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AUTH.NAME AUTHOR AFFILIATION
 KUNDALKAR, R.S. Florida Power & Light Co.
 RECIP.NAME RECIPIENT AFFILIATION
 MEYER, D.L. Rules & Directives Review Branch (Post 920323)

SUBJECT: Comment opposing proposed generic communication, lab testing
 of nuclear-grade activated charcoal (M97978).

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US NRC

62FR 9581
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(16)

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L-98-87

Mr. David L. Meyer, Chief
Rules Review and Directives Branch
Division of Administrative Services
U.S. Nuclear Regulatory Commission
Mail Stop T6-D69
Washington, DC 20555-0001

**SUBJECT: PROPOSED GENERIC COMMUNICATION; LABORATORY TESTING OF
NUCLEAR-GRADE ACTIVATED CHARCOAL (M97978)
NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT**

Dear Mr. Meyer:

Florida Power & Light Company (FPL), the licensee for the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments on the proposed generic communication referenced above. FPL also endorses the comments of the Nuclear Energy Institute on the proposed generic communication. As explained below, FPL has significant concerns with the proposed generic communication, and requests that the generic communication be withdrawn or modified as suggested below.

On February 25, 1998, the Nuclear Regulatory Commission (NRC) published for public comment, "Proposed Generic Communication; Laboratory Testing of Nuclear-Grade Activated Charcoal (M97978)." The proposed generic letter concerns laboratory testing of nuclear grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature (ESF) ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine.

Comments on Technical Approach

The approach provided in the proposed generic letter is a very conservative "one size fits all" approach without a thorough evaluation of the plant-specific design basis. Performance of this testing, while conservative, may exceed, or not be representative of, the design basis for various filter applications. The draft generic letter would require filter testing at 30 degrees centigrade according to the ASTM D3803-1989 protocol. These conditions would be viewed as generally representative of conditions for filters located outside of containment. Based on expected accident conditions, filter units located inside containment would be expected to operate at temperatures on the order of 130 degrees centigrade when required to be in-service. Accordingly, ASTM D3803-1989, when performed at 30 degrees centigrade, is not representative of design operating conditions inside containment. The proposed test would be over-conservative compared to a test at higher temperatures representative of inside containment conditions. Based on the foregoing, the scope of a final generic letter should therefore be restricted to outside containment applications only.

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an FPL Group company

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FPL observes that some utilities currently have Technical Specification acceptance criteria of 99 to 99.9 percent filter efficiency when they have taken credit for 95 to 99 percent filter efficiency in the accident analysis. The reason for these margins (safety factors of 5 to 7 are required by industry guidance) is to allow for the potential non-conservative nature of the state of the art testing technique at that time. In other words, the acceptance criteria was established to provide sufficient margin to account for error in the test technique. A more sound method for determining compliance with plant accident analyses is to apply the new test method to the filter banks as described in the draft generic letter and demonstrate compliance with the assumptions of the plant accident analyses, assuming a safety factor of 2. Without using such a method, licensees may be required to replace significant amounts of charcoal without a commensurate improvement in safety.

Schedular Concerns

The actions proposed by NRC could not be met within the proposed schedule. If adopted as proposed, the generic letter would require filter testing by essentially all licensees within 60 days of issuance of the generic letter. As stated in the generic letter, only two commercial laboratories, NUCON, and NCS Corporation, are available to perform such testing. Further, if problems were encountered, the need to replace charcoal could overburden charcoal suppliers with multiple requests for charcoal. FPL also points out that for filter applications that are normally inaccessible during plant operation may require a unit shutdown in order to perform the testing. If the generic letter is issued as proposed, NRC should consider increasing the time frame for the actions required by the proposed generic letter or permit testing at the next scheduled performance of the required surveillance.

Further, the development of an alternative test protocol within 60 days as proposed by the generic letter would be virtually impossible. The time required to collect and evaluate the information necessary to address the 13 points required by the NRC to determine the acceptability of an alternate protocol would be much greater than the 60 days proposed in the generic letter.

Proposed Use of "Compliance Exception" to Backfit Rule

In the proposed generic communication, the NRC staff has concluded that ASTM D3803-1989 is the most accurate and realistic protocol for testing charcoal in ESF ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. While this initiative addresses an area where improvement may be necessary, the generic communications process may not be the most appropriate means for compelling licensee actions.

The proposed generic letter would require licensees to justify current charcoal testing practices or commit to new testing requirements in a very short time frame. If current testing practices are not deemed adequate, NRC would impose, by generic letter, a new regulatory position that would result in a significant economic burden on licensees. As proposed, such requirements would be imposed without a backfit analysis pursuant to 10 CFR 50.109.

FPL questions the use of the "compliance" exception to the backfit rule in this case. In promulgating the backfitting rule, NRC stated that "[t]he compliance exception is intended to address situations in which the licensee has failed to meet known and established standards of the Commission because of omission or mistake of fact. It should be noted that new or modified interpretations of what constitutes compliance would not fall within the exception and would require a backfit analysis and application of the standard." 50 Fed. Reg. 38,079, 38,103 (1985). In this case, NRC has proposed new testing to determine compliance with NRC requirements. The proposed approach appears to represent new NRC interpretations of "what constitutes compliance." Further, preparation of a backfit analysis to assess the benefits of this new position against the costs of implementation is particularly appropriate in this case based on the Staff's belief that there is no immediate threat to public health and safety ("most charcoal in use is not degraded to an extent that would

Mr. David L. Meyer
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adversely affect control room habitability or public health and safety").

Moreover, the use of a generic communication to effectively impose new requirements on NRC licensees is inappropriate. The proposed generic letter would impose new charcoal testing requirements on licensees, and could mandate changes to current plant Technical Specifications which have been approved by NRC. Such proposed changes appear to meet the definition of a "rule" as set forth in the Administrative Procedure Act (APA): "...an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . ." 5 USC 551(4). For rulemakings, the APA requires NRC to follow the notice and comment procedures described in 10 CFR Part 2, Subpart H. See also Public Citizen v. NRC, 901 F.2d 147 (D.C. Cir.), cert. denied, 498 U.S. 992 (1990). FPL suggests that the subject matter of the proposed generic letter may be better suited for rulemaking.

FPL appreciates the opportunity to comment on the proposed generic communication.

Very truly yours,



Rajiv S. Kundalkar
Vice President
Nuclear Engineering

