkow, Director, Project Directorate II, 301-415-1485, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

SUPPLEMENTARY INFORMATION:

Background

Y2K-related events arise from a date-related problem that is experienced by a software system, a software application, or a digital device at a key rollover date when the system, application, or device does not perform its intended function. The key rollover dates are January 1, 2000; February 29, 2000 (an uncommon leap day); and December 31, 2000 (the 366th day of an uncommon leap year). The nuclear utility industry is engaged in Y2K readiness programs at all nuclear power plant facilities to seek out and correct Y2K-related problems that have any potential to adversely affect facility operations.

Y2K concerns result from licensees' reliance upon

- (1) Software to schedule maintenance and technical specification surveillances;
- (2) Programmable logic controllers and other commercial off-the-shelf software and hardware;
- (3) Digital process control systems;
- (4) Software to support facility operation;
- (5) Digital systems for collection of operating data; and
- (6) Digital systems to monitor post-accident plant conditions.

It is recognized that in spite of every reasonable effort by licensees to identify and correct Y2K computer system problems at their facilities, some software, applications, equipment, and systems may remain susceptible to the problem. Additionally, software, data, and systems external to the facility could adversely affect the facility (for example, interruption of communications or partial loss of offsite power).

The electricity production and delivery systems, as two of the more important elements of the North American economic and social infrastructure, must remain dependable during Y2K transition or rollover periods. Most other critical elements of the infrastructure depend on the availability of an interconnected, stable, and reliable supply of electrical power. There is no doubt that cascading or even localized outages of generators and transmission facilities could have serious short-term and long-term consequences.

Continued safe operation of nuclear power plants during Y2K transition or rollover periods will play a major role in maintaining stable and reliable electrical power supply systems, providing necessary reserve power if there are major losses at other generating facilities. The NRC staff is proposing interim staff guidance on the process for the NRC to exercise enforcement discretion in certain situations where power reactor licensees encounter Y2K-associated compliance problems in the Y2K transition period (December 31, 1999, through the first few days of 2000) or in other key rollover periods. The exercise of enforcement discretion may support a licensee decision to keep the plant in operation, if the licensee has determined that safety will not be unacceptably affected, in order to help maintain electrical grid stability and reliability. The NRC Headquarters Operations Center and the NRC Region IV Incident Response Center will be staffed during the key transition from December 31, 1999, to January 1, 2000, to ensure that appropriate actions can be taken for any regulatory issues that arise.

Scope

This proposed interim enforcement policy would provide for the exercise of enforcement discretion to address noncompliance with license conditions, including TSs, because of Y2K transition or rollover issues. The interim enforcement policy would apply to situations in which plant operation is needed to help maintain the stability and reliability of the electrical power supply system, even when license conditions, including TSs, would require a plant shutdown. If such situations occur, licensees would be expected to follow the existing guidance in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion <<http://www.nrc.gov/NRC/IM/noed.html>> to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. Licensees may make the decision to continue operations upon making a determination that it is safe and prudent to do so to help

maintain electrical grid stability and reliability, and when certain criteria are met. This enforcement discretion extends to situations in which the licensee may be unable to communicate with the NRC. (The staff assessment of telecommunications capability indicates that a loss of all telecommunications between NRC and licensees is highly unlikely.)

To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was used. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification. The NRC recognizes that a licensee will need to exercise judgement in making a determination under this discretion provision when it is not initially approved by the NRC and in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, consistent with the NRC's position involving 10 CFR 50.54(x), enforcement action for a violation of a license condition, including a TS, will not be taken unless a licensee's action was clearly unreasonable considering all the relevant circumstances. Enforcement action could include the assessment of civil penalties and the issuance of orders.

Paperwork Reduction Act Statement

This interim policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

The NRC is proposing to revise the NRC Enforcement Policy by adding Appendix E to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT
ACTIONS

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Appendix E: Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition

This appendix sets forth the interim enforcement policy that will govern the exercise of enforcement discretion by the NRC staff when licensees of operating nuclear power plants find it necessary to deviate from license conditions, including technical specifications (TSs), in those cases in which year 2000 (Y2K) related complications would otherwise require a plant shutdown that could adversely affect the stability and reliability of the electrical power grid. This policy extends to situations in which a licensee may be unable to communicate with the NRC, though the staff deems a loss of all communications to be highly unlikely.

The policy is effective [30 days after publication in the Federal Register] and will remain

in effect through January 1, 2001. This policy only applies during Y2K transition or rollover periods (December 31, 1999, through January 3, 2000; February 28, 2000, through March 1, 2000; and December 30, 2000, through January 1, 2001). During these periods, a licensee may contact the NRC Headquarters Operations Center and seek NRC enforcement discretion with regard to the potential noncompliance with license conditions, including TSs, if the licensee has determined that:

- (a) Complying with license conditions, including TSs, in a Y2K-related situation would require a plant shutdown; and
- (b) Continued plant operation is needed to help maintain a reliable and stable grid; and
- (c) Any decrease in safety as a result of continued plant operation is small (considering both risk and deterministic aspects).

Licensees would be expected to follow the existing guidance as stated in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. A licensee seeking NRC enforcement discretion must provide a written justification, or in circumstances in which good cause is shown, an oral justification followed as soon as possible by written justification. The justification must document the need and safety basis for the request and provide whatever other information the NRC staff needs to make a decision regarding whether the exercise of discretion is appropriate. The NRC staff may grant enforcement discretion on

the basis of balancing the public health and safety or common defense and security of not operating against potential radiological or other hazards associated with continued operation, and a determination that safety will not be unacceptably affected by exercising the discretion.

The Director of the Office of Nuclear Reactor Regulation, or his designee, will advise the licensee whether the NRC has approved the licensee's request and, if so, will subsequently confirm the exercise of discretion in writing. Enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting public health and safety and is warranted in the circumstances presented by the licensee.

If the volume of requests to the NRC Headquarters Operations Center is such that the NRC staff cannot review and approve all licensee requests in a timely fashion, the NRC staff will obtain the safety-significant information from the licensee to enable the NRC staff to make a prompt initial assessment. Unless the assessment is unfavorable, the licensee would be permitted to proceed with its planned course of action. The NRC staff will complete these assessments as time permits and the licensee will be advised of the results orally, if possible, and then in writing. If the NRC staff's prompt initial assessment or subsequent assessment determines that a licensee's actions raise safety concerns, the licensee would be so informed. The licensee would then be required to follow its license conditions, including TSs.

If there are communications difficulties between the licensee and the NRC, the licensee is encouraged to interact with the NRC inspector onsite who will have a dedicated satellite telephone. The inspector should be able to facilitate communication with the NRC Headquarters Operations Center and/or the NRC Regional Incident Response Centers (IRCs). If communication with the NRC Headquarters Operations Center is not possible, then the licensee should contact the IRC in NRC Region IV to discuss enforcement discretion. Similarly,

if the Region IV IRC cannot be reached, then the licensee should attempt to contact the Region I, II and III IRCs. Although it is considered highly unlikely, if, upon making reasonable efforts by utilizing all these options and communication is still not possible, the licensee may make the decision to continue plant operation. If a licensee opts to continue operation, it must have shown that complying with license conditions, including TSs, in a Y2K-related situation would require plant shutdown, continued plant operation is needed to help maintain a reliable and stable grid, and any decrease in safety would be small. The licensee would be expected to continue in its efforts to contact the NRC as soon as possible to permit the NRC staff to conduct an assessment of the licensee's actions to determine if the exercise of enforcement discretion is warranted as described above.

In conducting its assessments, the licensee should follow, to the extent practicable, the guidance in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion. Contrary to Part 9900 Section B.3 guidance, it is not necessary for an emergency to be declared by a government entity. Licensees are encouraged to contact NRC early in their evaluation process, particularly if time is of the essence, even though complete information as specified in Part 9900 may not be available.

The decision to exercise enforcement discretion does not change the fact that the licensee will be in noncompliance nor does it imply that enforcement discretion is being exercised for any noncompliance that may have led to the noncompliance at issue. To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was granted. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification. The NRC recognizes

that a licensee will need to exercise judgement in making a determination under this discretion provision when it is not initially approved by the NRC and in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, consistent with the NRC's position involving 10 CFR 50.54(x), enforcement action for a violation of a license condition, including a TS, will not be taken unless a licensee's action was clearly unreasonable considering all the relevant circumstances. Enforcement action could include assessment of civil penalties and the issuance of orders.

Dated at Rockville, Maryland, this day of May, 1999.

FOR THE NUCLEAR REGULATORY COMMISSION.

Annette Vietti-Cook,
Secretary of the Commission.