



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

February 4, 2016

Mr. David Lochbaum, Director
Nuclear Safety Project
Union of Concerned Scientists
PO Box 15316
Chattanooga, TN 37415

Dear Mr. Lochbaum:

In your letter of December 21, 2015, you requested that the Nuclear Regulatory Commission (NRC) staff “develop and make publicly available ... guidance and expectations on when an emergency amendment request can be approved.” In support of this request, you discussed the recently issued emergency amendment for the South Texas Project (STP), which allows operation for one cycle following the removal of one inoperable control rod.¹

Your letter states that the explanation for the emergency nature of the STP amendment was poorly justified.² With respect to the STP emergency amendment, you state that the STP Nuclear Operating Company (STPNOC or licensee) should have identified that control rod D-6 was likely to fail and should have developed the tools and procedures necessary to make repairs during the previous refueling outages. In your analysis, STPNOC should have anticipated that control rod D-6 was likely to fail as a result of the issues identified with the rapid refueling holdout ring and, thus, created the emergency.

While STPNOC identified the issues with the rapid refueling holdout ring during the previous two refueling outages, surveillance and testing on control rod D-6 showed that normal operation of the rods was unaffected. The rapid refueling holdout ring is not used during normal operations and not required to perform refueling operations. Its only purpose is to give the licensee additional flexibility to remove and replace the vessel head and control rods as a single component during a refueling outage. Following damage to the holdout ring, STPNOC did not use the rapid refueling capability and instead removed the reactor vessel head, upper internals, and each control rod individually.

Consistent with the NRC’s focus on plant safety, the NRC Resident Inspectors closely followed the licensee’s corrective actions and testing associated with STP Unit 1’s control rods, and agreed that the licensee acted appropriately to identify and monitor the issue with control rod D-6. The NRC staff determined that STPNOC’s statement that the situation could not have been “avoided or predicted” was reasonable since: (1) STPNOC was able to perform normal refueling operations; (2) the only observable damage was to a non-critical component (the rapid refueling holdout ring); (3) the rod remained capable of performing its safety function (to insert into the core); and (4) all other indications of rod performance were acceptable.

¹ By letter dated December 11, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15343A128), the NRC staff issued Amendment No. 208 to STP, Unit 1 under the emergency criteria of Title 10 of the *Code of Federal Regulations*, Subsection 50.91(a)(5).

² The December 21, 2015, letter explains that your review of other previously granted emergency amendments also found them to be poorly justified.

I appreciate your desire to ensure that the NRC staff minimize the number of amendments issued without previous public notice and hearing rights, and share this perspective, I assure you that the NRC staff carefully considered the emergency circumstances of this request, including evaluating whether the amendment could be processed under exigent circumstances with a limited period of public notice.³ This amendment was discussed extensively at various levels of management in the Office of Nuclear Reactor Regulation, Region IV, and other NRC offices to ensure that correct action was taken. While I appreciate your perspective on the justification for processing the amendment under emergency circumstances, the NRC staff appropriately applied the emergency criteria of Title 10 of the *Code of Federal Regulations* (10 CFR 50.91(a)(5)) in issuing this amendment. Historically, the NRC typically approves a small number of amendments under emergency circumstances out of the 700-800 amendments reviewed each year.

Concerning your request to provide additional guidance on expectations for issuance of emergency amendments, the regulation itself provides clear direction to the staff on what constitutes an emergency situation. In 10 CFR 50.91(a)(5), the regulation requires licensees to “explain why this emergency situation occurred and why it could not avoid this situation...” Additionally, the regulation states that the Commission is expected to decline to issue amendments under emergency circumstances if it determines that the licensee has “abused the emergency provision by failing to make timely application for the amendment...” As indicated above, we considered this criteria in our decision to process the amendment under the emergency criteria and determined that STPNOC did apply for a timely amendment, once the issue was identified, and could not have avoided the situation.

For the reasons discussed above, adequate guidance and resources exist for the NRC staff to make an informed decision concerning emergency amendments. The definition of “emergency situations” in the 10 CFR 50.91(a)(5) was, in fact, broadened by the Commission in response to comments on the 1986 rulemaking (*Federal Register* 51 (FR 7744)). This portion of the rule was expanded to include situations involving immediate action to allow plants to start up or increase power. Further, the Commission also responded to comments in the statements of consideration that the provisions in 10 CFR 50.91(a)(5) are “clear enough” and that the Commission is expected to “independently assess the licensee’s reasons for failure to file an application sufficiently in advance...” The Commission noted that this language was “extracted verbatim from Conference Report [No. 97-884].”⁴ Consistent with the statute and the Congressional record, the rule provides an appropriate level of flexibility in evaluating any license amendment and its unique set of facts that may require an amendment to be issued without prior public notice.

³ By letter dated August 8, 2014 (Accession No. ML14199A107), the NRC staff issued an amendment under exigent circumstances for Turkey Point Nuclear Plant, Units 3 and 4, even though Florida Power & Light had requested that the amendment be issued under emergency circumstances.

⁴ Conference Report No. 97-884, from the 97th Congress, Second Session (1982).

D. Lochbaum

- 3 -

Thank you for contacting the NRC to discuss your concern, and while you disagree with the legal justification for issuing the emergency amendment for STP, I appreciate your conclusions that the NRC staff made a strong and compelling technical justification in its safety assessment for this license amendment. Please note that a hearing may be requested on this amendment through March 7, 2016 (81 FR 272).

Sincerely,

A handwritten signature in black ink, appearing to read "Anne T. Boland", with a long horizontal flourish extending to the right.

Anne T. Boland, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Thank you for contacting the NRC to discuss your concern, and, while you disagree with the legal justification for issuing the emergency amendment for STP, I appreciate your conclusions that the NRC staff made a strong and compelling technical justification in its safety assessment for this license amendment. Please note that a hearing may be requested on this amendment through March 7, 2016 (81 FR 272).

Sincerely,

/RA/

Anne T. Boland, Director
 Division of Operating Reactor Licensing
 Office of Nuclear Reactor Regulation

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*concurrence by email

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DATE	1/19/16	1/21/16	1/28/16	2/04/16

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