NEI

NUCLEAR ENERGY INSTITUTE

DSI-24

(14)

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SENIOR VICE PRESIDENT,
REGULATORY POLICY & REFORM

November 27, 1996

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Chief, Docketing and Service Branch

SUBJECT: NRC Strategic Assessment and Rebaselining
(61 *Federal Register* 195; October 7, 1996)
Request for Comments

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),[1] on behalf of the nuclear energy industry, has reviewed the Direction Setting Issue (DSI) papers which form a part of the NRC Strategic Assessment and Rebaselining Initiative. The purpose of these papers is to discuss key issues affecting the future strategic direction of NRC and provide options for selection by the Commission. The NRC has requested comments from all "stakeholders" to be considered as part of the Commission's decision making process. Our comments on each DSI paper are organized in the following format:

1. What, if any important considerations have been omitted?

2. How accurate are the NRC's assumptions and projections for internal and external factors?

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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Acknowledged by card 12/23/96 DMS

3. Do the Commission's preliminary views respond to the current environment and challenge?

4. NEI Recommendations

The NRC is to be commended for undertaking this effort. It is important to periodically review the overall direction of the agency, particularly given the dynamic circumstances in the nuclear industry today. The DSIs identified through the early phases of this assessment are reasonably complete, highlighting the areas in which strategic decisions are needed. Many of our comments highlight areas where the staff analysis of the issues does not include viewpoints significantly different from the status quo.

We are concerned that insufficient review time will reduce the effectiveness of the stakeholder comment process. The stakeholders had a very limited time to solicit and compile comments from their constituencies. We recognize that the public comment period was extended, but the two week extension was announced too late in the process to affect the collection of comments from NEI's members. It is likely that other "stakeholders" representing large constituencies, including licensees with multiple internal organizational groups, were similarly constrained.

Of greater significance is the amount of time the NRC has indicated will be used to assess the comments. NRC staff indicated during the workshops that "Stakeholder Interaction Reports," compiling the comments, would be forwarded to the Commission for consideration within three weeks after the comment deadline. This schedule would make it very difficult for NRC management to consider the variety and volume of public comments that are likely to be received. It could restrict the ability to revise the thinking that went into the initial papers, to define and flesh out new options which may be suggested by the comments, or to provide analysis of such new options for the Commission's consideration. We encourage NRC to take the time necessary to derive full benefit from this important endeavor.

A significant omission from this strategic assessment is the current enforcement policy. That policy has a pervasive effect on the relationship between the NRC and its licensees and on the message the public perceives regarding the safety significance of problems. Other federal agencies with safety mandates, and many foreign nuclear regulatory authorities, have different approaches to enforcement. Some of these are structured differently specifically to encourage compliance, rather than punish non-compliance. NEI strongly encourages the NRC to subject the enforcement policy to the same type of review, examining options different from the

agency's historical practice, as has been applied to other programs in many of the DSIs.

In many of the DSI papers, past actions of the agency are summarized, but often not critically evaluated. Instead, it appears to be accepted that past regulatory actions were necessary and remain appropriate as continuing regulatory requirements. In fact, many of these actions were in response to specific events and issues, may not have been the most effective means of dealing with the issue, and are inappropriate as continuing burdensome requirements since the causes of the events have been dealt with. A more thorough assessment of previous NRC actions could produce lessons on how the agency could have been, and could be, more effective in addressing issues. Today, the regulatory problems at the Millstone station are the issue of the moment. References to these problems permeate the DSI papers. The papers could well have had a different tone had they been prepared a year earlier. While it is necessary to deal with compliance problems when they are found, it seems inappropriate for individual situations such as Millstone to color so completely the strategic picture for a regulatory agency.

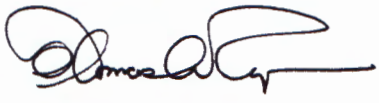
There is agreement between the NRC and industry that safety performance has improved over the last several years. Performance indicators monitored by NRC and industry both demonstrate such improvement. Nevertheless, the total burden imposed by regulatory requirements continues to increase. There is danger that this increasing burden will make it economically infeasible for some nuclear power plants to continue operation, thus depriving the nation of a reliable, clean source of electric power. Such an outcome is not in the public interest if safety is not in question. An improved focus is needed in the nuclear regulatory process on safety significance. We note that Chairman Jackson has often expressed her support for the concept of risk-informed, performance-based regulation. We agree that this is an excellent mechanism for providing the needed focus. It would allow issues to be addressed in their appropriate context, considering both their individual significance and the overall level of safety performance in the industry. It would lead to more efficient means to address those issues that require action. It would appropriately allow for individual variation in the response to an issue, as it is seldom the case that a single specific action is the appropriate, effective response for all members of a class of NRC licensees. The regulatory process needs to recognize this, and allow problems to be addressed in the manner which will be most effective given the circumstances of individual licensees. We encourage the NRC to utilize fully this strategic planning process to further the transition to this more effective and efficient regulatory regime.

Several of the DSIs would benefit from a practical definition of an adequate level of protection of public health and safety. It is difficult to discuss how to (1) improve public communication, (2) improve the efficiency and effectiveness of the regulator, and (3) properly focus a regulatory oversight program without defining the baseline against which effectiveness can be measured. Without a more objective definition of adequate safety levels, one cannot determine when programs are successful or address a perception that more needs to be done. The NRC needs to develop means for applying the safety goals in a practical manner in order to provide a benchmark that is useful for determining when and how much additional action is required to assure safety.

Significant management attention will be required to implement any changes that result from this strategic planning process. The experience with risk-informed performance-based regulation is instructive in that regard. The Commissioners and senior staff management repeatedly have made comments supportive of such approaches to regulation. There appears to be an understanding, at the policy level, that it is appropriate to deal with issues in their particular safety context. This policy has not been effectively transferred to the working level of the staff. Inspectors and reviewers, whose actions impact NRC licensees on a daily basis, remain focused on detailed, prescriptive approaches. They continue to be concerned with how the "requirements" of NRC guidance documents are met, regardless of the safety objective and inherent flexibility of guidance. It will be very important for the Commission and staff management to devote considerable effort to translating any policy changes resulting from this rebaselining to changes in practice at the working level, so that they may indeed improve the effectiveness of the regulatory process.

We appreciate the opportunity to comment on these issues. We are willing to meet with the Commission or staff to discuss our comments or the related broader issues. Please contact me at (202) 739-8013 if there are any questions regarding our comments.

Sincerely,



Thomas D. Ryan

TDR/RWH/ec
Enclosure

c: Hon. Shirley Ann Jackson, Chairman
Hon. Kenneth C. Rogers, Commissioner
Hon. Greta J. Dicus, Commissioner
Hon. Nils J. Diaz, Commissioner
Hon. Edward McGaffigan, Jr., Commissioner
Mr. James M. Taylor, EDO

Nuclear Energy Institute Comments

on

Direction Setting Issue Papers

from

NRC Strategic Assessment and Rebaselining Initiative

November 27, 1996

DSI 24 – DECOMMISSIONING - POWER REACTORS

1. What, if any, important considerations have been omitted?

   - There have been many changes in the decommissioning arena in the last few years and the NRC has considered most of the important issues. There are, however, two issues the NRC has failed to recognize: 1) the economic problem associated with the outdated generic funding formula, found in 10 CFR 50.75(c), that requires utilities to fund to unrealistic levels to ensure compliance, and 2) a new proposed rulemaking which would allow licensees to fund to a site-specific plan, which was announced by the NRC in early 1996.

   - An activity that the NRC should undertake that is not addressed in the paper is clarifying the rules for storage of greater than Class C (GTCC) waste. Currently plants need a Part 72 license to store spent fuel in an ISFSI. However, if they have GTCC waste, they must also get a Part 40 license to store the GTCC. NRC should act expeditiously to respond to Portland General Electric's rulemaking petition which expands the definition in Part 72 to include GTCC waste.

   - There needs to be a balancing of risk between reaching a site release radiation limit and trucking soil offsite only to be deposited elsewhere in order to meet the limit at the site.

   - Stability and consistency in clean up criteria are important to assuring collection of adequate funds for decommissioning. NRC needs to assure that any activity by other entities, including Agreement States, does not introduce inconsistencies into these criteria.

2. How accurate are the NRC's assumptions and projections for internal and external factors?

   - The issue paper addresses the most significant external factors (i.e., high-level waste (HLW), low-level waste (LLW), and industry restructuring) that are affecting the cost of decommissioning. The NRC should expand on the consequences of these external factors since these factors have a significant impact on the cost of decommissioning.

   - The statement that "three to five power reactors will cease operations in the next 5 years [but] resources for this increased workload should be offset by the decrease in the operating reactor workload" may not be realistic considering the expanded NRC oversight activities for financial assurance and inspection/ enforcement which are currently being addressed by rulemaking. Furthermore, decommissioning has become a high profile issue

which has been further complicated by the complexity of related issues, i.e., HLW, LLW and industry restructuring. Sufficient NRC resources should be reassigned to handle the increased workload.

- Several of the issues related to plant decommissioning are intertwined and their resolution through rulemaking should proceed concurrently rather than in series. As an example, the generic rulemaking on "Decommissioning of Nuclear Power Reactors," allows the licensees to spend 23 percent of the generic amount allowed for decommissioning (as specified in 10 CFR 50.75), 90 days after submittal of a Post Shutdown Decommissioning Activities Report (PSDAR). This rulemaking should have been conducted concurrently with the NRC's review of generic funding amounts. Both these issues were reviewed in the now-withdrawn SECY 96-095 "Proposed Rule on Nuclear Power Reactor Decommissioning Costs." These two rulemakings, in turn, affect a third rulemaking on the "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors." These three rulemakings hinge on some of the same policy issues. It is important that NRC accelerate the concurrent review and resolution of all pending decommissioning issues.

- NRC should strive to better and more coherently balance it's intention to reduce regulatory burden on shutdown reactors, against it's proposed guidance on "Operators and Plant Staffing for Decommissioning Reactors." This proposed guidance as well as the proposed rule on "Physical Protection for Permanently Shutdown Reactors" may tend to increase costs and resources related to decommissioning plants, in conflict with NRC's intention for reducing regulatory burden on shutdown reactors.

- The Commission has established, through rulemaking, an infrastructure for the Commission's decommissioning policy and regulations that assure successful decommissioning of all licensed facilities in a safe and timely manner. The decommissioning issues are changing rapidly and the time restraints of the rulemaking process utilized by the NRC can fall behind the industry's changing economic environment.

- An important external factor not considered is how state Public Utility Commissions handle decommissioning costs in the transition to competition. The treatment of these costs could have a dramatic effect on the timing of a decision to cease operations permanently.

3. Do the Commission's preliminary views respond to the current environment and challenge?

   The Commission's views in support of continuing the current direction and approach fail to respond to the current environment, since, as noted, multiple protracted rulemakings are unlikely to be able to accommodate the dynamic

nature of this issue. The Commission's views also suggest "new and innovative regulatory approaches". Comments on these approaches are:

- Transfer Nuclear Power Plants to Agreement States - This option could significantly set back the industry's progress in decommissioning to date. Each state would need to create new criteria. In the case of "Agreement States," a whole new infrastructure would need to be established in each state. Currently, federal oversight is maintaining consistent decommissioning approaches across the country.

- Resident Inspector - The premise of the new decommissioning rule was that decommissioning is a low technology enterprise and the risk to the health and safety of the public is reduced compared to reactor operation. A decommissioning resident inspector flies in the face of this premise. Experience to date has demonstrated that appropriate oversight has been provided by regional inspectors. In fact, reduced attention is probably warranted due to the low risk of the activities involved in decommissioning. Resident inspectors would be an unnecessary added cost that is currently not budgeted in decommissioning cost estimates. In a climate of decreasing resources, this is an area in which human resources can be made available for application elsewhere.

- Enhanced Performance-Oriented Approach - This option would be in the best interests of both the NRC and licensees.

4. NEI Recommendations

- Three major rulemaking activities are currently under way and are projected to be completed over the next two years. At that point, decommissioning would be "firmly established in the rules." The proposed NRC approach appears to be "business as usual" by relying on multiple rulemaking initiatives, three main rules and five supporting rules, followed by reg. guides, standard review plans, standard tech specs, inspections manuals and implementation plans. The paper endorses Option 1. Industry strongly encourages NRC to be more innovative and proactive to avoid the long term cost, and prohibitive process of rulemaking. The industry recommends an initiative to explore one integrated rulemaking with a scope that is commensurate with the reduced risk from decommissioning relative to power operation. NRC should package all of the rules together. The NRC should be moving aggressively (Option 2) to complete all of the implementing documents issued for the industry to use (including the cleanup criteria).

- From a financial viewpoint the industry also supports Option 2, "Pursue Current Direction and Approaches More Aggressively." Uncertainty needs to be minimized for the industry to succeed in the future. There should be

reasonable assurance that the license will have adequate funds available for decommissioning. The outdated generic funding formula should be revised; and a new proposed rule that would allow licensees to fund to a site specific cost estimate should be pursued immediately.

- The NRC should carefully consider the effect of any rule it might propose. Unnecessary prescriptive measures which may be based on misconceptions regarding the rate or extent of deregulation could increase costs for some licensees and affect decisions regarding continued operation. They could thus be counter-productive to the NRC goal of ensuring that adequate decommissioning funds are available when needed. For this reason, the NRC should monitor the process of deregulation closely and impose additional financial assurance requirements only as market conditions settle out and justify them. Issues which may involve large uncertainties should not be aggressively approached until all sides of the issue have been addressed, especially as they relate to industry restructuring or deregulation to promote competition.

- NRC should increase its dialog with FERC regarding the proposed stranded cost recovery mechanisms included in FERC Orders 888 and 889. These cost recovery issues affect NRC reviews of the rulemaking on "Financial Assurance Requirements for Decommissioning Nuclear Power Plants."

- NRC should apply the same performance based regulatory approaches that are applied to the Maintenance Rule. In that spirit, NRC should permit the licensee to establish decommissioning performance goals to carry out the decommissioning objectives. NRC's role would be to verify compliance with obligations established on a performance basis. This new approach to decommissioning may result in a "win-win" paradigm for both the NRC and the licensee.

- It is recommended that NRC pursue this activity at the "Option 2 level - Pursue Current Direction and Approaches More Aggressively," rather than at NRC's preferred course, "Option 1 - Continue Current Direction and Approaches." It is recognized that accelerated treatment of decommissioning issues may require additional NRC resources. It is suggested that resources be made available from the curtailment of other NRC activities, and be replaced with prompt action on decommissioning issues.

- Future substantive reactor rulemakings (e.g., shutdown rule, steam generator rule) should consider explicitly their applicability to and effect on facilities in the decommissioning process.