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SUBJECT: Offers listed comments on proposed rev to 10CFR50 App J, "Containment Leakage Testing," published in 950221 FR & endorses comments submitted by NEI on subj.

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DUKE POWER

May 8, 1995

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

Attention: Document Control Desk

Subject: Proposed Revision to 10 CFR 50 Appendix J, "Containment Leakage Testing";
Duke Power Company Comments

Duke Power Company offers the following comments on the proposed revision to 10 CFR 50 Appendix J, as published in the February 21, 1995, *Federal Register*. In addition, Duke Power endorses the comments submitted by NEI on this subject.

There are three basic issues upon which the NRC specifically requested comments. These are:

- The requirement that licensees commit, in Technical Specifications, to the particular implementation document used to develop the performance-based program;
- The requirement for visual examination of the containment; and
- Mandatory compliance with the proposed Option B.

For reasons outlined below, Duke Power agrees with NEI on these issues, and requests that NRC reconsider its positions.

Commitment in Technical Specifications to Implementation Document

The proposed rule states that "[t]he regulatory guide or other implementing document used by a licensee...must be included, by general reference, in the plant's technical specifications." This is neither necessary nor appropriate. Recent efforts at improving and standardizing Technical Specifications have focused on including in Technical Specifications primarily requirements and information which the operators need to ensure that the plant is operated safely. In the September 20, 1994 *Federal Register*, in which

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the NRC published a proposed rule to establish the criteria for defining the scope of Technical Specifications, the NRC noted that, "since 1969, there has been a trend toward including in technical specifications...essentially all other Commission requirements governing the operation of nuclear power reactors." Further, the NRC noted that the increase in volume of technical specifications "has diverted both the NRC staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety." Clearly, the reference to an implementation document for a leakrate testing program is not something the operator needs to enable him to operate the reactor safely on a day-to-day basis, and should not appear in technical specifications.

In addition, the requirement that the implementation program be included by reference in technical specifications may require an unnecessarily burdensome process to make minor changes. As operating experience with the new performance-based testing program is obtained, additional refinements and/or revisions may be made to the industry guideline written by NEI, or to the Regulatory Guide. Such a change would necessitate each licensee to submit a license amendment for NRC review and approval. It would be more appropriate to include the implementation document by reference in, for example, the FSAR or other document that may be changed by the licensee via the 50.59 process. Thus, the NRC would still have the opportunity to review the change, albeit after the fact.

Visual Examination of Containment

The primary concern relative to the requirement to perform a visual examination of the containment every three years, independent of a Type A test, is the potential for redundant, or at least overlapping, requirements. Visual examination of containment is addressed in the NRC's ongoing rulemaking effort regarding the incorporation of ASME Section XI, IWE and IWL into 10 CFR Part 50. This rulemaking is considered to be the more appropriate location for containment inspection requirements, and it serves no additional purpose to include them in Appendix J also.

Mandatory Compliance with Option B

The NRC has established, in 10 CFR 50.109, criteria to determine when a requirement is justified to be imposed upon licensee. These criteria are predicated upon the requirement having a significant safety benefit which justifies the cost of implementation. Clearly, the replacement of a program of testing which has served the industry since 1973 can not be considered to have a significant safety benefit which justifies its unilateral imposition. It would be inappropriate in the cases where a licensee may be considering near-term closure of the nuclear plant to require that the licensee incur additional costs associated with implementing such a new program. Since imposition of the proposed rule cannot be justified relative to any safety benefit, the NRC proposes to simply waive the requirements of 10 CFR 50.109. Then, too, waiving the Commission's own requirements when they become inconvenient would set a dangerous precedent. The Commission is obligated to

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either abide by its own regulations, or institute formal rulemaking procedures to change them. In any case, the discussion over whether Option B should be made mandatory for all licensees should not be allowed to impede the rulemaking process.

Summary

Duke Power encourages the NRC to complete its rulemaking to implement performance-based leakage testing program as expeditiously as possible. The above comments are intended to identify items which will benefit both the NRC and the licensees in terms of minimizing unnecessary expenditures of resources in future license amendment reviews, redundant inspection requirements, and backfit analyses.

Very truly yours



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