

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: FEBRUARY 9, 1989

Pages: 4

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION/DISCUSSION AND VOTE

- - -

PUBLIC MEETING

- - -

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, February 9, 1988

The Commission met in open session, pursuant to
notice, at ^{11:30}~~10:00~~ a.m., Thomas M. Roberts, Acting Chairman,
presiding.

COMMISSIONERS PRESENT:

THOMAS M. ROBERTS, Acting Chairman
KENNETH M. CARR, Member of the Commission
KENNETH C. ROGERS, Member of the Commission
JAMES R. CURTISS, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

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P-R-O-C-E-E-D-I-N-G-S

11:30 a.m.

CHAIRMAN ROBERTS: Chairman Zech is indisposed and asked me to preside over this meeting.

Does anyone have any introductory comment?

Affirmation session. Would you lead us through, Mr. Secretary?

SECRETARY CHILK: Mr. Chairman, the subject is SECY-88-334. It's a policy statement on cooperation with states at commercial nuclear power plants and other nuclear production and utilization facilities.

In this paper, the Commission is being asked to approve a final policy statement which provides a uniform basis for NRC state cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production and utilization facilities.

All Commissioners have voted to approve the policy that was attached to our February 8th memorandum.

Would you please affirm your votes?

(Ayes.)

CHAIRMAN ROBERTS: Anyone have any further business to come before us?

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WASHINGTON, D.C. 20005

1 MR. PARLER: No, sir.

2 CHAIRMAN ROBERTS: Adjourned.

3 (Whereupon, at 11:32 a.m., the public
4 hearing was adjourned.)

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: FEBRUARY 9, 1989

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.

Judy Hadley

Reporter's name: _____
(if other than transcriber)

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December 7, 1988

POLICY ISSUE

SECY-88-334

(Affirmation)

For:

The Commissioners

From:

William C. Parler, General Counsel

Subject:

POLICY STATEMENT ON COOPERATION WITH
STATES AT COMMERCIAL NUCLEAR POWER PLANTS AND OTHER
NUCLEAR PRODUCTION AND UTILIZATION FACILITIES
(COMLZ-9/9A/9B)

Purpose:

To provide the Commission with a summary of and NRC response to public comments and to recommend that the Commission publish the policy statement as a final policy statement without further change.

Background:

On May 24, 1988, the Secretary of the Commission advised the staff by memorandum (COMLZ-9/9A/9B) that the Commission had approved the issuance of the subject policy statement by publication in the Federal Register with a request for public comment. The Commission also directed the Office of the General Counsel to "... analyze the public comments and provide the Commission with recommendations on the need for any changes following the public comment period." This paper responds to that instruction.

The policy statement was published in the Federal Register on June 13, 1988 for public comment (53 FR 21981-21983). Twenty-eight comments were received. A list of the commenters and copies of the comment letters are provided in Appendix A. Fourteen comments were submitted by members and representatives of the nuclear power industry, including electric utilities and their counsel, thirteen by various state offices and one from a public interest group. Two states, Ohio and Minnesota, expressed an active interest in entering a joint inspection program with NRC. Although some of the comments were submitted after July 13, 1988, the expiration date of the comment period, all comments have been considered.

Contact:

J. R. Mapes, OGC
492-1642

Discussion:

Based on the number and content of the comments, the policy statement has not generated unusual interest. State commenters were generally supportive of the concept of participating in NRC inspections but tended to be critical of various aspects of the policy as too restrictive regarding the role of the states. Although industry commenters were uniformly opposed to independent state inspections of commercial nuclear power plants and were generally opposed to any state role in NRC inspections, there appears to be a consensus among all commenters that states do have legitimate concerns in being kept well-informed of NRC's regulatory activities with respect to commercial nuclear power plants.

Appendix B contains a summary of the public comments and the NRC response. The comments received from state offices are grouped together and summarized separately from the comments received from industry. Specific recommendations for revising the policy statement made by state commenters are set out on pp. 7 - 8 of Appendix B; specific recommendations made by industry commenters can be found on pp. 18 - 20 of Appendix B. These recommendations are addressed in the NRC response which begins on p. 20 of Appendix B and is organized under the following general topics: legal issues; implementation of the policy statement - effect on NRC licensees; communication through state liaison officers; state participation in NRC inspections; opportunity for public comment on NRC-State instruments of cooperation relating to inspections at commercial nuclear power plants. For the reasons given in the NRC response, OGC has concluded that no change need be made in the text of the policy statement.

Coordination:

The Offices of Governmental and Public Affairs, Nuclear Reactor Regulation and Nuclear Material Safety and Safeguards concur.

Recommendation:

That the Commission:

(1) adopt the policy statement noticed for comment as a final statement of policy to be effective in its entirety on the date of republication in the Federal Register.

(2) approve the draft Federal Register notice set out in Appendix C for publication in the Federal Register. (Note: The draft Federal Register notice includes the summary of comments and NRC response as set out in Appendix B.)

A handwritten signature in dark ink, appearing to read "William C. Parler", followed by the date "12/16". The signature is fluid and cursive.

William C. Parler
General Counsel

Enclosures:

- Appendix A - List of commenters and comment letters.
- Appendix B - Summary of comments and NRC response.
- Appendix C - Draft Federal Register Notice.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, December 23, 1988.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, December 16, 1988, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of January 2, 1989. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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APPENDIX A

APPENDIX A

LIST OF COMMENTERS

1. Iowa Department of Public Health, Iowa State Liaison Officer
2. Ohio Citizens for Responsible Energy, Inc. (OCRE)
3. Iowa Department of Public Health, Chief, Bureau of Radiological Health
4. Nuclear Management and Resources Council, Inc. (NUMARC)
5. New York Public Service Commission
6. Yankee Atomic Electric Company
7. Energy Facility Site Evaluation Council, State of Washington
8. Wisconsin Electric Power Company
9. Bishop, Cook, Purcell & Reynolds
10. Illinois Department of Nuclear Safety
11. Long Island Lighting Company
12. Consumers Power Company
13. Ohio Public Utilities Commission and Ohio Emergency Management Agency
14. Washington Public Power Supply System
15. Louisiana Power & Light
16. Tennessee Valley Authority
17. Minnesota Department of Health
18. Pennsylvania Power & Light Company
19. Maryland Department of Natural Resources, Energy Administration - Power Plant Research Program
20. State of California, Department of Health Services
21. Shaw, Pittman, Potts & Trowbridge
22. Indiana State Board of Health, Indiana State Liaison Officer
23. Commonwealth of Puerto Rico, Environmental Quality Board
24. GPU Nuclear Corporation
25. New York State Energy Office
26. Illinois Power Company
27. Oregon Department of Energy
28. Commonwealth Edison



PROPOSED RULE PR 50
(53 FR 21981)
DOCKETED
JUN 27 1988

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF PUBLIC HEALTH
MARY L. ELLIS, DIRECTOR

88 JUN 27 P3:30

OFFICE
DOCK

OFFICE
VICE

June 22, 1988

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Ladies and Gentlemen:

Reference is made to your policy statement on cooperation with states at commercial nuclear plants and other nuclear production or utilization facilities. I have reviewed this document in conjunction with radiation control program staff of this department. We concur in the need for such a policy statement by NRC in order to maintain a uniform posture in its relationship with all states, and more significantly, to avoid any perception of dual regulation.

Independent state inspections of federally regulated facilities would tend to confuse the regulated sector as well as expend sorely needed state resources in areas where adequate federal enforcement is already being directed. We are not prepared at this time to enter into a joint inspection program, as described in this policy statement. However, I fully agree with the six conditional elements you have listed and would strongly support the inclusion of these elements in any future such program in which we might participate.

Sincerely,

John A. Eure, State Liaison Officer, State of Iowa
Assistant to the Division Director
for Environmental Health
Division of Disease Prevention
Iowa Department of Public Health

JAE/bf

cc: Mary L. Ellis
Director of Public Health

Roland Lickus
NRC Region III

June 30, 1988

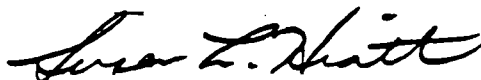
COMMENTS OF OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. (88 CR 5 P2:35)
ON POLICY STATEMENT, COOPERATION WITH STATES AT COMMERCIAL
NUCLEAR POWER PLANTS, 53 FED. REG. 21981 (June 13, 1988)

OFFICE OF THE SECRETARY
DOCKETING & SERVICE
BRANCH

The Commission has proposed a policy statement outlining NRC cooperation with State governments. Included in this policy statement is the opportunity for representatives of State governments to participate in inspections under NRC oversight. Other activities in which States can participate include observation of NRC inspections and meetings between the NRC and licensees.

OCRE supports this policy statement. This policy statement offers some important opportunities for State involvement in the protection of the health and safety of citizens. The NRC is to be commended for taking this initiative in pursuing cooperation with State governments.

Respectfully submitted,



Susan L. Hiatt
OCRE Representative
8275 Munson Road
Mentor, OH 44060
(216) 255-3158

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF PUBLIC HEALTH

88 JUL -1 P2:38 ELLIS, DIRECTOR

OFFICE OF THE
DOCKETING & SERVICE
BRANCH

June 29, 1988

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Ladies and Gentlemen:

Reference is made to your policy statement which appeared in the Federal Register (page 21981) on June 13, 1988, regarding cooperation with states at commercial nuclear plants and other nuclear production or utilization facilities. We have reviewed the policy and concur in the need for such a policy by NRC in order to maintain a uniform posture in its relationship with all states, and more significantly, to avoid any perception of dual regulation.

Independent state inspections of federally regulated facilities would tend to confuse the regulated sector as well as expend sorely needed state resources in areas where adequate federal enforcement is already being directed. We are not prepared at this time to enter into a joint inspection program, as described in this policy statement. However, I fully agree with the six conditional elements you have listed and would strongly support the inclusion of these elements in any future such program in which we might participate.

Sincerely,



Donald A. Flater, Chief
Bureau of Radiological Health
515/281-3478

DAF/bf

cc: Carlton Kammerer, Director
State, Local and Indian Tribes Programs, NRC

William J. Adam, Ph.D., NRC Region III



DOCKET NUMBER
PROPOSED RULE

PR 50
(53FR21981)

DOCKETED
DATE

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

88 JUL 13 P6:04

Joe F. Colvin
Executive Vice President &
Chief Docketing Officer

July 13, 1988

OFFICE
DOCKET
BRANCH

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Policy Statement - Cooperation With States at
Commercial Nuclear Power Plants and Other
Nuclear Production or Utilization Facilities -
53 FR 21981 (June 13, 1988) -
Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the NRC Policy Statement - Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities - 53 FR 21981 (June 13, 1988). NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

NRC should be commended for taking the initiative to assist States to better understand the NRC's regulatory activities and the complex regulations associated with that responsibility. A Memorandum of Understanding (MOU) between the NRC and a duly authorized State representative could provide a mechanism whereby the complementary goals and policies of the NRC and State agencies could be carried out more efficiently and expeditiously without diminishing the responsibilities or authority of either party.

However, as the Policy Statement recognizes, the regulatory responsibilities assigned exclusively to the NRC by the Atomic Energy Act of 1954, as amended, i.e., the regulation of the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, cannot be delegated. Section 274 of the Atomic Energy Act recognizes the interest of States in the peaceful uses of atomic energy and the desirability of the Commission to coordinate its programs with the

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Mr. Samuel J. Chilk
July 13, 1988
Page Two

States in the regulation of byproduct, source, and special nuclear materials; it explicitly states that no agreement entered into with a State shall provide for the discontinuance of the Commission's authority and responsibility with respect to the regulation of the construction and operation of any production or utilization facility. The proposed policy statement is silent about any specific need that the policy statement fulfills or any benefit, other than in greater coordination of activities, that would result from the implementation of the proposed policy statement.

Although we understand that it may be beneficial for the NRC and the States to share information relating to their common interest to protect the public health and safety, we are concerned that situations could develop where a licensee could be subjected to dual, and perhaps conflicting, regulation. We share the NRC's concern "... that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation." Although it may be appropriate for States to participate in the regulation of byproduct, source, and special nuclear materials pursuant to Section 274b of the Atomic Energy Act, it is not appropriate for States to assert authority over the public health and safety aspects of commercial nuclear power plant regulation. The NRC must not abrogate its legal responsibilities nor allow, much less provide for, dual regulation of nuclear facilities. The need for stability of regulation and consistency of interpretation, goals that are critical to the safe and reliable operation of commercial nuclear power plants, will not be advanced by State participation in NRC inspection activities, even when in theory those programs will have provisions to "ensure close cooperation with NRC." Such close cooperation and NRC oversight will not preclude the imposition of yet additional interpretations of regulatory requirements. The interests of the NRC and States in pursuing cooperative ways in which they can better satisfy their complementary responsibilities to protect public health and safety does not provide a justifiable basis for undercutting the NRC's nondelegable authority over commercial nuclear power plant construction and operation under the Atomic Energy Act. It is not consistent with that authority for the NRC to allow State representatives to conduct specific inspection activities, even if it is presumed that such activities would be conducted in accordance with NRC standards, regulations and procedures. The provisions of Section 274i of the Atomic Energy Act authorizing agreements with respect to inspections must be interpreted in concert with Section 274b and 274c and do not establish an independent basis for agreements with States.

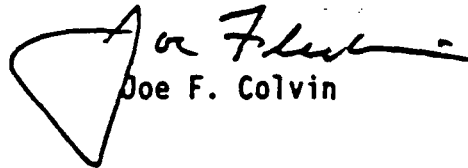
The NRC should closely monitor the implementation of whatever policy is finally adopted, and any MOUs executed thereunder, to ensure that any misapplication of authority does not occur. The litigation concerning emergency planning responsibilities now being considered in the First Circuit Court of Appeals is a vivid example of the potential that exists for States to misinterpret NRC regulations and assert authority over nuclear power plant operations. The NRC should also periodically evaluate the merits and

Mr. Samuel J. Chilk
July 13, 1988
Page Three

effectiveness of the policy it adopts to ensure whether the nation's best interests are being served.

We appreciate the opportunity to comment on the NRC's Policy Statement and would be pleased to discuss our comments further with appropriate NRC staff personnel.

Sincerely,



Joe F. Colvin

RWB/bb

DOCKET NUMBER PR 50
PROPOSED RULE
STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223
(53 FR 21981)

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88 JUL 13 AM 10:35

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8-ND

ROBERT A. SIMPSON
Acting Counsel

JOHN J. KELLER
Secretary

July 8, 1988

Secretary

United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Sir:

This letter responds to the notice that was published in the June 13, 1988, Federal Register, on page 21981. The notice invited comments on a proposed policy statement for cooperative efforts between the Nuclear Regulatory Commission (NRC) and the states with respect to commercial nuclear power plants and other nuclear production or utilization facilities.

We agree with the proposed statement that the protection of public health and safety and the environment can best be served by a policy of cooperation that unites the common goals of the NRC and the states. In addition, however, we would urge the NRC to recognize in its policy statement, the value of cooperation between the NRC and the states where there is mutual interest but differing goals and responsibilities. The following suggestions are intended to promote improved communication and cooperation.

1. Channelling state/NRC interaction through a single state liaison is too restrictive. The proposed policy statement should recognize the unique and diverse communication needs of various state agencies and allow for more than one state contact.

It is to a large degree the NRC's practice, and perhaps intent, to channel contact with states through the State Liaison Officer.

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It is our experience that this is not an efficient or effective process. While it may be suitable for routine contacts and distribution, it is not suitable for contacts involving intensive interaction where continued communication with various branches in Washington or with regional personnel is necessary. State radiological emergency preparedness personnel, for example have unique and intensive communication needs that may exist for extended periods. Similarly, state ratemaking bodies that periodically conduct intensive reviews of operations or construction have information and communication needs that go beyond the level normally available through a liaison. More efficiency interaction will be possible if the NRC will recognize continuing relationships with more than one permanent contact.

2. The policy statement should be broadened to recognize the state's needs for interaction with the NRC in areas central to state responsibilities, but substantially affected by NRC actions.

The proposed policy statement seems to focus primarily on state participation in health and safety, environmental, and other nuclear safety-related activities falling under NRC jurisdiction. It does not appear to address unique jurisdictional responsibilities of other state agencies. For example, state agencies are responsible for the evaluation of the reasonableness of construction costs that directly affect base rates as well as operation and maintenance expenses. These evaluations frequently result in state agency/NRC communication as the state agency seeks to evaluate the reasonableness of a particular company's efforts including compliance with NRC rules and regulations.

For nine years the New York Public Service Commission has had staff located at the Nine Mile Point site and until recently at Shoreham for the purpose of construction monitoring. That staff has worked closely with the NRC's staff to the benefit of both agencies and such cooperation should be encouraged as states seek to evaluate construction costs. At other times the Public Service Commission has conducted comprehensive reviews of construction and operational activities which prompted close and extensive communication with the NRC staff in Washington and at the regional level.

The NRC policy statement should recognize the needs of state agencies to be familiar with NRC regulations, policies, and actions as they seek to evaluate and promote efficiency during construction, operation, and decommissioning phases.

When such reviews become necessary effective communication should include attendance by state representatives for the purpose of observation at all enforcement, policy, exit, and other meetings affecting the issue at hand. For example, the Nine Mile Point One unit is currently out-of-service for an extended period. The outage extension may be due, in part, to Niagara Mohawk Power Corporation's failure to adequately complete its first ten-year in-service inspection program. In this instance it is important for the State of New York be given access to meetings between the company and the NRC and be able to establish open communication with NRC resident, regional, and branch personnel as it seeks to understand the extent to which the company fulfilled its license obligations.

3. The qualifications necessary for observers at NRC inspections and meetings need not be as stringent as those for participation in those activities.

The policy statement says that State representatives will be able to observe inspections, and entrance and exit meetings where the representative is knowledgeable in radiological health and safety matters. We are concerned that the NRC may impose a standard of knowledge and training that is inappropriate to the act of observing (as distinct from participating) in an inspection or meeting. We recommend that such a distinction be made in the policy statement.

Thank you for the opportunity to comment on your proposed statement of policy. We share your objective of enhancing the present degree of cooperation between the states and the NRC.

Sincerely,



G.F. WALSH
Director, Power Division

GFW/JGR/pbf

YANKEE ATOMIC ELECTRIC COMPANY

1671 Worcester Road, Framingham, Massachusetts 01701

OFFICE OF THE
DOCKETING
BRANCH

July 12, 1988

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Comments on Policy Statement, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," (53FR21981).

Dear Sir:

Yankee Atomic Electric Company (YAEC) appreciates the opportunity to comment on the subject policy statement. Yankee Atomic Electric Company owns and operates a nuclear power plant in Rowe, Massachusetts. Our Nuclear Service Division also provides engineering and licensing services for other nuclear power plants in the Northeast, including Vermont Yankee, Maine Yankee and Seabrook.

Yankee Atomic Electric Company endorses the goal of improving NRC communication and cooperation with State governments on issues relating to the regulation of commercial nuclear power plants. We believe that policies which aid qualified State representatives in improving their understanding of the design and operation of such facilities are beneficial to all parties and should be encouraged.

We specifically endorse the second paragraph of the policy statement as providing an appropriate and adequate basis for achieving the desired communication and cooperation. It is our belief that if representatives of the State are kept well-informed of the NRC's activities, provided with opportunities to closely observe the NRC inspection activities, and afforded appropriate channels to raise questions and offer recommendations as proposed in this paragraph, all of the legitimate concerns of a State can be adequately addressed. With this in mind, we are very concerned about those portions of the policy statement which indicate that the NRC will proceed beyond this point and delegate some of its authority to conduct safety inspections to State personnel.

The policy statement specifically mentions the NRC's concern that "independent" State inspection programs could misdirect a licensee's attention in a manner inconsistent with NRC safety requirements, result in the misinterpretation of NRC safety requirements, or give the perception of dual regulation. We believe that delegation of any of the NRC's responsibilities to State personnel would be subject to these same concerns regardless of how the NRC attempted to structure and implement its oversight role.

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Page Two
FYC 88-009
GLA 88-089
July 12, 1988


Furthermore, to require the NRC Staff to qualify State inspectors and then assume full responsibility for the inspectors' subsequent activities at a facility seems to us to seriously complicate the regulatory process without providing commensurate benefits.

In the introductory remarks to the policy statement, an allusion is made to States monitoring facilities adjacent to their boundaries. We see no objection to keeping appropriate representatives of "neighboring" States apprised of the regulatory activities at a specific facility. However, we believe that the policy statement should explicitly limit any "on-site" presence of State personnel to representatives of the State in which the facility is located.

Finally, we encourage the authors of the policy statement and subsequent NRC/State implementing agreements to be sensitive to the fact that these NRC/State programs can be a significant expense for the licensee. Examples of anticipated costs include: i) the likely requirement to provide on-site facilities and services for State personnel comparable to those provided to the resident NRC inspectors, ii) the time spent by NRC personnel (and subsequently billed to the licensee) in training, qualifying, managing, and/or communicating with State personnel, and iii) the direct cost of participating State personnel.

In conclusion, we urge the Commission to adopt a final policy statement that precludes delegation and/or duplication of Federal radiological health and safety activities at commercial nuclear power plants. We encourage the Commission to adopt a policy statement that will promote a cost effective contribution to the common goal of protecting the public health and safety.

Very truly yours,


John DeVincents
Vice President

JDS/amd



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

88 JUL 13 P6:03

Mail Stop PY-11 • Olympia, Washington 98504 • (206) 459-6490 • (SCAN) 585-6490

OFFICE OF THE
DOCKETING AND SERVICE
BRANCH

July 12, 1988

Secretary
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

Attention: Docketing and Service Branch

Gentlemen:

Thank you for the opportunity to comment on the Commission's proposed Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities as published in the Federal Register on June 13, 1988.

The state of Washington, as an Agreement State since December 1966, supports the Commission's objective of adopting a clear policy regarding cooperation with the states that could be implemented uniformly across all five Nuclear Regulatory Commission (NRC) Regions. Early in 1985 the state of Washington and Region V, NRC, entered into an agreement establishing a mutually acceptable procedure for the exchange of information concerning maintenance, engineering, quality assurance, security, emergency planning and operation of nuclear power plants located in the state of Washington. It was the intent of this agreement that cooperative efforts should enhance understanding, reduce duplication of effort and provide, wherever possible, a unified position on matters of joint concern.

Since the signing of this current agreement, state personnel have attended NRC inspectors exit meetings, have shared information on environmental monitoring, have participated in significant meetings between plant management personnel and senior representatives of NRC, and have worked jointly with NRC on emergency response drills and exercises. The agreement has proven beneficial to state relations with the NRC and has served as a guide for other cooperative efforts. A satisfactory method to continue this spirit of cooperation is through a well defined and agreed upon liaison program. The state will review the final policy statement adopted by the Commission to propose changes in the existing agreement which may be mutually productive.

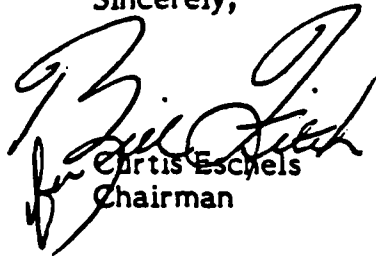
The state of Washington raises a general concern with the policy where it requires the states to recognize federal supremacy over the regulation of radiological and national security aspects of the construction and operation of nuclear production or utilization facilities. The state of Washington will not concede that the federal government has

Secretary
July 12, 1988
Page 2

unqualified and unspecified authority over these matters where public health, safety and environmental concerns are at risk. The state also is concerned about the requirement that the state specify the minimum education, experience, training and qualification of its inspectors which are to be patterned after those of NRC inspectors. Because the jurisdictions of the state and federal government are different it is reasonable to expect the level of education and training to be different.

It is with positive support that we endorse the Commission's efforts to adopt a national policy for cooperation with the states and look forward to its adoption as a standard.

Sincerely,



Curtis Eschels
Chairman

CE:WLF:ab



Wisconsin Electric POWER COMPANY
231 W MICHIGAN, P.O. BOX 2046, MILWAUKEE, WI 53201

DOCKET NUMBER
PROPOSED RULE **PR 50**
(53 FR 21981)

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NRC-88-064

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July 11, 1988

Mr. Samuel J. Chilk, Secretary
U.S. NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

Attention: Docketing and Service Branch

Gentlemen:

POLICY STATEMENT ON NRC COOPERATION
WITH STATES AT COMMERCIAL NUCLEAR POWER PLANTS

On June 13, 1988, the U.S. Nuclear Regulatory Commission announced a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." The statement was published in the Federal Register, Volume 53, No. 113, at page 21981. The Commission invited interested parties to comment on the policy before it becomes a final agency policy.

This policy statement reflects the intention of the NRC to cooperate fully with State governments and acknowledges their complementary responsibilities in protecting public health and safety and the environment with regard to operation of nuclear power plants and other utilization facilities. As the licensee of a commercial nuclear power plant, we believe that the policy statement will provide a uniform basis for NRC and State cooperation in the regulatory oversight of these facilities. This interim policy both recognizes the increased interest by States to become more actively involved in the monitoring of activities at commercial nuclear power plant and recognizes the regulatory responsibilities assigned exclusively to the NRC by the Atomic Energy Act of 1954 as amended.

We would encourage the NRC to adopt the provisions of this policy statement as an interim measure and to publish this statement as a final policy as soon as practical.

Very truly yours,

C. W. Fay
C. W. Fay
Vice President
Nuclear Power

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LAW OFFICES

BISHOP, COOK, PURCELL & REYNOLDS

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WASHINGTON, D.C. 20005-3502
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USNRC

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TELEX 440574 INTLAW UI
TELECOM: (202) 371-5950

July 13, 1988

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Subject: NRC Policy Statement Regarding Cooperation
With State Governments At Nuclear Power
Plants (53 Fed. Reg. 21981)

Dear Mr. Chilk:

On June 13, 1988, the Nuclear Regulatory Commission (NRC) published a Policy Statement dealing with cooperation between NRC and State governments on the regulatory oversight of commercial nuclear power plants and other nuclear production and utilization facilities. 53 Fed. Reg. 21981. The Commission has solicited public comments on the Policy Statement. We offer the following comments on behalf of Arkansas Power and Light Co., Consolidated Edison Company of New York, Public Service Co. of Colorado, Rochester Gas & Electric Corporation, System Energy Resources, Inc., TU Electric, and Washington Public Power Supply System.

1. Background

The Policy Statement indicates that, in order to further the Commission's stated goal of cooperation between the NRC and the States in the protection of public health and safety and the environment, the NRC will do the following:

- The NRC will continue to apprise governor-appointed State Liaison Officers routinely of matters of interest to the States.
- The NRC will respond fully and in a timely manner (where possible, within thirty days) to State requests for information;

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and will endeavor to provide a timely response to State recommendations concerning matters within NRC's regulatory jurisdiction.

-- If asked, the NRC will inform State Liaison Officers through the appropriate NRC Regional Office of the scheduling of public meetings between the NRC and its licensees and applicants, so that State representatives may attend as observers.

More importantly, the Policy Statement provides that:

-- If asked, the NRC will allow State observation of NRC inspections and/or inspection entrance and exit meetings, provided that the State representatives¹ are knowledgeable in radiological health and safety matters.

-- The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities. Such proposals must specifically identify those activities in which the State wishes to participate. In addition, the State's proposed program must contain a number of provisions designed to "ensure close cooperation and consistency" with the NRC inspection program.² The Commission states that it will not consider such proposals where the State program does not include these elements.

2. Discussion and Comments

At the outset, we recognize the importance to the NRC of the goals the Commission sets for itself in the Policy Statement. Specifically, the Commission is well-justified in its attempt to promote and enhance cooperation and to clarify the relationship between the Commission and the State governments. As Commission licensees, we are all too cognizant of the political atmosphere that surrounds the issue of nuclear power, and are keenly interested in maintaining amicable and workable relationships with the States. Reasonable efforts by the NRC to facilitate cooperation with the States are to be applauded.

However, while we support the overall goal of NRC/State cooperation, we find extremely disturbing any Commission proposal to achieve this goal by delegating to the States any part of the Commission's authority to conduct inspections at

1/ Such requests by a State must be approved by the appropriate NRC Regional Administrator.

2/ The elements that the Commission requires be included in the State's program are set forth in the Policy Statement. 53 Fed. Reg. 21982.

nuclear generating facilities. In particular, the Policy Statement provides that:

Qualified State representatives may be permitted to perform inspections in cooperation with, and on behalf of, the NRC under the oversight of an authorized NRC representative. The degree of oversight provided would depend on the activity. For instance, State representatives may be accompanied by an NRC representative initially, in order to assess the State inspectors' preparedness to conduct the inspection individually.

53 Fed. Reg. 21983 (emphasis added).

Similarly, the Policy Statement provides that:

State participation in NRC programs would allow qualified State representatives, either individually or as a member of a team, to conduct specified inspection activities in accordance with NRC standards, regulations and procedures in close cooperation with the NRC. State activities will normally be conducted under the oversight of an authorized NRC representative with the degree of oversight dependent upon the activity involved.

Id. at 21982 (emphasis added).

In sum, this language suggests that the NRC will "normally" oversee the States as they participate in and actually conduct inspections and other inspection-related activities. However, the clear implication is also that there will be occasions on which State representatives will be allowed to conduct their own inspections at nuclear generating plants "on behalf of" the NRC, unaccompanied by NRC representatives. At the most fundamental level, we conclude, as a matter of law, that allowing the States to conduct safety inspections would constitute an inappropriate delegation of the Commission's exclusive authority to regulate the operation of nuclear power plants. Moreover, we are concerned that any State involvement in inspections could lead to substantial friction between the States and the nuclear licensees involved. This would ultimately defeat the Commission's avowed goal of an enhanced relationship between the NRC and State governments.

a. Legal Problems

Section 274.i of the Atomic Energy Act empowers the Commission, in carrying out its licensing and regulatory responsibilities, to "enter into agreements with any State, or group of States, to perform inspection or other functions on a cooperative basis as the Commission deems appropriate." However, to interpret this general grant of authority as allowing State representatives to conduct radiological health and safety inspections at nuclear power plants would, we believe, go beyond the intended scope of this provision.

Congress added Section 274 to the 1954 Atomic Energy Act in 1959. The 1959 Amendments were intended to clarify the federal-state relationship regarding the regulation of "byproduct, source and special nuclear materials," and to "increase programs of assistance and cooperation between the Commission and the States so as to make it possible for the States to participate in regulating the hazards associated with such materials." S. Rep. No. 870, 86th Cong., 1st Sess. (1959), 1959 U.S.C.C.A.N. 2878; H.R. Rep. No. 1125, 86th Cong., 1st Sess. 8 (1959). Thus, the 1959 bill was directed toward state regulation of nuclear materials.³ In light of the fact that the 1959 bill adding Section 274 was intended to permit State regulation of nuclear materials only, subsection i should properly be read to permit only inspections related to such materials.

This reading is confirmed by Section 274.c(1), which provides that:

No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of--

(1) the construction and operation of any production or utilization facility.

Section 274.b authorizes the Commission to enter into agreements with the States to provide for the discontinuance of certain regulatory authority. Only byproduct material, source material, and certain quantities of special nuclear material are proper subjects for such state agreements. Regulation of production and utilization facilities is not included, suggesting that Commission authority with respect to such facilities may not be discontinued or delegated. Clearly, the conduct of a safety inspection at a nuclear generating facility constitutes an

^{3/} See also Section 274.a, which indicates that the purpose of Section 274 is generally to allow State regulation of materials, rather than power plants.

aspect of the regulation of that facility. An abdication of NRC inspection authority to the extent contemplated by the present Policy Statement is thus inconsistent with the intent of the Atomic Energy Act.

The Policy Statement acknowledges (53 Fed. Reg. 21981, 21982) that the federal government, as represented by the NRC, has exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of commercial nuclear generating plants, except for certain authority over air emissions granted to States by the Clean Air Act. See 42 U.S.C. § 2021.c(1).⁴ At the same time, however, the Commission announces in the Policy Statement its intention to allow the States to participate in the regulation of radiological matters by permitting State representatives to conduct inspections. We submit that it is exactly this type of State involvement that is preempted at commercial nuclear power plants.

The legislative history of Section 274 states that "the principal provisions of the bill authorize the Commission to withdraw its responsibility for regulation of certain materials -- principally radioisotopes -- but not over more hazardous activities such as the . . . regulation of reactors," and that "[l]icensing and regulation of more dangerous activities -- such as nuclear reactors -- will remain the exclusive responsibility of the Commission." S. Rep. No. 280, 1959 U.S.C.C.A.N. at 2874, 2879 (emphasis added); H.R. Rep. No. 1125.

4/ This conclusion is premised on the doctrine of federal preemption. Preemption is based upon the Supremacy Clause (Article VI, Clause 2) of the U.S. Constitution, which invalidates State regulation in areas that Congress has already occupied or which conflict with a federal statutory or regulatory scheme. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947); Florida Lime & Avacado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963).

Under the dual regulatory scheme that Congress has established for nuclear-powered electricity generation, it is well-established that the federal government -- specifically, the NRC -- "maintains complete control of the safety and 'nuclear' aspects of energy generation" and "has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm., 461 U.S. 190, 212 (1983); Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 249 (1984). These limited State powers do not include the authority to conduct State inspections of nuclear plants.

In conclusion, Section 274 must be read as a whole. The principal grant of authority to delegate certain functions to States, Section 274.b, is qualified by Section 274.c. Section 274.i must be read as subject to Section 274.c as well. Therefore, we read the grant of authority in Section 274.i as allowing the NRC to enter "instruments of cooperation" only with respect to licensed activities other than commercial nuclear power reactors (e.g., materials licensees) or with respect to matters other than radiological health and safety (e.g., certain environmental matters).

b. Practical Problems

The Commission tacitly attempts to justify its proposed policy by asserting that it will not permit "independent" inspections by the States. For purposes of the Policy Statement, an "independent" State inspection program "is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative." 53 Fed. Reg. 21982, col. 3.

Thus, in the Commission's view, the distinction between a permissible and an impermissible State role in the inspection process is whether there is an appropriate degree of "cooperation" with, and "oversight" by, the NRC. As discussed above, this distinction does not comport with Section 274 or its legislative history. Furthermore, we are not particularly comforted by the distinction, since certain portions of the Policy Statement (cited above) suggest that there need not always be Commission oversight of State inspections. Finally, this aspect of the Policy Statement raises myriad practical problems.

The Commission's announced intent to delegate inspection authority to the States would open a Pandora's box of regulatory problems for the NRC. As the Policy Statement itself recognizes, the existence of independent State inspection programs "could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual

5/ In light of these legal deficiencies, it is also troublesome that the Policy Statement does not address any need for the proposed instruments of cooperation. Presumably when Congress enacted Section 274 to provide for State participation in regulation of nuclear materials, it premised its action on some identified need. The NRC provides no similar basis for now deciding (without any Congressional sanction) to extend its delegation of responsibility to commercial nuclear power plants.

regulation." 53 Fed. Reg. 21982, col. 3. Such problems could of course result in unnecessary expenditures of time and money on the part of the licensee and the agency, and could even degrade safe reactor operation.

For example, and perhaps most troublesome, the Policy Statement provides a window for State inspectors to pursue personal agendas, motives, regulatory standards, and regulatory interpretations that differ from those of the Commission and/or the licensees. If this occurs, it will almost certainly lead to friction between the States and the licensees, adverse publicity for the NRC, a call to the NRC to take sides, and a shattering of the illusion of "cooperation" between the NRC and the States. As an example of this, the Commission need only look as far as its own recent experience with the emergency planning regulations. In the early 1980's the Commission promulgated those regulations calling for a substantial State and local role. At the time, the Commission apparently viewed cooperation as a given and the regulations as fairly benign, as perhaps it now views the present Policy Statement. However, history has shown that those regulations have resulted in State-imposed delays on reactor operations, and in one case, a finished power plant apparently will be torn down before it ever operates. We hope the Commission will not again be so sanguine regarding "cooperation" with State governments.

In addition, the possibility of having State inspectors also raises the question of ensuring the competence of such inspectors. For example, who will these inspectors be? Who will assure their competence? Does the Commission have the time and the resources to train these individuals? Inspectors that are not properly trained will exacerbate the problems noted above. The Commission seems to presume without foundation that State inspectors will be qualified. Moreover, the NRC should recognize that there is a limited pool of talent from which States could draw qualified inspectors. That pool generally consists of the NRC and its licensees. These organizations could thus lose important resources as a result of this proposal. As a final example, this proposal raises questions regarding whether State inspectors would be treated the same as NRC inspectors in regard to training, security, and fitness for duty requirements. In sum, the Commission's Policy Statement has not even begun to address these important practical problems.

3. Conclusions

In view of the legal and practical concerns discussed above, we most strongly urge the Commission to modify the Policy Statement to provide specifically that no State radiological health and safety inspections of NRC-licensed commercial nuclear

Mr. Samuel J. Chilk
July 13, 1988
Page 8

power reactors will be permitted, independent or otherwise. We believe that the concept of federal preemption of all regulatory activities in this area dictates the exclusive authority of NRC representatives with respect to all such inspections and other inspection-related activities.

In this regard, the proposed delegation of inspection authority to State representatives also exceeds the scope and intent of Section 274 of the Atomic Energy Act, as confirmed by the legislative history. To address this legal deficiency and the practical problems cited above, we believe that the role of State representatives should be strictly limited to observation of, or participation in, entrance and exit meetings. The additional qualifications in this latter regard currently incorporated into the Policy Statement (e.g., that State representatives at these meetings be "knowledgeable") should be retained.

We appreciate this opportunity to provide our comments on the Commission's proposed Policy Statement on cooperation with the States.

Respectfully submitted,



Nicholas S. Reynolds
David A. Repka

BISHOP, COOK, PURCELL
& REYNOLDS



DOCKET NUMBER
PROPOSED RULE

PR 50
(53FR21981)

10

'88 JUL 15 P5

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE
SPRINGFIELD 62704
(217) 785-9900

OFFICE
DOCKET
BRANCH

TERRY R. LASH
DIRECTOR

July 11, 1988

The Secretary of the Commission
Attn: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Proposed Policy - Cooperation With States At Commercial Nuclear Power
Plants And Other Nuclear Production Or Utilization
Facilities, May 24, 1988.

The Illinois Department of Nuclear Safety (IDNS) hereby submits its comments on the above-mentioned proposed policy concerning cooperation with states at commercial nuclear power plants and other nuclear production or utilization facilities. There are thirteen operational reactors at seven sites within Illinois. IDNS is the lead agency in Illinois for preparing emergency plans for and coordinating emergency responses to accidents at these nuclear power plants.

The Illinois Department of Nuclear Safety has reviewed the proposed policy on "Cooperation With States At Commercial Nuclear Power Plants And Other Nuclear Production Or Utilization Facilities." The Illinois Department of Nuclear Safety is encouraged by the following items addressed in the policy:

- Cooperation between the NRC and the states.
- How oversight by the NRC will be accomplished.
- Uniformity among all states with regard to protocol.
- Coordination of State and NRC inspection efforts.
- Inspection findings not disclosed prior to release of the NRC inspection report.

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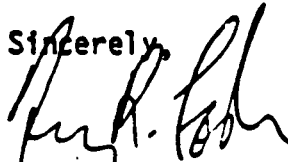
The Secretary of the Commission
July 8, 1988
Page Two

We recommend that a sentence be added to the second paragraph in the "Implementation" section on page 8, third line from the bottom to clarify what appears to be the intent.

. . . inspection individually. After a positive assessment, State inspectors' inspections may be conducted individually and would be coordinated with the NRC resident inspector. Other activities. . .

We are looking forward to cooperative ventures with the NRC in accordance with the proposed policy. We plan to provide additional resources to maintain public health and safety and to assure that there is minimal impact on the environment as a result of activities licensed and regulated by the NRC.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry R. Lash", written over the typed name.

Terry R. Lash
Director

TRL:1k



LONG ISLAND LIGHTING COMPANY

SHOREHAM NUCLEAR POWER STATION
P.O. BOX 618, NORTH COUNTRY ROAD • WADING RIVER, N.Y. 11792

JOHN D. LEONARD, JR.
VICE PRESIDENT - NUCLEAR OPERATIONS

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PROPOSED RULE
PR 50
(53FR21981)

July 14, 1988

VPNO88-102

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

Policy Statement on Cooperation
With States and Commercial Nuclear Power Plants

Gentlemen:

We have carefully reviewed the proposed policy which was published in the Federal Register (53FR21981) on June 13, 1988, and wish to submit comments thereon.

We recognize that the states can have legitimate concerns regarding the safety and operation of nuclear power plants. We believe that these concerns can be addressed in the currently prescribed licensing process through the offices of the NRC. Our major concern with this revised policy is understanding the role of qualified state inspectors. Since the Atomic Energy Act has delegated to the NRC sole authority to regulate nuclear power plants, any policy which could possibly weaken this authority must be avoided.

The proposed policy on NRC/State Cooperation is not entirely clear. We believe that if the NRC feels State input is essential, it should on a case-by-case basis:

- (1) consider a State's concerns regarding safety of a nuclear power plant responding, when necessary, with an inspection which could include State observers;
- (2) provide a State with timely information regarding its concerns, providing the information is not proprietary or does not pertain to security matters;

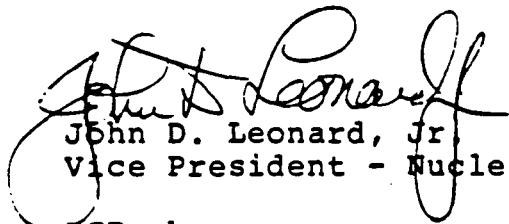
- (3) include State representation in public meetings with the licensees;
- (4) obtain State assistance when such assistance would be a benefit to the NRC in its regulatory duties; and
- (5) have complete oversight of State activities regarding nuclear safety.

The NRC should not:

- (1) permit independent State inspection programs or reviews; and
- (2) delegate responsibility for performing NRC inspections to State representatives.

The proposed policy statement is ambiguous with regard to the above requirements. This ambiguity can lead to a situation where a State, for whatever reason, could hinder the NRC in its regulation of nuclear power.

Very truly yours,



John D. Leonard, Jr.
Vice President - Nuclear Operations

PGP:ck



Consumers
Power

**POWERING
MICHIGAN'S PROGRESS**

General Offices: 1945 West Parnall Road, Jackson, MI 49201 • (517) 788-1636

PROPOSED RULE FR 50
(53 FR 21981)

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Kenneth W Berry
Director
Nuclear Licensing

OFFICE OF THE SECRETARY
DOCKETING AND SERVICE
BRANCH

July 11, 1988

Secretary of the Commission
U S Nuclear Regulatory Commission
Washington, D C 20555

Attention: Docketing and Service Branch

**CONSUMERS POWER COMPANY COMMENTS ON THE POLICY STATEMENT -
COOPERATION WITH STATES AT COMMERCIAL NUCLEAR POWER PLANTS &
OTHER NUCLEAR PRODUCTION OR UTILIZATION FACILITIES**

Consumers power Company is pleased to offer the following comments on the proposed changes to 10CFR, Part 50 titled, "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities; Policy Statement" as published in the Federal Register on June 13, 1988 (53 FR 21981).

Consumers Power Company agrees that the States have a legitimate concern with the operation of nuclear power plants within their jurisdiction; however, we are concerned with some aspects of the Policy Statement as it relates to State participation in NRC inspection activities. Our concerns are discussed in detail below.

First, although the Policy Statement requires the State program to recognize the primacy of the NRC for the regulation of its licensees, we believe that this policy may result in a situation similar to that which has arisen regarding State cooperation in Emergency Preparedness planning. Specifically, regardless of the policy statement, we believe that it is likely that the political climate within a particular State may result in a State inspector declaring a plant unsafe based on his interpretation of the inspection results, or releasing information relating to the NRC inspection prior to public disclosure by the NRC. Also, since the Policy Statement appears to deal primarily with radiological health and safety, we believe that there will be calls from State officials whose States are within the 50-mile ingestion pathway of a particular plant to participate in the inspection program for that plant. Thus, the licensee and the NRC may be required to deal with and resolve the concerns of several States rather than one. Again, given the differences in State policies towards nuclear power, this could lead to significant problems for both the licensee and the NRC.

Second, although the Policy Statement requires that the State program must specify the minimum education, experience, training, and qualification requirements for the State representatives, it does not declare how the NRC will judge the adequacy of the State program, particularly as the program relates to the qualifications of the State representatives. Will the determination of the adequacy of the State program be made by the Region or by Headquarters? We believe that a detailed description of what constitutes an adequate State program, including the minimum qualifications of the State inspectors, is necessary to ensure uniform interpretation of this Policy.

Third, considering past disagreements within the NRC itself, regarding the meaning and interpretation of the NRC's own regulations, we believe it very likely that the addition of a third party, especially a party who is likely to be inexperienced to the inspection process, will result in significant delays in the process of resolving inspection items.

In conclusion, while Consumers Power Company agrees that the NRC should ensure that the various States are routinely informed on matters of legitimate concern, we do not believe that a policy of allowing State participation in routine inspection activities is necessary or in the best interest of the NRC or the licensees.


Kenneth W Berry,

STATE OF OHIO
PUBLIC UTILITIES COMMISSION
180 EAST BROAD STREET
COLUMBUS, OHIO 43266-0573

DOCKET NUMBER
PROPOSED RULE

PR 50
(53 FR 21981)

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RICHARD F. CELESTE
GOVERNOR



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OFFICE
DOCKETING
BRANCH

July 14, 1988

Secretary of the Commission
Attn.: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Dear Sirs:

Per our telephone conversation, a copy of the Ohio Emergency Management Agency's and the Public Utilities Commission of Ohio's comments was faxed to Washington, D.C., and delivered to the Secretary of the Commission today.

Enclosed are the original and copies of the OEMA-PUCO comments to the NRC policy statement found in 53 F.R. 21981.

Please date stamp and mail any extra copies to the PUCO in the self-addressed envelope which is also enclosed.

Very truly yours,

Mark A. Selker
Attorney
Consumer Services Department

MAS:aac

Enclosures

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UNITED STATES OF AMERICA

BEFORE

THE NUCLEAR REGULATORY COMMISSION

Cooperation With States at	
Commercial Nuclear Power Plants and) 53 FR 21981
Other Nuclear Production or Utilization) 10 CFR Part 50
Facilities; Policy Statement) 42 U.S.C.A. SEC. 2021

COMMENTS FILED

FOR THE STATE OF OHIO

BY

THE OHIO EMERGENCY MANAGEMENT AGENCY

AND

THE PUBLIC UTILITIES COMMISSION OF OHIO

The Ohio Emergency Management Agency (OEMA) and the Public Utilities Commission of Ohio herewith offer comments on the policy statement on "Cooperation with States at Commercial Nuclear Power Plants and other Nuclear Production or Utilization Facilities."

The Nuclear Regulatory Commission (NRC) has invited comment to consider its policy statement on future State proposals to monitor and participate in activities related to the operation of nuclear power plants. The NRC issued the policy statement in response to increasing State initiatives to safeguard the environment and the health and safety of its citizens, especially residents in close proximity to nuclear facilities in or near the State. The States have become more critical of (1) NRC problems relating to establishing adequate safety enforcement procedures and (2) NRC neglect of the management aspects of nuclear power plants.

The policy statement, if adopted, would provide for "instruments of cooperation" for State participation in inspections and inspection entrance and exit meetings consistent with NRC regulations and standards. The States would be required to identify the specific inspections they desire to participate in with the NRC.

OEMA and PUCO support the NRC policy to join with the States in Memorandum of Understanding instruments of cooperation and subletter agreements. The NRC policy will strengthen federal-state cooperation and improve nuclear safety. The State of Ohio will enter into an instrument of cooperation and subletter agreements to permit joint inspection activities, information sharing with the NRC and additional agreements on low level waste matters.

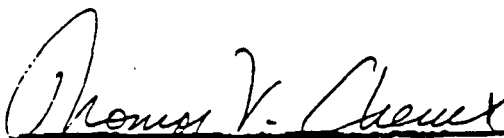
The policy statement makes it difficult however for States to qualify for an instrument of cooperation or subletter agreement while pursuing their responsibilities to protect health and safety. Ohio for example has authority over the operator's finances through the rate-setting mechanism set forth in Chapter 4909 of the Ohio Revised Code. In any rate-making proceeding, the Public Utilities Commission has the duty to "consider the management policies, practices, and organization of the public utility" and the authority to recommend "management policies, management practices, or an organizational structure to the public utility" to remedy "inadequate, inefficient, or improper" policies or practices. Moreover, the PUCO must deny "operating and maintenance expenses... incurred by the utility through management policies or administrative practices that the commission considers imprudent" (Section 4909.154 of the Ohio Revised Code).

Ohio's management jurisdiction in conjunction with OEMA, the Ohio Department of Health and the Ohio Environmental Protection Agency would assist NRC and complement the NRC program contained in the policy statement. Accordingly, the NRC and the State of Ohio should review proposals to utilize the State's management and rate-making authority in concert with its emergency preparedness responsibilities and authority as part of or parallel to an instrument of cooperation and subletter agreements. Multilevel cooperation and assistance will promote safe operation of nuclear power plants and insure to the benefit of the operators and the public.

Respectfully submitted,



RICHARD C. ALEXANDER
The Adjutant General and Director
Ohio Emergency Management Agency



THOMAS V. CHERNA
Chairman
Public Utilities Commission of Ohio



SECRET
PROPOSED RULE
PR 50
(33FR 21981)

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

LOCALITY
U. S. NRC

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352

88 JUL 18 P3:15

July 11, 1988

OFFICE OF THE
DOCKETING
BRANCH

Secretary
U. S. Nuclear Regulatory Commission
P1-137
Washington, D. C. 20555

Attention: Docketing & Service Branch

Subject: SUPPLY SYSTEM COMMENTS ON PROPOSED
POLICY STATEMENT REGARDING COOPERATION
WITH STATES

The Supply System appreciates the opportunity to comment on the proposed Policy Statement regarding Cooperation with States. We agree that the NRC should "cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC." Therefore, we agree that it is entirely appropriate for:

- 1) The NRC to keep Governor appointed State Liaison Officers routinely informed on matters of interest to the states.
- 2) The NRC to respond in a timely manner to state requests for information and state recommendations concerning matters within NRC's regulatory jurisdiction.
- 3) The NRC to routinely inform State Liaison Officers of public meetings between the NRC and its licensees and applicants, in order that state representatives may attend as observers.

The Supply System does believe that State inspections of facilities licensed by the NRC should not be permitted. Our position is in opposition to that in the Policy Statement which specifies that "the NRC will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings." We oppose this portion of the Policy Statement for the following reasons:

- 1) The ultimate responsibility for safety of nuclear power rests with the NRC. Delegating some of those responsibilities to many states can only lead to waste and inefficient utilization of ratepayer resources. Having a few NRC inspectors with the appropriate specialized training and expertise is much more cost effective than for many states also having to acquire those capabilities.

- 2) Having states perform inspections of nuclear facilities can only ultimately lead to confusion and conflicting interpretations of NRC requirements and guidance documents.
- 3) Utility budgets are generally fixed. This proposal will certainly lead to additional resources being required to respond to inspections by state personnel. This will probably come at the expense of other necessary programs.
- 4) The states probably do not now have the requisite levels of qualifications for their inspectors. This means that they must then obtain those qualifications and much of the training responsibility is going to fall upon the utilities.
- 5) Delegating inspection responsibilities to the states does not relieve NRC of their responsibility for safe nuclear power. What does result from this Policy Statement is the equivalent of dual regulation with two governmental entities (Federal and State) having responsibilities in these areas.

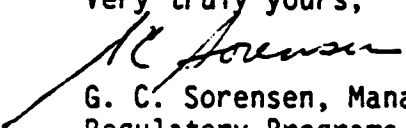
The Policy Statement allows state representatives to individually conduct inspection activities under the oversight of an authorized NRC representative. NRC's resources have been severely restricted in recent years and the Supply System believes that the NRC will have great difficulty in maintaining an appropriate level of oversight. Without a clear and concise statement of the states' ability or inability to perform inspections independently, there will always be confusion about a state inspector's authority to be conducting inspection activities.

In summary, the Supply System believes that to delegate inspection responsibility to the states results in additional levels of regulatory oversight with no additional benefit to public health and safety and the potential for negative safety implications certainly must be considered. We also see deleterious impacts to the ratepayers due to further increases in governmental activities with no added benefit.

Please note that we will be providing additional comments on this proposed policy statement through Bishop, Cook, Purcell, and Reynolds.

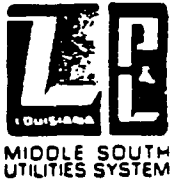
If you have any questions, please contact Mr. D. W. Coleman at (509) 372-5304.

Very truly yours,



G. C. Sorensen, Manager
Regulatory Programs

cc: C. Eschels/EFSEC
NS Reynolds/BCPR
JR Lewis/BPA



LOUISIANA
POWER & LIGHT

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NEW ORLEANS, LOUISIANA 70160 • (504) 595-3100

88 JUL 18 P2:57

July 13, 1988

OFFICE
DOCKETING
SPANLE

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NQA

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

SUBJECT: 53 Federal Register 21981 (June 13, 1988)
Comments on NRC Policy Statement
10CFR50: Cooperation With States at Commercial
Nuclear Power Plants or Utilization Facilities

Dear Sir or Madam:

Louisiana Power & Light Company (LP&L), owner and operator of Waterford Steam Electric Station - Unit Number 3, a nuclear generating station located in Taft, Louisiana, is providing comments on the subject Federal Register notice. LP&L supports the policy statement and agrees with the rationale used by the Nuclear Regulatory Commission (NRC) in developing the statement as presented in the Federal Register notice.

As the NRC indicates in the policy statement:

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment.

Inasmuch as LP&L employees are citizens of the State of Louisiana, LP&L respects, understands and supports these states' rights and desires. However, states are already burdened with many pressing fiscal responsibilities. Nuclear power technology and regulation thereof require a great deal of expertise that both the industry and the NRC have established over a long period of time. The NRC has in place the technological expertise to assess its licensees/applicants without regard to geographical location. For these reasons, states' desires for increased interaction in matters of nuclear

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Page 2
W3P88-1366
July 13, 1988

power are better served by continued, albeit increased, interaction with the NRC, rather than through direct, independent action with NRC licensees/applicants.

LP&L concurs with the NRC's stated concern that:

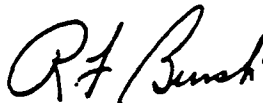
...independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation.

LP&L finds the elements required to be identified in a state's proposal for an instrument of cooperation to be reasonable and appropriate. Further, LP&L strongly concurs that all enforcement action should be undertaken by the NRC.

LP&L encourages the NRC to include one further consideration in the policy statement: that of apprising potentially affected licensees/applicants that their state is pursuing an instrument of cooperation with the NRC. This would allow licensees/applicants to be a party to the proceedings through the public participation process, in the same manner that petitions brought by licensees/applicants to the NRC are open to public participation.

LP&L appreciates this opportunity to comment on the subject policy statement.

Yours very truly,



R.F. Burski
Manager
Nuclear Safety & Regulatory Affairs

RFB/CDG/plm

cc: J.G. Dewease, R.P. Barkhurst, N.S. Carns, M.J. Meisner, J.J. Cordaro,
R.M. Redhead, G.E. Wilson, L.W. Laughlin, R.W. Prados, R.J. Murillo,
G.E. Wuller, Records Center, Administrative Support, Licensing Library

TENNESSEE VALLEY AUTHORITY

CHATTANOOGA, TENNESSEE 37401
5N 157B Lookout Place

53FR21981

COMPUTER
INDEX

JUL 15 1988

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U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

OFFICE
DOCUMENT
BRANCH

Gentlemen:

**NUCLEAR REGULATORY COMMISSION (NRC) - POLICY STATEMENT REGARDING 10 CFR 50,
"COOPERATION WITH STATES AT COMMERCIAL NUCLEAR POWER PLANTS AND OTHER NUCLEAR
PRODUCTION OR UTILIZATION FACILITIES"**

The Tennessee Valley Authority (TVA) has reviewed and is pleased to provide comments on the Policy Statement noticed in the June 13, 1988 Federal Register (53FR 21981-21983) regarding State participation in NRC inspection activities at nuclear plants.

TVA supports NRC's initiative in the development of this Policy Statement as it establishes a basis for ensuring uniformity in State proposals for inspection of licensees, and lays the ground rules for their participation within the authorities already established through federal regulations.

We also share the concerns of NRC and the Nuclear Management and Resources Council that this program must be closely monitored to ensure that misapplication of authority does not occur, and that the program should be evaluated for its merits and effectiveness periodically.

One specific comment we offer concerns the following excerpt.


For instance, State representatives may be accompanied by an NRC representative initially, in order to address the State inspector's preparedness to conduct the inspection individually.

It implies that at sometime an authorized State inspector may be allowed to conduct an unsupervised inspection. We recommend that a qualified NRC inspector always accompany a non-NRC "inspector."

We appreciate this opportunity to comment.

Very truly yours,

TENNESSEE VALLEY AUTHORITY


R. Gridley, Director
Nuclear Licensing and
Regulatory Affairs

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JUL 15 1988

cc: Mr. George Barber
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Room 12C-13
Rockville, MD 20852

Ms. S. C. Black, Assistant Director
for Projects
TVA Projects Division
U.S. Nuclear Regulatory Commission
One White Flint, North
11555 Rockville Pike
Rockville, Maryland 20852

Mr. F. R. McCoy, Assistant Director
for Inspection Programs
TVA Projects Division
U.S. Nuclear Regulatory Commission
Region II
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323



minnesota department of health

717 s.e. delaware st.

p.o. box 9441

minneapolis 55440

(612) 623-5000

PROPOSED RULE

IN 50
(53FR21981)

July 14, 1988

88 JUL 19 10:08

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Docketing & Service Branch
Washington, D. C. 20555

OFFICE
DOCKET
BRANCH

Dear Mr. Chilk:

The Minnesota Department of Health wishes to make the following comments in response to your proposed policy statement on Commission cooperation with states at commercial nuclear power plants, which appeared in the June 13, 1988 Federal Register.

The Department would welcome the opportunity to cooperate more closely with the Commission in its regulatory activities of commercial nuclear power plants. We see this as an opportunity to improve our working relationship with the Commission, educate ourselves about the day-to-day activities of your licensee and provide an avenue for making your licensee aware that the State may have concerns in related areas.


Areas of inspection in which we are particularly interested include low-level waste preparation prior to shipment, spent fuel rod storage, environmental monitoring, decontamination procedures and equipment, emission control equipment and emission inventory records, routes of discharges, employee radiation exposure control, and emergency equipment and systems.

If this policy is adopted, Minnesota intends to seek a Memorandum of Understanding with the Commission in order to participate in NRC inspections.

Thank you for the opportunity to comment on your policy statement. If you need additional information, please contact Raymond W. Thron, Ph.D., P.E., State Liaison Officer, at 612/623-5320, or Ms. Alice T. Dolezal Hennigan, Chief, Section of Radiation Control, at 612/623-5351.

Sincerely yours,

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PDR PR
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Sister Mary Madonna Ashton
Commissioner of Health

SMMA:ATDH:TDD
an equal opportunity employer

JUL 14 1988

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Harold W. Keiser
Senior Vice President-Nuclear
215-770-4194

OFFICE OF THE
DOCKETING SERVICE
BRANCH

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn.: Docketing and Service Branch

SUSQUEHANNA STEAM ELECTRIC STATION
COMMENTS ON POLICY STATEMENT
COOPERATION WITH STATES AT NUCLEAR POWER PLANTS
PLA-3057 FILES R41-2/A17-11

Docket Nos. 50-387
and 50-388

Dear Mr. Chilk:

Pennsylvania Power and Light (PP&L) is pleased to provide the following comments on the policy statement on cooperation with states at commercial nuclear power plants and other nuclear production or utilization facility (53FR21981).

Although PP&L agrees in principle with the policy statement, we do make two specific comments.

1. PP&L believes the policy statement should provide for arbitration, through the NRC, should a State representative be less than fully qualified to perform in the capacity of a nuclear plant inspector, and
2. PP&L believes that State representatives should not be permitted to operate independently, but rather be accompanied onsite by NRC representatives. This approach is consistent with that generally used by the NRC with consultants.

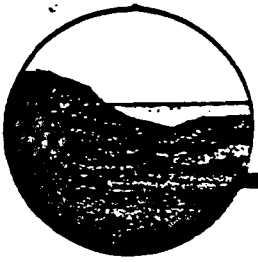
PP&L appreciates this opportunity to comment on the policy statement.

Very truly yours,



H. W. Keiser

cc: [REDACTED]
NRC Region I
Mr. F. I. Young, NRC Senior Resident Inspector
Mr. M. C. Thadani, NRC Project Manager



Maryland Department of Natural Resources
Energy Administration — Power Plant Research Program

Tawes State Office Building
Annapolis, Maryland 21401
(301) 974-2261

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William Donald Schaefer
Governor

OFFICE OF THE
DOCKET CLERK
SPAN...

Torrey C. Brown, M.D.
Secretary

July 19, 1988

Samuel J. Chilk, Secretary
Nuclear Regulatory Commission
Docketing and Service Branch
Washington, D.C. 20555

Dear Mr. Chilk:

Representatives of the Maryland Department of Natural Resources and Department of the Environment have reviewed the Nuclear Regulatory Commission's Policy Statement, "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities." The following comments are offered for your consideration.

The Policy Statement makes several references to notification which can or will be made to the State Liaison Officer. The State of Maryland has no problem with the existing State Liaison Officer program, and no objection to most routine notifications being made to the State Liaison Officer. However, there may be cases, the ongoing review of the shutdown of the Peach Bottom Atomic Power Station being one notable example, where the principal contact within the State of Maryland is not the State Liaison Officer. Our only concern is to ensure that the Policy Statement is not intended to preclude future instances where the Governor may desire to select a principal contact other than the State Liaison Officer for interaction with the Commission.

It is our understanding that the Commission has directed its staff that the rights and responsibilities granted to the states under the Policy Statement are extended only to host states. The State of Maryland strenuously objects to this policy. The scope of our review and activities (e.g., radiological monitoring and emergency planning) for the Calvert Cliffs Nuclear Power Plant, located in state, and the Peach Bottom Atomic Power Station, located out of state, are virtually identical. The location of Peach Bottom only 3 miles north of the Maryland Pennsylvania border necessitates that this be the case. Any impact from the operation of this plant, whether environmental, public health and safety, social or political would be no different if the plant were located a few miles south within the state's borders.

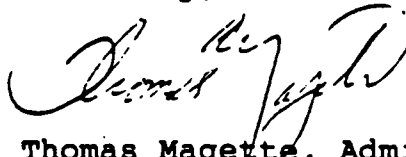
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At least one of the reasons for our level of activity at Peach Bottom is the NRC's own requirement concerning radiological emergency planning for states within 10 miles of operating reactors. This requirement does not distinguish between a host state and one three miles downstream. We therefore do not believe that the NRC's Policy Statement should make such a distinction. We suggest that the NRC's implementation of this policy be revised to grant the same rights and responsibilities to all states within 10 miles of a nuclear power plant. We do not believe this places an unreasonable burden on either the NRC or the licensee. This aspect of the policy should also be clearly stated in the Policy Statement.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Magette", written over a horizontal line.

Thomas Magette, Administrator
Nuclear Evaluations

TM/rva

cc: Paul Perzynski, MDE

DEPARTMENT OF HEALTH SERVICES

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JUL 19 1988
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BRANCH

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Services Branch

FEDERAL REGISTER Notice: 53113, PAGE 21981, DATED JUNE 13, 1988

The State of California is supportive of changes which would allow greater opportunity to participate with the Nuclear Regulatory Commission in matters involving the use of radioactive materials in California. California has been an agreement state since 1962. The State has spent many hours on licensing and inspection to provide for the health and safety of the public excluding those licensees of the Nuclear Regulatory Commission.

There are three utilities and several nuclear production facilities licensed within California. The proposed change would allow the State to accompany Nuclear Regulatory Commission personnel on regular inspections of these facilities. The proposed policy change does not identify a source of funding for the inspections. If the State could not fund the inspection program totally, the State may be seen by the general public as not providing adequate review of nuclear facility operators to protect the public health. We believe that the proposed policy should include suggested means by which the State could obtain funding for the program.

If you have any questions, please feel free to contact Gary W. Butner at (916) 323-5027.

Sincerely,

for *B. Kozusko*

Don J. Womeldorf, Program Manager
Low-Level Radioactive Waste

cc: Harvey F. Collins, Chief
Environmental Health Division
714 P Street, Room 616
Sacramento, CA 95814

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Docketing and Service Branch
Page 2

Paul A. Szalinski, Chief
Radiologic Health Branch
1232 Q Street
Sacramento, CA 95814

Gary W. Butner, Health Physicist
Environmental Management Branch
714 P Street, Room 616
Sacramento, CA 95814

John H. Hickman, Sr. Health Physicist
Environmental Management Branch
8455 Jackson Road, Suite 120
Sacramento, CA 95826

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88 JUL 25 P2:13
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FAX MAIL
(202) 775-0338

WRITER'S DIRECT DIAL NUMBER

July 20, 1988

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

Re: NRC Policy Statement on
Cooperation With States
53 Fed. Reg. 21981 (June 13, 1988)

Gentlemen:

The Commission recently published, at 53 Fed. Reg. 21981 (June 13, 1988), a Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities. The Federal Register notice invited the comments of interested parties concerning the policy statement, which is intended to provide a uniform basis for NRC/State cooperation in the regulatory oversight of commercial nuclear power plants and other nuclear production and utilization facilities.

On behalf of Baltimore Gas & Electric Company, The Cleveland Electric Illuminating Company, Northern States Power Company, Pennsylvania Power & Light Company, Sacramento Municipal Utility District, The Toledo Edison Company, Union Electric Company and Wisconsin Electric Power Company, all of whom hold operating licenses for nuclear power reactors, we are pleased to provide the following comments for the Commission's consideration.

I. Introduction

The NRC presently has agreements in place with at least five states -- Illinois, New Jersey, Oregon, Pennsylvania and Vermont -- which allow those states to participate in specified NRC activities (generally, inspections and meetings). However, the

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Secretary of the Commission
July 20, 1988
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trend of state activism in nuclear safety matters is spreading rapidly. As the NRC has recognized:

In recent years, States have taken the initiative to monitor more closely commercial nuclear power plants and other nuclear production or utilization facilities within, and adjacent to, their State boundaries by becoming better informed and, in some cases, more involved in activities related to the regulation and operation of those facilities.

53 Fed. Reg. 21982 (June 13, 1988). According to the NRC:

It was this increased interest by States to become more actively involved in NRC activities that caused the NRC to re-examine those agreements previously negotiated with States and to determine a uniform policy for how future State proposals should be handled.

Id.

The NRC's Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities provides that the NRC:

- (1) Will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest of the States;
- (2) Will respond in a timely manner to a State's requests for information and its recommendations concerning matters within the NRC's regulatory jurisdiction;
- (3) Will, upon request, routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers; and
- (4) Will, upon request, allow State representatives to observe specific inspections and/or

Secretary of the Commission
July 20, 1988
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inspection entrance and exit meetings where
State representatives are knowledgeable in
radiological health and safety matters.

53 Fed. Req. at 21982.

The policy statement further provides that the NRC "will consider State proposals to enter into instruments of cooperation for State participation in inspections and inspection entrance and exit meetings." 53 Fed. Req. at 21982. However, the policy statement emphasizes that a State's proposal to enter into an instrument of cooperation must outline a program that:

- (1) Recognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act;
- (2) Is in accordance with Federal standards and regulations;
- (3) Specifies minimum education, experience, training, and qualification requirements for State representatives which are patterned after those of NRC inspectors;
- (4) Contains provisions for the findings of State representatives to be transmitted to NRC for disposition;
- (5) Would not impose an undue burden on the NRC and its licensees and applicants; and
- (6) Abides by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

Id.

Secretary of the Commission
July 20, 1988
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The policy statement is intended to preclude independent State inspection programs -- programs in which State representatives inspect and assess NRC-regulated activities on the State's own initiative and authority, without close cooperation with and oversight by the NRC. The policy statement indicates that the NRC is "concerned that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation." 53 Fed. Reg. at 21982.

Generally, we approve of the policy statement as a timely reaffirmation of federal preemption in the area of nuclear safety, which properly focuses on State observation of and participation in NRC meetings and inspections as a first step in defining more clearly the roles which States may play in cooperation and coordination with the NRC. However, we strongly disagree with the proposal that State representatives may conduct certain inspections alone, even if those inspections are conducted with the cooperation of the NRC and in accordance with NRC inspection procedures. We also disagree with the policy statement to the extent that it would allow States to publicly disclose inspection findings after release of the NRC inspection report. In addition, we believe that affected licensees and applicants should be afforded the opportunity to comment on draft instruments of cooperation between the NRC and the States. Finally, we believe that affirmative action is appropriate to bring existing instruments of cooperation into conformance with the policy statement.

Accordingly, we urge the Commission to modify the policy statement as follows:

1. To provide that State representatives may participate in NRC inspections only as observers, and may not alone inspect NRC-regulated activities (even if those inspections would be conducted with the cooperation of the NRC and in accordance with NRC inspection procedures);
2. To prohibit State disclosure of inspection findings both before and after release of the NRC inspection report;

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July 20, 1988
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3. To provide affected licensees and applicants opportunity to comment on draft instruments of cooperation during negotiations between the NRC and the States; and
4. To provide for renegotiation of existing instruments of cooperation between the NRC and the States at the earliest opportunity, to bring the existing agreements into conformance with the policy statement.

II. Discussion

A. States Should Not Be Permitted To Conduct Inspections Alone.

As the policy statement notes, "[t]he NRC and the States have complementary responsibilities in protecting public health and safety and the environment." 53 Fed. Reg. at 21982. However, the NRC has exclusive regulatory authority over all radiological health and safety aspects of the construction and operation of nuclear power plants. Based on a careful review of legislative history, the U.S. Supreme Court has confirmed the NRC's preemptive role in nuclear safety regulation:

[T]he Federal Government maintains complete control of the safety and "nuclear" aspects of energy generation; the States exercise their traditional authority over the need for additional generating facilities to be licensed, land use, ratemaking, and the like.

Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 212 (1983). Accord, Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984); Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd mem., 405 U.S. 1035 (1972). See also 10 C.F.R. § 8.4 (1988). Relying on the doctrine of preemption, the federal courts have expressly rejected state and local government attempts to inspect the radiological safety of nuclear power plants. See, e.g., County of Suffolk v. Long Island Lighting Co., 728 F.2d 52, 59 (2d Cir. 1984) (independent physical inspection of nuclear plant "would plainly intrude on areas of exclusive NRC jurisdiction" and is

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therefore barred by preemption); City of Cleveland v. Public Utilities Commission of Ohio, 64 Ohio St.2d 209, 414 N.E.2d 718 (Ohio 1980) (State PUC safety inspection of nuclear plant is preempted).

Indeed, the policy statement acknowledges that the regulatory responsibilities assigned exclusively to the NRC by the Atomic Energy Act of 1954 -- i.e., the regulation of the radiological safety and national security aspects of the construction and operation of nuclear power plants -- cannot be delegated. See 53 Fed. Reg. at 21982. However, the policy statement completely fails to establish the legal authority of State representatives to alone inspect nuclear safety activities -- in the words of the policy statement, "on behalf of the NRC." Id.

Moreover, while it is beyond dispute that States have an interest in the protection of public health and safety and the environment, those interests are served equally well whether a State representative alone conducts an inspection of compliance with NRC standards or whether that State representative observes an NRC official conducting the same inspection. Thus, there is no cognizable benefit to the States from the opportunity to conduct certain inspections alone (in cooperation with the NRC). Nor does the policy statement identify any benefit to the NRC of the States' assumption of inspection activities traditionally conducted by NRC personnel.^{1/} In fact, the policy statement does not even specify which -- if any -- activities the NRC has determined to be "desirable for State personnel to perform on behalf of the NRC." 53 Fed. Reg. at 21982.

Finally, we agree with the NRC that State inspection programs "could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation." 53 Fed. Reg. at 21982. However, the potential for those problems is not limited to "independent State inspection programs," as the policy statement appears to suggest. The potential for dual

^{1/} States' assumption of NRC inspection activities would not even result in financial savings for the NRC, since the NRC collects the full cost of such activities from its applicants and licensees under 10 C.F.R. Part 170.

Secretary of the Commission
July 20, 1988
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regulation would be inherent even in inspections conducted by States in cooperation with the NRC.

The NRC itself is in the best position to determine whether its own regulatory requirements are being met. As a general matter, the greater the number of personnel involved in inspections, the greater the potential for differing -- and often conflicting -- interpretations of regulatory requirements. The risk of differing and conflicting interpretations is multiplied when the personnel are drawn from the different organizations, which have different responsibilities and interests, and which operate from different assumptions, with different organizational backgrounds and agendas.^{2/} The NRC has long been concerned about ensuring uniformity in enforcement among its regional offices. The practice of allowing State representatives to alone inspect NRC-regulated activities would further compound this concern.

Further, it is important to efficient and effective regulation to have both hardware and personnel issues viewed in context. This is as true for inspection and enforcement as for any other area of regulation. State representatives (who would only be permitted to conduct inspections of very specific areas) would necessarily be wearing blinders to much of the context of any potential enforcement situation. Such a limited perspective would be particularly likely to result in misinterpretation and confusion of regulatory policy.

Finally, our concern about dual regulation is not simply an issue of economic cost and sound administrative practice. The clarity and consistency of regulation is at the heart of the safe operation of nuclear power plants. Thus, given the inherent potential for dual regulation, even State inspections which are conducted in cooperation with the NRC may actually have negative implications for public health and safety.

^{2/} These and other similar considerations would likely cause the NRC to be uncertain in many cases about the weight to be accorded the inspection findings of State representatives. The NRC's need to verify such findings by conducting a repeat inspection itself before considering enforcement action would be both politically sensitive and burdensome on the NRC and the licensee or applicant.

Secretary of the Commission
July 20, 1988
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B. States Should Not Be Permitted To
Disclose Findings Even After
Release of NRC Inspection Report.

The policy statement indicates that the NRC intends to require all State instruments of cooperation to provide that State representatives will "abide[] by NRC protocol not to be [sic] publicly disclose inspection findings prior to the release of the NRC inspection report." 53 Fed. Reg. at 21982. While such a requirement is patently appropriate, it does not go far enough.

Under the NRC's current proposal, it would appear that States would be free to release underlying inspection data, notes, observations and findings after release of the NRC inspection report. However, a State's release of this type of information at any time would be prejudicial to the NRC's inspection and enforcement process, particularly if the information released by the State appeared on its face to be inconsistent in any way with the ultimate findings of the NRC inspection report.

States have no inherent right to participate in NRC inspection activities. Therefore, where the NRC permits such participation, the NRC may condition that permission as it deems appropriate. Whether a State has participated in an NRC inspection as an observer or has conducted some part of the inspection itself, it should not be permitted to publicly disclose any underlying data, notes, observations or findings -- before or after release of the NRC inspection report. The integrity of the NRC's inspection and enforcement program demands no less.

C. Affected NRC Licensees and Applicants
Should Have Opportunity to Comment
On Instruments of Cooperation.

The policy statement indicates that a State's proposed instrument of cooperation will be acceptable to the NRC only if, inter alia, the State's program "would not impose an undue burden on the NRC and its licensees and applicants." 53 Fed. Reg. at 21982 (emphasis supplied). However, the policy statement fails to provide for any opportunity for affected NRC licensees and applicants to comment on draft instruments of cooperation. Clearly, affected licensees and applicants may have valuable -- even unique -- insights and perspectives on issues which may be

Secretary of the Commission
July 20, 1988
Page 9

addressed in instruments of cooperation. Accordingly, the policy statement should expressly provide affected licensees and applicants the opportunity to comment on draft instruments of cooperation during negotiations between the NRC and the States.^{3/} Further, the NRC should consult with affected licensees and applicants in its formal review of the implementation of an instrument of cooperation to be conducted not less than six months after the effective date of the instrument. See 53 Fed. Req. at 21983.

D. Existing Agreements Should be Renegotiated
To Conform To Policy Statement.

Although the policy statement "strongly encourages" States with existing instruments of cooperation "to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement" (53 Fed. Req. at 21982), it indicates that the NRC presently plans to continue to honor those agreements even if they are not modified. 53 Fed. Req. at 21981. But the policy statement offers no justification for this "grandfathering."

In the absence of compelling reasons to the contrary, all licensees and applicants across the country should be subject to uniform treatment. Accordingly, the final policy statement should expressly provide for renegotiation of existing instruments of cooperation between the NRC and the States, at the earliest opportunity, to bring the existing agreements into conformance with the policy statement.

^{3/} For example, under the Agreement States Program, the terms of any proposed agreement for the NRC's transfer to a State of authority for the regulation of byproduct material, source material and small quantities of special nuclear materials must be published in the Federal Register once a week for four weeks and subject to opportunity for public comment. See 42 U.S.C. § 2021(e).

Secretary of the Commission

July 20, 1988

Page 10

III. Conclusion

The NRC's Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities is a timely reaffirmation of federal pre-emption in the area of nuclear safety, which properly focuses on State observation of and participation in NRC meetings and inspections. However, the policy statement should be modified to provide that State representatives may participate in inspections of NRC-regulated activities only as observers. The policy statement should be further revised to prohibit State disclosure of underlying data, notes, observations and findings both before and after release of the NRC inspection report. In addition, the policy statement should expressly provide affected licensees and applicants the opportunity to comment on draft instruments of cooperation. Finally, existing instruments of cooperation between the NRC and the States should be renegotiated at the earliest opportunity, to bring them into conformance with the policy statement.

With these revisions, the policy statement should be published in final form.

Respectfully submitted,

Delissa A. Ridgway
Jay E. Silberg, P.C.
Delissa A. Ridgway

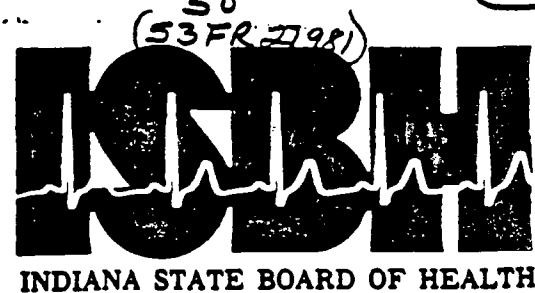


INDIANA STATE BOARD OF HEALTH
1330 WEST MICHIGAN STREET
P.O. BOX 1964
INDIANAPOLIS, IN 46206-1964

OFFICE OF THE
DOCKETING & SERVICE
BRANCH

88 JUL -8 PM 4:18

88 JUL 27 A9:04



INDIANA STATE BOARD OF HEALTH

AN EQUAL OPPORTUNITY EMPLOYER

July 5, 1988

Secretary

Attention: Docketing & Service Branch Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Cooperation With States at Commercial Nuclear Power
Plants and other Nuclear Production or Utilization Facilities;
Policy Statement.

Dear Sir:-

I appreciate being included in your proposed policy regarding
cooperation with the states.

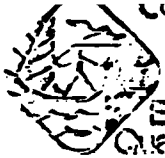
Indiana has no fuel facilities and only one research reactor.
Indiana has had few problems and none in recent years with the
cooperation provided or offered by the Nuclear Regulatory Commission.

The policy statement is straight forward, easily understood and
appears to be equitable to the states and the Federal Government. We
would appreciate routine notification of NRC inspection activities and
public meetings affecting Indiana.

Thank you for your cooperation. If we may be of service, please
contact us.

Sincerely

T. S. Danielson, Jr., M.D., M.P.H.
Indiana State Liaison Officer

Environmental
Quality BoardDOCKET NO.
PROPOSED R.50
(53 FR 21981)

FC

July 12, 1988

88 JUL 27 A9:04

OFFICE
DOCKET NO. 1
GRAND

Mr. Carlton Kammerer
Director
State, Local and Indian Tribe Programs
Office of Governmental and Public Affairs
United States Nuclear Regulatory Commission
Washington, D. C. 20555

Subject: Cooperation with States at Nuclear Facilities
Policy Statement- FR 53, No. 113 June 13, 1988, 21981

Dear Mr. Kammerer:

Reference is made to your letter of June 15, 1988 received in my office on July 6, 1988 regarding the Nuclear Regulatory Commission's Proposed Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

We support this policy statement in principles. Since we receive this document too late we cannot assure that our specific comments will be ready for July 13, 1988 as required.

Cordially yours,

Santos Rohena Betancourt
Chairman

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PDR PR
50 53FR21981 PDR

DS10



DOCKET NUMBER
PROPOSED RULE PR 50
(53 FR 21981)
GPU Nuclear Corporation
One Upper Pond Road
Parsippany, New Jersey 07054
201-316-7000
TELEX 136-482
Writer's Direct Dial Number:

88 JUL 27 P4:12

OFFICE
DOCKETING
BRANCH

July 22, 1988
C300-88-0393

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Chilk:

Subject: Request for Comments on the NRC Policy Statement on
Cooperation with States at Commercial Nuclear Power Plants.

The staff of GPU Nuclear Corporation herewith submits comments on the subject policy statement. Comments were requested in a June 13, 1988 Federal Register notice (53 FR 21981).

As a general comment, we believe that the subject policy statement correctly maintains the current balance of Federal/State authority in the field of nuclear regulation. Therefore, we support the NRC's efforts in this area.

Sincerely,

J. L. Sullivan, Jr.
J. L. Sullivan, Jr.
Lic. & Reg. Affairs Director

JLS/RPJ:fg

cc: President - P. R. Clark
Director, Communications - C. Clawson
Director, Planning & Nuclear Safety - R. L. Long

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PDR PR
50 53FR21981 PDR

DS10



NEW YORK STATE ENERGY OFFICE

WILLIAM D. COTTER
COMMISSIONER

(53 FR 21981)

August 8, 1988

88 AUG 12 A10:51

Mr. Samuel J. Chilk
Secretary to the Commission
U.S. Nuclear Regulatory Commission
Washington DC 20555

OFFICE
DOCKETING & RECORDS
BRANCH

Dear Mr. Chilk:

This is in response to the notice that was published in the June 13, 1988 Federal Register regarding a U.S. Nuclear Regulatory Commission policy statement on cooperation with states at commercial nuclear power plants and other nuclear production or utilization facilities.

My concerns about this statement relate to the limitations which appear to be suggested regarding state involvement in NRC meetings and proceedings.

While I agree that the "NRC and the States have complementary responsibilities in protecting public health and safety and the environment", the States' role in the nuclear area is broader. States make both policy and regulatory decisions that can affect and be affected by nuclear operations. An NRC inquiry into an extended outage at a nuclear plant may develop information important to state regulation of that utility's rates, for instance. This does not appear to be reflected in the statement of policy, which refers only to state representatives "knowledgeable in radiological health and safety matters". If the intent of this definition is to exclude persons from disciplines other than radiological health and safety, it will unreasonably limit state involvement. This narrow a definition would contradict the spirit, if not the intent, of the objective of furthering federal/state cooperation.

My concerns are heightened by indications from the Regional State Liaison Officer that the NRC may ultimately allow only one person to be designated as a state representative. Since the states' nuclear interests are very broad, it is sometimes necessary that more than one representative attend an NRC proceeding. Limiting state representation to one person would further contradict a policy intended to enhance cooperation.

Thank you for considering these comments. Be assured that New York shares a commitment to enhanced cooperation between the states and the Nuclear Regulatory Commission.

Sincerely,

William E. Davis
Executive Deputy Commissioner

WED/kkb

DOCKET NUMBER PR 50
PROPOSED RULE
(53 FR 21981)

U-601236
L10-88(08-05)-LI

DOCKETED
NRC

ILLINOIS POWER COMPANY



CLINTON POWER STATION, P.O. BOX 678, CLINTON, ILLINOIS 61727

August 5, 1988

88 AUG 12 P2:10

OFFICE
DOCKET
BRANCH

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Policy Statement - Cooperation with States at Commercial
Nuclear Power Plants and Other Nuclear Production or
Utilization Facilities - 53FR21981 (June 13, 1988) - Request
for Comments

Dear Mr. Chilk:

Illinois Power Company offers the following comments in response to the request of the U.S. Nuclear Regulatory Commission (NRC) for comments on the NRC Policy Statement - Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities - 53FR21981 (June 13, 1988).

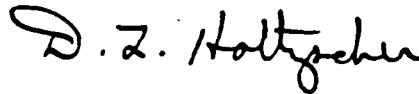
Illinois Power Company endorses the comments provided by the Nuclear Management and Resources Council (NUMARC) in their July 13, 1988, letter (Mr. J. F. Colvin to Mr. S. J. Chilk). Illinois Power Company offers the following amplifying comments:

- a. As the policy statement recognizes, the regulatory responsibilities assigned exclusively to the NRC by the Atomic Energy Act of 1954 cannot be delegated. The proposed policy statement is silent about any specific need that the policy statement fulfills or any benefit, other than greater coordination of activities, that would result from the implementation of the proposed policy statement.
- b. It may be beneficial for the NRC and the states to share information relating to their common interest to protect the public health and safety. However, we are concerned that situations could develop where a licensee could be subjected to dual, and perhaps conflicting, regulation. As is evident from the litigation now being considered in the U.S. Court of Appeals for the First Circuit concerning Emergency Planning, dual regulation and conflicting interpretations can lead to disputes resulting in substantial expenses, delays, and diversion of resources from more important concerns.

- c. The NRC should closely monitor the implementation of whatever policy is finally adopted, and any memorandum of understanding executed thereunder, to ensure that any misapplication of authority does not occur. The NRC should also periodically evaluate the merits and effectiveness of the policy it adopts to ensure whether the nation's best interests are being served.

Illinois Power Company appreciates the opportunity to comment on the NRC's policy statement and would be pleased to discuss our comments further with appropriate NRC staff personnel.

Sincerely yours,

A handwritten signature in cursive script that reads "D. L. Holtzscher".

D. L. Holtzscher
Acting Manager-Licensing and
Safety

PGB/bjc



DOCKET NUMBER PR 50--
PROPOSED RULE
(53 FR 21981)

(27)

Department of Energy

625 MARION ST. NE, SALEM, OREGON 97310 PHONE 378-4040 TOLL FREE 1-800-221-8035

August 2, 1988

OFFICE OF THE
DOCKET BRANCH

Carlton Kammerer, Director
State, Local and Indian
Tribe Programs
Office of Governmental and
Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer,

We have reviewed the draft Nuclear Regulatory Commission Policy Statement regarding cooperation with States. Please consider these comments as you proceed with adoption of this policy statement:

The State of Oregon intends to ensure that NRC's final policy statement does not adversely impact programs we have diligently worked to establish.

In 1975 Oregon Legislature established the State regulatory program for nuclear installations. The 1979 Legislature required a resident engineer at each nuclear power plant in the state. In 1980, the NRC and the Oregon Department of Energy (ODOE) agreed on the relationships between our respective regulatory programs.

Over the years, we have shown that State and NRC regulatory programs can be complementary without being duplicative. Our interaction on plant safety issues has been very productive. We believe this has been a major factor in achieving safe plant operation and maintaining public confidence.

We take part in many of the NRC regulatory activities at Trojan. But, our interests do not always coincide with the NRC inspectors'. We believe personal interaction with plant staff is essential in gaining the information needed to accurately assess and influence plant safety.

There have been no instances where Oregon has misinterpreted NRC safety requirements. Oregon regulators have never redirected the licensee's attention to areas not consistent with NRC safety priorities. And, our agreement with the NRC prevents such problems from occurring. It states:

"If ODOE finds it necessary to direct the operators of Trojan to take action, ODOE shall obtain NRC's prior agreement that such action does not have an adverse effect on plant or public safety"

We believe that diluting our regulatory role to the level in the draft policy statement would not be in the public's best interest.

Several other States have shown an interest in developing similar regulatory programs. Like Oregon, these programs may be required by state laws. These laws may require more than the draft policy statement would allow. The NRC needs to recognize this and develop and maintain good working relationships with these states. Such relationships will usually work to the advantage of both parties. The alternative is controversy and conflict and attendant negative publicity.

Oregon has worked hard to build and maintain public confidence that state and federal regulatory programs assure safe operations at Trojan. Discord between NRC and other states will only erode Oregonians' confidence that states and the NRC can work cooperatively for the public interest.

We appreciate NRC's cooperative approach to Oregon's regulatory program. We believe this relationship has benefited the NRC, the licensee and the public. We hope the final policy statement will foster such relationships here as well as in other states.

Sincerely,



M. W. Alsworth
Manager of Reactor Safety
Nuclear Safety and Energy
Facilities Division

MWA:ml
1273-Letter(d1/f1)



Commonwealth Edison
One First National Plaza, Chicago, Illinois
Address Reply to: Post Office Box 767
Chicago, Illinois 60690 - 0767

DOCKET NUMBER PR 50
PROPOSED RULE (53FR21981)
26

August 4, 1988

'88 AUG 22 A9:21

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington DC 20555
Attn: Docketing and Service Branch

OFFICE
DOCKET
BRANCH

**Subject: Proposed Policy Statement on Cooperation with States
at Nuclear Power Plants (53 FR 21981, 6/13/88)**

Dear Mr. Chilk:

This provides Commonwealth Edison Company's (Edison) views on the subject policy statement. In general, Edison supports the Nuclear Regulatory Commission's (NRC) approach to cooperation between the NRC and the States on nuclear power plants. In particular, Edison agrees with the NRC's criteria for an acceptable instrument for State cooperation and with the NRC's refusal to recognize independent State inspection programs. However, Edison is concerned that the policy statement does not address how the NRC will enforce its authority should a State representative exceed the scope of his/her authority under the agreement for cooperation. By contrast, the Commission periodically reviews agreement state programs to assure continuing compliance. Some such sort of review should be included either in the policy statement or in Memoranda of Understanding (MOU) entered into under it.

Edison is also concerned that State representatives may be allowed to observe inspections and/or inspection entrance and exit meetings on approval by the Regional Administrator. Such observations should be delayed until the state has entered into an MOU at which time the observations will be a logical first step to ultimate participation in NRC inspection activities. Moreover, observers should be required not to divulge any information obtained without prior clearance by the NRC. Otherwise, the inspection process could be compromised.

Finally, although not explicitly stated, Edison assumes that any MOU negotiated under the policy statement will be available for public comment before it becomes final. Thank you for allowing us to comment on this matter.

Very truly yours,

Henry E. Bliss
Nuclear Licensing Manager

APPENDIX B

APPENDIX B - SUMMARY OF COMMENTS AND NRC RESPONSE

II. Summary of Comments and NRC Response

On June 13, 1988, the Commission's Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities was published in the Federal Register for public comment (53 FR 21981.) The comment period expired July 13, 1988. In the Federal Register notice, the Commission stated that the "proposed policy will be followed in the interim, except for those paragraphs in the policy statement and Implementation section dealing with State proposals for instruments of cooperation for participation in inspections and inspection entrance and exit meetings. The Commission will not act on these specific types of State-proposed instruments of cooperation until the comment period expires and the policy statement is published as a final policy statement."

The NRC received 28 letters of comment; fourteen from members and representatives of the nuclear power industry, including electric utilities and their counsel, thirteen from various State offices and one from a public interest group.

State Comments

Most of the State offices expressed support for the NRC's policy "to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC." In the opinion of these States, the NRC policy statement would, among other things, enable the NRC to maintain uniformity in its relations with all the States, strengthen Federal-State cooperation,

Noting that State needs for interaction with NRC are especially important in areas which are substantially affected by NRC actions but for which the State has central responsibility (e.g., rate-making, 1/ emergency preparedness, environmental protection) several States expressed concern regarding the extent to which their differing needs and responsibilities would be accommodated under the NRC policy. Some States expressed the view that because of differing nature of State responsibilities, States might find it difficult to qualify for a Federal/State instrument of cooperation. One State suggested that the policy statement affirmatively recognize "the value of cooperation between the NRC and the States in areas where there is mutual interest but differing goals and responsibilities." Another State suggested that State representatives should be permitted to participate as observers in NRC enforcement, policy, exit or other meetings whenever the matters addressed involve issues of concern to the State.

Several States objected to that portion of the policy statement which would channel all communication between NRC and a State through the State Liaison Officer on the grounds that this procedure is too restrictive. Noting the needs of various State agencies to maintain a continuing relationship and ongoing dialogue with NRC, these States recommended that the policy statement be modified to allow for more than one State contact.

1/ For example, for nine years the New York Public Service Commission has had staff located at the Nine Mile Point site and until recently at Shoreham for the purpose of construction monitoring in order to evaluate the reasonableness of construction costs that directly affect base rates as well as operation and maintenance expenses.

Expressing appreciation of NRC's cooperative approach to Oregon's regulatory program and noting that Oregon has worked hard to build and maintain public confidence that State and Federal regulatory programs assure safe operations at Trojan, ODOE expressed its belief that this relationship has benefited NRC and that dilution of the State's regulatory role to the level in the draft policy statement would not be in the best interest of the public.

Citing concerns relating to the operation of the Peach Bottom nuclear power reactor, located in Pennsylvania only three miles north of the Maryland - Pennsylvania border, Maryland expressed the view that the benefits accorded States under the policy statement should not be limited to "host" States, but should also be extended to all States within ten miles of a nuclear power plant.

One State expressed general concern with the provision in the policy statement which would require States, as a condition of entering into an instrument of cooperation with NRC for the purpose of State participation in inspections and inspection entrance and exit meetings, to recognize "the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act." (53 FR 21982, June 13, 1988.) This State declared that it "will not concede that the federal government has unqualified and unspecified authority over these matters where public health, safety and

limit state involvement" and that "[t]his narrow a definition would contradict the spirit, if not the intent, of the objective of furthering federal/state cooperation."

In addition, the State commenters recommended that the policy statement be revised in the following respects:

- o The policy statement should recognize the unique and diverse communication needs of various State agencies and allow for more than one State contact.
- o The policy statement should affirmatively recognize the value of cooperation between NRC and the States in areas where there is mutual interest but differing goals and responsibilities.
- o The policy statement should be broadened to recognize the States' needs for interaction with the NRC in areas central to State responsibilities, but substantially affected by NRC actions.
- o The second paragraph of the Implementation section should be revised by inserting the following sentence between the fifth and sixth sentences in that paragraph:
"After a positive assessment, State inspectors' inspections may be conducted individually and would be coordinated with the NRC resident inspector."

For the most part, the industry commenters acknowledged the legitimate concerns of the States in being kept well-informed of NRC's activities with respect to the regulation of commercial nuclear power plants. The industry commenters also expressed general support for the Commission's overall goal of promoting and enhancing NRC/State cooperation. One commenter expressed the view that "policies which aid qualified State representatives in improving their understanding of the design and operation of . . . [commercial nuclear power plants] are beneficial to all parties and should be encouraged." One commenter characterized the policy statement as "a timely reaffirmation of federal preemption in the area of nuclear safety, which properly focuses on state observation and participation in NRC meetings and inspections." One commenter expressed affirmation support for the Commission's stated position that in those instances in which inspections were conducted by State representatives, "[a]ll enforcement action will be undertaken by the NRC." (53 FR 21983, June 13, 1988.)

The industry commenters were in substantial disagreement, however, as to how this goal might best be achieved. Two commenters expressed unqualified support for the policy statement as published June 13, 1988, one stating that the policy statement correctly maintains the current balance between Federal and State authority in the field of nuclear regulation, the other urging that the Commission promulgate the policy statement in final form as soon as practicable. Two commenters considered the policy statement's six criteria for an acceptable State proposal for entrance into an NRC/State instrument of cooperation relating to nuclear power plant inspections to be reasonable and appropriate. However, one of these commenters was concerned that the policy statement does not address how the NRC will enforce its authority should a

also noted that the policy statement as published for comment is ambiguous and that "[t]his ambiguity can lead to a situation where a State, for whatever reason, could hinder the NRC in its regulation of nuclear power."

Most commenters endorsed the second paragraph of the policy statement which provides that the NRC will (1) continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to States, (2) respond in a timely manner to a State's requests for information and to its recommendations concerning matters within the NRC's regulatory jurisdiction, (3) upon request, routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers, and (4) upon request, permit State representatives to observe but not to participate actively in specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters. In the opinion of the commenters, these provisions constitute both an appropriate and an adequate basis for achieving the desired communication and cooperation between the Commission and the States. Two commenters expressed a willingness to have State representatives present at public meetings with NRC licensees. These same two commenters favored giving States timely information

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

The NRC should not:

- o permit independent State inspection programs or reviews;
- o delegate responsibility for performing NRC inspections to State representatives.

inspections at nuclear generating plants 'on behalf of' the NRC, unaccompanied by NRC representatives." 5/ Two commenters who opposed independent State inspection programs indicated a willingness to accept State participation in NRC inspections as long as the State representatives were always accompanied by a qualified NRC inspector. One of these commenters suggested that the role of State representatives at an NRC inspection should be the same as that accorded NRC consultants.

The commenters who opposed any type of State inspection program, whether conducted independently or under continuing NRC oversight, strongly urged the Commission to provide specifically that no State radiological health and safety inspections of NRC-licensed commercial nuclear power reactors will be permitted, independent or otherwise. In their view, the role of State representatives should be strictly limited to observation of, or participation in, entrance and exit meetings. Noting that implementation of this aspect of the policy statement would make the regulatory process unnecessarily complicated and redundant--under the policy NRC staff would be required both to qualify State inspectors and to assume full responsibility for the manner in which State inspectors conduct any subsequent activities--the commenters based their objections on legal, policy and practical grounds.

According to these commenters, the Atomic energy Act of 1954, as amended, gives the NRC exclusive responsibility for regulating the radiological and

5/ According to one commenter, ". . . the policy statement completely fails to establish the legal authority of State representatives to alone inspect nuclear safety activities -- in the words of the policy statement, 'on behalf of the NRC.'"

environmental matters.)" Section 274i should not be read as authorizing NRC to enter into agreements with States under which States will conduct inspections of commercial nuclear power plants for NRC.

The commenters also viewed the provisions of the policy statement inviting States to enter into instruments of cooperation with NRC for the purpose of participating in NRC inspections and inspection entrance and exit meetings as contrary to law because such arrangements constitute dual or concurrent regulation. As the legislative history of section 274 of the Atomic Energy Act of 1954, as amended, makes clear, it was the intent of section 274 that regulatory authority either be exercised by the Federal government or by the States, but not by both.

The commenters also objected to the provisions of the NRC policy statement respecting the use of State inspectors at nuclear power plants in accordance with NRC/State instruments of cooperation on the ground that despite these arrangements such activities could have negative implications for public health and safety. According to the commenters, permitting States to participate in NRC inspections would greatly increase the likelihood of divergent Federal and State interpretations of regulatory requirements which would, in turn, create uncertainty and confusion, inject an unsettling and destabilizing element into the regulatory process and result in significant delay in the resolution of specific problems identified during an inspection. In connection with this objection, the commenters noted the parallel concerns expressed by NRC "that independent State inspection programs could direct an applicant's or licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation." (53 FR 21981, June 13, 1988.) As an example of the

acquire these capabilities. In this connection, the commenter questioned whether NRC would be able, in view of continuing budget constraints, to give State inspectors proper training and maintain an appropriate level of oversight of State inspectors and State inspection programs.

Several commenters criticized the policy statement because it failed to address such practical problems as how the NRC will judge the adequacy of a State inspection program and how the NRC will assure the competence of State inspectors and whether these determinations will be made by the Regions or at NRC Headquarters. In the opinion of the commenter, uniform interpretation of the policy statement could best be assured by including a detailed description of an adequate State program and specifying minimum qualifications for State inspectors.

One commenter recommended that the policy statement provide for arbitration as a method of resolving problems in those instances in which a State representative or State inspector is less than fully qualified. Another commenter requested that NRC licensees be informed whenever a State initiates negotiations with NRC regarding an instrument of cooperation so that the licensees could participate in the process.

One commenter noted that in the case of a particular facility, it might be necessary for the Commission to deal with the concerns of several States, for example, States located within 50 miles of the ingestion pathway, instead of limiting Commission consideration to the concerns of the State within which the facility site is located. Another commenter had no objection to keeping appropriate representatives of neighboring States apprised of regulatory activities at a specific facility but urged that the on-site presence of State

conducted with the cooperation of the NRC and in accordance with NRC inspection procedures).

- o The policy statement should prohibit State disclosure of inspection findings both before and after release of the NRC inspection report.

6/

- o The policy statement should apprise potentially affected licensees and applicants that their State is pursuing an instrument of cooperation with the NRC and provide for these licensees and applicants an opportunity to comment on drafts of instruments of cooperation during negotiations between the NRC and the State.
- o The policy statement should specify how the NRC will enforce its authority should a State representative exceed the scope of his/her authority under an instrument of cooperation.
- o The policy statement should provide for renegotiation of existing instruments of cooperation between the NRC and the States at the

6/ This recommendation was based on the commenter's view that the release by a State of underlying inspection data, notes, observations and findings even after release of an NRC inspection report could be prejudicial to the NRC's inspection and enforcement process, particularly if the information released by the State appeared on its face to be inconsistent in any way with the ultimate findings of the NRC inspection report. Another commenter stated that State observers should be required not to divulge any information obtained without prior clearance by the NRC.

Legal Issues.

We turn first to the commenters' legal concerns that the portions of the policy statement which provide for State participation in NRC inspections at commercial nuclear power plants and in NRC inspection entrance and exit meetings in accordance with the provisions of an NRC/State instrument of cooperation are contrary to law because such activities are precluded by the doctrine of Federal preemption and beyond the scope of section 274 of the Atomic Energy Act of 1954, as amended.

Section 161 of the atomic Energy Act of 1954, as amended, sets forth the general powers of the Commission in licensing or regulating any of the activities authorized by the Act, including the licensing and regulation of utilization and production facilities. Section 161f (42 U.S.C. 2201(f)) which is identical to section 12(a) of the Atomic Energy Act of 1946 and has remained unchanged since February 17, 1954 when it was reenacted into public law (Pub. Law. 703, 68 Stat. 949) provides:

"Sec. 161. General Provisions. -- In the performance of its functions the Commission is authorized to --

* * * * *

"f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;"

* * * * *

This provision, standing alone, gives the Commission broad discretionary authority to enter into arrangements with States respecting inspections at nuclear power plants, including arrangements pursuant to instruments of cooperation as described in the policy statement.

plants pursuant to an NRC/State instrument of cooperation are contrary to law by reason of the doctrine of Federal preemption are equally without merit.

Federal preemption, which is based on the Supremacy Clause of the Constitution, resolves controversies which arise as a result of the conflicting demands of Federal and State laws. Here there is no conflicting State law. The only document of concern is a policy statement prepared by a Federal agency which states in the clearest possible terms that it will be implemented at both the State and Federal level in strict accordance with applicable law. 8/ Since, as the above analysis shows, the policy statement is within NRC's statutory authority, there is no preemption issue.

A related concern expressed by a State commenter was that any formal acknowledgement by a state of NRC's legal authority, as recited in the first of the six conditions enumerated in the policy statement, might be viewed as a relinquishment by a State of some part of the State's rightful authority to protect the health, welfare and environment of its citizens. It is not the purpose of the policy statement to alter the respective responsibilities of

8/ For example, the policy statement affirmatively "[r]ecognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; . . ." the policy statement also identifies six elements which must be included in a state proposal for an instrument of cooperation in order to assure the proposal's consistency with the provisions of section 274c. of the Atomic Energy Act of 1954, as amended. Section 274c provides in part that "[n]o agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of -- (1) the construction and operation of any production or utilization facility; . . ."

significantly delay efforts to resolve specific problems identified during an inspection.

State commenters expressed contrary views. In the opinion of these commenters, implementation of the NRC policy statement would foster uniformity, strengthen Federal-State cooperation, reduce duplication of effort, encourage the development of a unified NRC/State position on matters of joint concern, avoid the perception of dual regulation and improve nuclear safety.

Based on its experience with State resident inspectors at the Trojan Nuclear Power Plant in Oregon, which has demonstrated that complementary State-Federal interaction on plant safety issues can be productive, the Commission believes that the concerns expressed by the industry commenters are unrealistic and exaggerated. The Commission reiterates its commitment, as stated in the Implementation section of the policy statement, to perform a formal review of a memorandum of understanding (MOU) between NRC and a State relating to State involvement in NRC inspections

" . . . not less than six months after the effective date [of the MOU] . . . to evaluate implementation of the MOU and resolve any problems identified. Final agreements will be subject to periodic reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party."

In view of this commitment, as well as the Commission's announced intent that activities undertaken to implement the policy statement shall be carried

Liaison Officer on the grounds that this procedure is too restrictive. Noting the needs of various State agencies to maintain a continuing relationship and ongoing dialogue with NRC, these States recommended that the policy statement be modified to allow for more than one State contact.

The Commission is well aware of the varying interests of States in the activities of commercial nuclear power plants and of the number of different State agencies with direct responsibility for various aspects of those activities. It is precisely because this situation exists that the Commission has adopted a policy which requires that all inquiries and requests from States respecting observations and inspections at commercial nuclear power plants and all information from NRC to States respecting these matters be channeled through a single point, namely the office of the State Liaison Officer. This arrangement not only assures the Commission that NRC information of interest to the States will be sent forward to those State agencies that need to know, it also assures interested State agencies that their requests and inquiries will be handled in a uniform and businesslike manner. Since the primary purpose of the policy statement is to articulate the manner in which the Commission plans to conduct its business in this area and to provide guidance to NRC Regional Offices which will assure that these matters are handled uniformly, it is neither necessary nor appropriate to modify the policy statement to elaborate further on the differing nature or wide variety of State responsibilities.

For the foregoing reasons, the Commission has made no change in the provisions of the policy statement which relate to communication through State Liaison Officers. The Commission has also concluded that the policy statement

inspection will be invited to the enforcement conference. If information relevant to an NRC enforcement matter was obtained by a State representative during an inspection and subsequently made available to the NRC, it is expected that the State representative would also be invited to attend the enforcement conference. Moreover, State assistance, including testimony at any enforcement hearing, may be needed to carry out NRC's enforcement program.

A related matter concerns the role to be accorded State representatives who wish to attend or participate in entrance and exit meetings and inspections of nuclear power reactors located in adjacent States. Despite disagreement on the criteria to be used to identify adjacent States, there was a general consensus among commenters who addressed this issue that representatives from adjacent States should be permitted to attend meetings and inspections subject to the same conditions that apply to representatives from the host State.

The Commission has given considerable thought to this matter and has concluded that for the time being and in accordance with its original intent, the scope of the policy statement should be limited to cooperation between NRC and "host" States, i.e., States in which an NRC licensed facility is located. After the Commission has gained some practical experience in implementing the present policy, it will reconsider the question of whether and to what extent the policy statement should be broadened to encompass cooperative arrangements between NRC and "adjacent" States.

The policy statement makes clear that State representatives must be properly qualified to undertake their assigned roles, whether as participants or observers. Although State representatives who only observe need not be as knowledgeable technically as State representatives who actively participate in

inspection. The Commission is of the opinion that insofar as State representatives are apprised of this information as a result of their involvement in NRC's regulatory activities, that State representatives should be required to meet the same standards as their NRC counterparts regarding information disclosure.

Opportunity for Public Comment on NRC-State Instruments of Cooperation
Relating to Inspections at Commercial Nuclear Power Plants

The Commission has given considerable thought to the suggestion of some of the industry commenters that potentially affected applicants for NRC licenses and NRC licensees should be notified that their State is pursuing an instrument of cooperation with NRC and be accorded an opportunity, during ongoing negotiations between NRC and the State, to submit public comments on the draft instrument of cooperation before it is finally agreed to by NRC and the State. The Commission recognizes that the subject matter of these instruments of cooperation is of great interest to nuclear power plant applicants and licensees, who are, of course, the entities that will be inspected.

The Commission published the policy statement in the Federal Register for the express purpose of obtaining public comment. Thus NRC applicants and licensees have already had an opportunity to express their views and concerns on the principal policy issues relating to the conduct of NRC/State inspections at commercial nuclear power plants, including issues relating to the scope and content of NRC/State instruments of cooperation. In the opinion of the Commission, it would not serve any useful purpose automatically to accord NRC applicants and licensees a further participatory role in negotiations between NRC and a particular State regarding the terms of a

APPENDIX C

APPENDIX C -- DRAFT FEDERAL REGISTER NOTICE

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear
Production or Utilization Facilities; Policy Statement

AGENCY: Nuclear Regulatory Commission

ACTION: Final Policy Statement

SUMMARY: The Nuclear Regulatory Commission (NRC) believes that the agency's mission to protect the public health and safety and the environment can best be served by a policy of cooperation with State governments which unites the common goals of the NRC and the States. In accordance with this policy statement, the NRC will keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States, and NRC will respond in a timely manner to State requests for information and State recommendations concerning matters within NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between the NRC and its licensees and applicants, in order that State representatives may attend as observers, and NRC will allow State observation of NRC inspection activities. The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. The NRC will not consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities without close cooperation with, and oversight by, the NRC. This policy statement is intended to provide a

The NRC has had extensive formal and informal interaction with the States throughout its history. The Agreement State Program, under section 274b of the Act, is an example of a formal program where the NRC relinquishes its regulatory authority over certain radioactive materials to the States. There are currently 29 Agreement States regulating approximately 65 percent of those licensees nationwide that use or manufacture those types of radioactive material. The Agreement State Program operates under two Commission Policy Statements, one for entering into section 274b agreements and one for periodically reviewing Agreement State radiation control programs for adequacy in protecting public health and safety and for compatibility with NRC programs. This policy statement supports continuation of the Agreement State Program and is not meant to affect it.

This policy statement is not intended to affect rights to notice and to participate in hearings granted to States by statute or NRC regulations.

Under 10 CFR Part 9, Subpart D, the NRC has provided procedures for handling requests for an NRC representative to participate or provide information in judicial or quasi-judicial proceedings conducted by States or other courts and agencies. This policy statement supports these procedures and does not affect them.

Under 10 CFR 50.55a, the NRC has recognized the role of the States within the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code (ASME Code) System. This policy statement does not affect the State and NRC relationship as laid out in the ASME Code.

The State Liaison Officer Program, established in 1976, provides a focal point in each of the 50 States and the Commonwealth of Puerto Rico for communication between NRC and the States. The Governor-appointed State Liaison

resident inspector programs at Trojan. Additionally, the NRC has documented the protocol that States must follow to be permitted to observe certain NRC activities in "letter agreements."

In recent years, States have taken the initiative to monitor more closely commercial nuclear power plants and other nuclear production or utilization facilities within, and adjacent to, their State boundaries by becoming better informed and, in some cases, more involved in activities related to the regulation and operation of those facilities. It was this increased interest by States to become more actively involved in NRC activities that caused the NRC to re-examine those agreements previously negotiated with States and to determine a uniform policy for how further State proposals should be handled. In developing this policy statement to be used to respond to future State proposals, the Commission, recognizing that the regulatory responsibilities assigned exclusively to the NRC by the Act cannot be delegated, has considered: (1) Those activities it deems appropriate for States to conduct on a cooperative basis and are desirable for State personnel to perform on behalf of the NRC; and (2) its oversight responsibility to ensure that NRC standards, regulations, and procedures are met where State representatives carry out NRC functions. Further, it is the Commission's intention to provide uniformity in its handling of State requests.

II. Summary of Comments and NRC Response

On June 13, 1988, the Commission's Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities was published in the Federal Register for public comment (53 FR 21981.) The comment period expired July 13, 1988. In the Federal

With the opening of these avenues of communication, NRC licensees would be made more aware of State concerns in related areas.

Two States stated that they are prepared to enter into a joint inspection program with NRC at this time. One State expressed no immediate interest but indicated that it might wish to participate in such a program in the future. This State was supportive of the six conditions specified in the Policy Statement as prerequisites to State participation in NRC inspections and inspection entrance and exit meetings in accordance with the provisions of an instrument of cooperation entered into with NRC. One State indicated that it would appreciate routine notification of NRC inspection activities and public meetings affecting the State. One State supported, while another State opposed, independent State inspections of federally regulated facilities. The stated reasons for opposing such inspections were that they would confuse the regulated sector and would require the expenditure of scarce State resources in an area in which there is already adequate Federal enforcement. Noting the possible difficulty of securing needed funds for such inspections, one State recommended that the policy statement include suggested means of funding State inspections.

Noting that State needs for interaction with NRC are especially important in areas which are substantially affected by NRC actions but for which the State has central responsibility (e.g., rate-making, ^{1/} emergency

^{1/} For example, for nine years the New York Public Service Commission has had staff located at the Nine Mile Point site and until recently at Shoreham for the purpose of construction monitoring in order to evaluate the reasonableness of construction costs that directly affect base rates as well as operation and maintenance expenses.

plant safety." According to ODOE, this experience demonstrates that State and NRC regulatory programs can be complementary without being duplicative and that State-Federal interaction on plant safety issues has been very productive. In its comments, ODOE also states:

"There have been no instances where Oregon has misinterpreted NRC safety requirements. Oregon regulators have never redirected the licensee's attention to areas not consistent with NRC safety priorities. And our agreement with the NRC prevents such problems from occurring. It states:

"If ODOE finds it necessary to direct the operators of Trojan to take action, ODOE shall obtain NRC's prior agreement that such action does not have an adverse effect on plant or public safety."

Expressing appreciation of NRC's cooperative approach to Oregon's regulatory program and noting that Oregon has worked hard to build and maintain public confidence that State and Federal regulatory programs assure safe operations at Trojan, ODOE expressed its belief that this relationship has benefited NRC and that dilution of the State's regulatory role to the level in the draft policy statement would not be in the best interest of the public.

Citing concerns relating to the operation of the Peach Bottom nuclear power reactor, located in Pennsylvania only three miles north of the Maryland - Pennsylvania border, Maryland expressed the view that the benefits accorded States under the policy statement should not be limited to "host" States, but

Several States questioned the need to require State programs carried out under an instrument of cooperation to specify "minimum education, experience, training, and qualification requirements for State representatives which are patterned after those of NRC inspectors." In the opinion of some States, the standard of knowledge and training appropriate for State observers need not be as stringent as that for State inspectors. Other States expressed the view that the training and educational requirements applicable to Federal and State personnel need not be identical but should instead bear some reasonable relationship to the differing jurisdictional responsibilities of the Federal government and the States. One State questioned the provisions of the policy statement characterizing qualified State representatives as those "knowledgeable in radiological health and safety matters." This State pointed out that "[i]f the intent of this definition is to exclude persons from disciplines other than radiological health and safety, it will unreasonably limit state involvement" and that "[t]his narrow a definition would contradict the spirit, if not the intent, of the objective of furthering federal/state cooperation."

In addition, the State commenters recommended that the policy statement be revised in the following respects:

- o The policy statement should recognize the unique and diverse communication needs of various State agencies and allow for more than one State contact.
- o The policy statement should affirmatively recognize the

which a State could obtain funding for its inspection program.

Public Interest Comments

The comments from the public interest group expressed support for the policy statement because it offers some important opportunities for State involvement in the protection of the health and safety of citizens and commended the NRC for taking the initiative in pursuing cooperation with States.

Industry Comments

Fourteen comments were received from representatives of the nuclear power industry, including one from a major industry organization, two from legal counsel on behalf of fifteen electric utilities holding NRC operating licenses for nuclear power plants, and eleven from individual electric utilities holding NRC operating licenses; three of the latter were also included in the group of electric utilities represented by legal counsel.

For the most part, the industry commenters acknowledged the legitimate concerns of the States in being kept well-informed of NRC's activities with respect to the regulation of commercial nuclear power plants. The industry commenters also expressed general support for the Commission's overall goal of promoting and enhancing NRC/State cooperation. One commenter expressed the view that "policies which aid qualified State representatives in improving their understanding of the design and operation of . . . [commercial nuclear power plants] are beneficial to all parties and should be encouraged." One commenter characterized the policy statement as "a timely reaffirmation of federal preemption in the area of nuclear safety, which properly focuses on

also of the opinion that the NRC should proceed on a case-by-case basis ^{4/} if it feels State input is essential. The commenter also noted that the policy statement as published for comment is ambiguous and that "[t]his ambiguity can lead to a situation where a State, for whatever reason, could hinder the NRC in its regulation of nuclear power."

Most commenters endorsed the second paragraph of the policy statement which provides that the NRC will (1) continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to States, (2) respond in a timely manner to a State's requests for information and to its recommendations concerning matters within the NRC's regulatory jurisdiction,

4/ If the NRC should decide to proceed in this manner, the commenter recommended that the following guidelines should be followed:

The NRC should:-

- o consider a State's concerns regarding safety of a nuclear power plant responding, when necessary, with an inspection which could include State observers;
- o provide a State with timely information regarding its concerns, providing the information is not proprietary or does not pertain to security matters;
- o include State representation in public meetings with the licensees;
- o obtain State assistance when such assistance would be a benefit to the NRC in its regulatory duties; and
- o have complete oversight of State activities regarding nuclear safety.

The NRC should not:

- o permit independent State inspection programs or reviews;
- o delegate responsibility for performing NRC inspections to State representatives.

State proposals to enter into instruments of cooperation for State participation in NRC inspections of commercial nuclear power plants and in NRC inspection entrance and exit meetings, and the types of inspection activities which qualified State representatives may be permitted to perform. Some of the commenters opposed any type of State inspection program, whether conducted independently or under continuing NRC oversight. Other commenters were principally concerned about those passages of the policy statement which, in their opinion, carry "the clear implication . . . that there will be occasions on which State representatives will be allowed to conduct their own inspections at nuclear generating plants 'on behalf of' the NRC, unaccompanied by NRC representatives." ^{5/} Two commenters who opposed independent State inspection programs indicated a willingness to accept State participation in NRC inspections as long as the State representatives were always accompanied by a qualified NRC inspector. One of these commenters suggested that the role of State representatives at an NRC inspection should be the same as that accorded NRC consultants.

The commenters who opposed any type of State inspection program, whether conducted independently or under continuing NRC oversight, strongly urged the Commission to provide specifically that no State radiological health and safety inspections of NRC-licensed commercial nuclear power reactors will be permitted, independent or otherwise. In their view, the role of State

^{5/} According to one commenter, ". . . the policy statement completely fails to establish the legal authority of State representatives to alone inspect nuclear safety activities -- in the words of the policy statement, 'on behalf of the NRC.'"

certain authorities to the Commission, makes clear that the responsibility for regulating nuclear power reactors from the standpoint of radiological health and safety remains with the NRC. In view of these statutory provisions, it is the considered opinion of the commenters that, under existing law, section 274i "should properly be read to permit only inspections related to . . . materials" and to allow "NRC to enter 'instruments of cooperation' only with respect to licensed activities other than commercial nuclear power reactors (e.g., materials licensees) or with respect to matters other than radiological health and safety (e.g., certain environmental matters.)" Section 274i should not be read as authorizing NRC to enter into agreements with States under which States will conduct inspections of commercial nuclear power plants for NRC.

The commenters also viewed the provisions of the policy statement inviting States to enter into instruments of cooperation with NRC for the purpose of participating in NRC inspections and inspection entrance and exit meetings as contrary to law because such arrangements constitute dual or concurrent regulation. As the legislative history of section 274 of the Atomic Energy Act of 1954, as amended, makes clear, it was the intent of section 274 that regulatory authority either be exercised by the Federal government or by the States, but not by both.

The commenters also objected to the provisions of the NRC policy statement respecting the use of State inspectors at nuclear power plants in accordance with NRC/State instruments of cooperation on the ground that despite these arrangements such activities could have negative implications for public health and safety. According to the commenters, permitting States to participate in NRC inspections would greatly increase the likelihood of divergent Federal and State interpretations of regulatory requirements which would, in turn, create

licensees would likely be called upon to provide on-site facilities and services for State personnel participating in nuclear power plant inspections comparable to those provided to NRC resident inspectors. States would be required to bear the direct costs, e.g., hiring expenses, salaries, employment benefits, of hiring and maintaining a cadre of individuals qualified to conduct inspections of commercial nuclear power plants. In the opinion of one commenter, it would be less wasteful and more cost effective to have a few NRC inspectors with appropriate training and expertise than to have many States acquire these capabilities. In this connection, the commenter questioned whether NRC would be able, in view of continuing budget constraints, to give State inspectors proper training and maintain an appropriate level of oversight of State inspectors and State inspection programs.

Several commenters criticized the policy statement because it failed to address such practical problems as how the NRC will judge the adequacy of a State inspection program and how the NRC will assure the competence of State inspectors and whether these determinations will be made by the Regions or at NRC Headquarters. In the opinion of the commenter, uniform interpretation of the policy statement could best be assured by including a detailed description of an adequate State program and specifying minimum qualifications for State inspectors.

One commenter recommended that the policy statement provide for arbitration as a method of resolving problems in those instances in which a State representative or State inspector is less than fully qualified. Another commenter requested that NRC licensees be informed whenever a State initiates negotiations with NRC regarding an instrument of cooperation so that the licensees could participate in the process.

(e.g., that State representatives should be knowledgeable) should be retained.

- o The policy statement should provide that State representatives may participate in NRC inspections only as observers, and may not alone inspect NRC-regulated activities (even if those inspections would be conducted with the cooperation of the NRC and in accordance with NRC inspection procedures).
- o The policy statement should prohibit State disclosure of inspection findings both before and after release of the NRC inspection report.

6/

- o The policy statement should apprise potentially affected licensees and applicants that their State is pursuing an instrument of cooperation with the NRC and provide for these licensees and applicants an opportunity to comment on drafts of instruments of cooperation during negotiations between the NRC and the State.

6/ This recommendation was based on the commenter's view that the release by a State of underlying inspection data, notes, observations and findings even after release of an NRC inspection report could be prejudicial to the NRC's inspection and enforcement process, particularly if the information released by the State appeared on its face to be inconsistent in any way with the ultimate findings of the NRC inspection report. Another commenter stated that State observers should be required not to divulge any information obtained without prior clearance by the NRC.

inspection. The commenters also expressed concerns regarding the role, if any, to be accorded applicants for or holders of NRC licenses for commercial nuclear power reactors and other nuclear production and utilization facilities during ongoing negotiations between NRC and a State regarding the terms of a NRC/State instrument of cooperation.

Legal Issues.

We turn first to the commenters' legal concerns that the portions of the policy statement which provide for State participation in NRC inspections at commercial nuclear power plants and in NRC inspection entrance and exit meetings in accordance with the provisions of an NRC/State instrument of cooperation are contrary to law because such activities are precluded by the doctrine of Federal preemption and beyond the scope of section 274 of the Atomic Energy Act of 1954, as amended.

Section 161 of the atomic Energy Act of 1954, as amended, sets forth the general powers of the Commission in licensing or regulating any of the activities authorized by the Act, including the licensing and regulation of utilization and production facilities. Section 161f (42 U.S.C. 2201(f)) which is identical to section 12(a) of the Atomic Energy Act of 1946 and has remained unchanged since February 17, 1954 when it was reenacted into public law (Pub. Law. 703, 68 Stat. 949) provides:

"Sec. 161. General Provisions. -- In the performance of its functions the Commission is authorized to --

* * * * *

"f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;"

* * * * *

section 274i does not provide an independent legal basis for entering into agreements with States.

The commenters' objections that the provisions of the policy statement relating to State participation in NRC inspections at commercial nuclear power plants pursuant to an NRC/State instrument of cooperation are contrary to law by reason of the doctrine of Federal preemption are equally without merit.

Federal preemption, which is based on the Supremacy Clause of the Constitution, resolves controversies which arise as a result of the conflicting demands of Federal and State laws. Here there is no conflicting State law. The only document of concern is a policy statement prepared by a Federal agency which states in the clearest possible terms that it will be implemented at both the State and Federal level in strict accordance with applicable law. ^{8/} Since, as the above analysis shows, the policy statement is within NRC's statutory authority, there is no preemption issue.

A related concern expressed by a State commenter was that any formal acknowledgement by a state of NRC's legal authority, as recited in the first of

^{8/} For example, the policy statement affirmatively "[r]ecognizes the Federal Government, primarily NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act; . . ." the policy statement also identifies six elements which must be included in a state proposal for an instrument of cooperation in order to assure the proposal's consistency with the provisions of section 274c. of the Atomic Energy Act of 1954, as amended. Section 274c provides in part that "[n]o agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of -- (1) the construction and operation of any production or utilization facility; . . ."

Implementation of Policy Statement - Effect on NRC Licensees; Costs

According to industry commenters, implementation of the provisions of the policy statement respecting the use of State inspectors at nuclear power plants in accordance with NRC/State instruments of cooperation is likely to have a negative effect on public health and safety. In the opinion of these commenters, permitting States to participate in NRC inspections would not only create the appearance of dual regulation but would also greatly increase the likelihood of divergent Federal and State interpretations of regulatory requirements. The resulting uncertainty and confusion would inject an unsettling and destabilizing element into the regulatory process and could significantly delay efforts to resolve specific problems identified during an inspection.

State commenters expressed contrary views. In the opinion of these commenters, implementation of the NRC policy statement would foster uniformity, strengthen Federal-State cooperation, reduce duplication of effort, encourage the development of a unified NRC/State position on matters of joint concern, avoid the perception of dual regulation and improve nuclear safety.

Based on its experience with State resident inspectors at the Trojan Nuclear Power Plant in Oregon, which has demonstrated that complementary State-Federal interaction on plant safety issues can be productive, the Commission believes that the concerns expressed by the industry commenters are unrealistic and exaggerated. The Commission reiterates its commitment, as stated in the Implementation section of the policy statement, to perform a formal review of a memorandum of understanding (MOU) between NRC and a State relating to State involvement in NRC inspections

Although requested to do so, the Commission has declined to revise the policy statement in order to address the topic of possible sources of State funds. This position is consistent with the underlying policy of the 1959 Federal-State amendment to the Atomic Energy Act of 1954, as amended, which makes no provision for the expenditure of Federal funds for the purpose of administering State regulatory programs.

Communication through State Liaison Officers

Several States objected to that portion of the policy statement which would channel all communication between NRC and a State through the State Liaison Officer on the grounds that this procedure is too restrictive. Noting the needs of various State agencies to maintain a continuing relationship and ongoing dialogue with NRC, these States recommended that the policy statement be modified to allow for more than one State contact.

The Commission is well aware of the varying interests of States in the activities of commercial nuclear power plants and of the number of different State agencies with direct responsibility for various aspects of those activities. It is precisely because this situation exists that the Commission has adopted a policy which requires that all inquiries and requests from States respecting observations and inspections at commercial nuclear power plants and all information from NRC to States respecting these matters be channeled through a single point, namely the office of the State Liaison Officer. This arrangement not only assures the Commission that NRC information of interest to the States will be sent forward to those State agencies that need to know, it also assures interested State agencies that their requests and inquiries will be handled in a uniform and businesslike manner. Since the primary purpose of the policy statement is to articulate the manner in which the Commission plans

be conducted under the close and continuing surveillance of the NRC and in strict accordance with Federal standards and regulations. The presence of the NRC is essential not only because all communications with the licensee must be made through the NRC but also because the NRC is solely responsible for taking any needed enforcement action. Where an enforcement conference is held with the licensee as an extension to a particular inspection which the State observed or participated in, the State representative who attended the inspection will be invited to the enforcement conference. If information relevant to an NRC enforcement matter was obtained by a State representative during an inspection and subsequently made available to the NRC, it is expected that the State representative would also be invited to attend the enforcement conference. Moreover, State assistance, including testimony at any enforcement hearing, may be needed to carry out NRC's enforcement program.

A related matter concerns the role to be accorded State representatives who wish to attend or participate in entrance and exit meetings and inspections of nuclear power reactors located in adjacent States. Despite disagreement on the criteria to be used to identify adjacent States, there was a general consensus among commenters who addressed this issue that representatives from adjacent States should be permitted to attend meetings and inspections subject to the same conditions that apply to representatives from the host State.

The Commission has given considerable thought to this matter and has concluded that for the time being and in accordance with its original intent, the scope of the policy statement should be limited to cooperation between NRC and "host" States, i.e., States in which an NRC licensed facility is located. After the Commission has gained some practical experience in implementing the present policy, it will reconsider the question of whether and to what extent

Accordingly, the Commission has made no changes in the policy statement in response to these comments.

Several commenters expressed the view that the policy statement should prohibit State disclosure of inspection findings after as well as before the NRC inspection report is publicly released. Commenters also expressed concern about the disclosure by State representatives of any underlying data obtained or any notes or observations made while attending or participating in an NRC inspection. The Commission is of the opinion that insofar as State representatives are apprised of this information as a result of their involvement in NRC's regulatory activities, that State representatives should be required to meet the same standards as their NRC counterparts regarding information disclosure.

Opportunity for Public Comment on NRC-State Instruments of Cooperation
Relating to Inspections at Commercial Nuclear Power Plants

The Commission has given considerable thought to the suggestion of some of the industry commenters that potentially affected applicants for NRC licenses and NRC licensees should be notified that their State is pursuing an instrument of cooperation with NRC and be accorded an opportunity, during ongoing negotiations between NRC and the State, to submit public comments on the draft instrument of cooperation before it is finally agreed to by NRC and the State. The Commission recognizes that the subject matter of these instruments of cooperation is of great interest to nuclear power plant applicants and licensees, who are, of course, the entities that will be inspected.

The Commission published the policy statement in the Federal Register for the express purpose of obtaining public comment. Thus NRC applicants and licensees have already had an opportunity to express their views and concerns

Accordingly, the Commission hereby adopts and republishes that policy statement as a final statement of policy. The Commission further declares that the final statement of policy in its entirety is effective immediately.

III. Statement of Policy

It is the NRC's policy to cooperate fully with State governments as they seek to respond to the expectations of their citizens that their health and safety be protected and that there be minimal impact on the environment as a result of activities licensed by the NRC. The NRC and the States have complementary responsibilities in protecting public health and safety and the environment. Furthermore, the NRC is committed to the full and timely disclosure of matters affecting the public and to the fair and uniform handling of all agency interactions with the States, the public, and NRC licensees.

Accordingly, the NRC will continue to keep Governor-appointed State Liaison Officers routinely informed on matters of interest to the States. The NRC will respond in a timely manner to a State's requests for information and its recommendations concerning matter within the NRC's regulatory jurisdiction. If requested, the NRC will routinely inform State Liaison Officers of public meetings between NRC and its licensees and applicants in order that State representatives may attend as observers. Additionally, at the State's request, State representatives will be able to observe specific inspections and/or inspection entrance and exit meetings where State representatives are knowledgeable in radiological health and safety matters.

The Commission recognizes that the involvement of qualified State representatives in NRC radiological health and safety programs has the potential for providing additional safety benefit. Therefore, the NRC will consider State proposals to enter into instruments of cooperation for State

licensee's attention to areas not consistent with NRC safety priorities, misinterpret NRC safety requirements, or give the perception of dual regulation. For purposes of this policy statement, an independent State inspection program is one in which State representatives would conduct inspections and assess NRC-regulated activities on a State's own initiative and authority without close cooperation with, and oversight by, an authorized NRC representative.

Instruments of cooperation between the NRC and the States, approved prior to the date of this policy statement will continue to be honored by the NRC. The NRC strongly encourages those States holding these agreements to consider modifying them, if necessary, to bring them into conformance with the provisions of this policy statement.

IV. Implementation

As provided in the policy statement the NRC will routinely keep State Liaison Officers informed on matters of interest to the States. In general, all State requests should come from the State Liaison Officer to the appropriate NRC Regional Office. The NRC will make every effort to respond as fully as possible to all requests from States for information on matters concerning nuclear production or utilization facility safety within 30 days. The NRC will work to achieve a timely response to State recommendations relating to the safe operation of nuclear production or utilization facilities. State representatives are free to attend as observers any public meeting between the NRC and its applicant and licensees. The appropriate Regional Office will routinely inform State Liaison Officers of the scheduling of public meetings upon request. State requests to observe inspections and/or inspection

reviews and may be amended or modified upon written agreement by both parties and may be terminated upon 30 days written notice by either party.

Additionally, once State involvement in NRC activities at a nuclear production or utilization facility is approved by the NRC, the State is responsible for meeting all requirements of an NRC licensee and applicant related to personal safety and unescorted access of State representatives at the site.

Dated at Rockville, Maryland, this _____ day of _____, 1988.

For the Nuclear Regulatory Commission

Samuel J. Chilk,
Secretary of the Commission