

## **Separate Views of Commissioner Baran**

This rule was meant to be the capstone of the agency's response to the Fukushima Dai-ichi accident in Japan. The draft final rule presented to the Commission by the NRC staff in December 2016 was the culmination of years of work to establish new requirements for the mitigation of beyond-design-basis events at nuclear power plants. The draft final rule would have responded to Near-Term Task Force (NTTF) recommendations 2 and 4 by requiring licensee strategies to mitigate beyond-design-basis events to address each plant's re-evaluated seismic and flooding hazards. The rule also would have responded to NTTF recommendations 8 and 9 by requiring an integrated emergency response capability and "sufficient staffing, command and control, training, drills, communications capability, and documentation of changes to support the integrated response capability." To address NTTF recommendations 10 and 11, the rule would have set requirements for enhanced onsite emergency response capabilities.

I strongly support requiring these updated standards and critical safety improvements, which are necessary to provide adequate protection of public health and safety. But the majority of the Commission has decided to gut this key post-Fukushima safety rule.

In the aftermath of Fukushima, licensees and the NRC staff spent years using the latest science and modern methods to determine the present-day flooding and earthquake hazards for the nation's nuclear power plants. Now, the majority of the Commission has decided that licensees can ignore these reevaluated hazards with their strategies to mitigate beyond-design-basis events. Instead of requiring nuclear power plants to be prepared for the actual flooding and earthquake hazards that could occur at their sites, NRC will allow them to be prepared only for the old, outdated hazards typically calculated decades ago when the science of seismology and hydrology was far less advanced than it is today. This decision is nonsensical.

The requirement for licensees to develop and maintain mitigating strategies for beyond-design-basis events based on the modern, reevaluated hazards was at the core of this rulemaking, and the majority of the Commission has voted to jettison it. Under the final rule written by the majority, the FLEX equipment at nuclear power plants is not required to be reasonably protected from the up-to-date flooding and earthquake hazards. Other vital safety protections were completely excised from the rule. Licensees will not be required to have sufficient staffing or communications capabilities to implement the mitigating strategies. And there will be no requirement for drills and exercises to test licensees' ability to respond to these kinds of extreme events. Instead of establishing these commonsense and non-controversial safety standards, the majority of the Commission has opted to require only what was already required in the Commission's March 2012 mitigating strategies Order. That order was supposed to be a first step towards improved safety, not the last. But the majority's version of this rule does nothing to enhance the safety of nuclear power plants.

This outcome is a complete U-turn for NRC. In the 2012 order, the Commission made it clear that mitigating strategies for beyond-design-basis events were necessary to ensure adequate protection of public health and safety. The Commission did not require the mitigating strategies to account for the reevaluated hazards at that time because the seismic and flooding analyses had not yet been performed. But the NRC staff clearly understood that the mitigating strategies would ultimately need to address the reevaluated hazards. In 2014, the staff recommended that "licensees' mitigating strategies address the reevaluated flooding hazards as

part of the [mitigating beyond-design-basis-events] rulemaking.”<sup>1</sup> The Commission unanimously approved that recommendation.<sup>2</sup> As a result, the proposed rule was written to “resolve and clarify the necessary actions a licensee must take to continue to show adequate protection of public health and safety, in light of the reevaluated hazards.”<sup>3</sup> This central aspect of the proposed rule was likewise unanimously approved by the Commission. In the comments submitted on the proposed rule, no stakeholder disagreed that these requirements should be included in the rule or disputed that they were necessary for adequate protection of public health and safety. Thus, the majority of the Commission has now voted for a final rule that bears no resemblance to the proposed rule or any of the public comments submitted to the agency in response to the proposed rule. Despite the fact that the Commission had repeatedly and unanimously found that updated safety standards were necessary to adequately protect the public, those safety standards have now been abruptly dropped from the final rule at the last minute, without any warning or notice to stakeholders.

The guidance that has been developed by the NRC staff and industry was intended to facilitate compliance with the requirements included in the draft final rule. Licensees have been preparing for years to implement mitigating strategies that account for the reevaluated flooding and earthquake hazards at nuclear power plant sites. This guidance is not a substitute for a regulation. It is not a legally binding requirement.

This rule was always intended to be the agency’s response to several key Near-Term Task Force recommendations. Instead of following through on these planned safety improvements, critical aspects of those recommendations to enhance mitigation and strengthen emergency preparedness are simply left unaddressed. As a result, the rule fails to confront a fundamental lesson of the Fukushima accident – that nuclear power plants must be fully prepared for the natural hazards that could threaten their safe operation. The majority of the Commission has chosen to leave this important safety work for a future Commission. The unfortunate reality is that this hollow shell of a rule does nothing beyond what the Commission already did more than six years ago. Nuclear power plants will be no safer with this rule than they are today.

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<sup>1</sup> COMSECY-14-0037 at 6-7. There was no ambiguity on this point. The staff paper also stated: “The NRC staff is asking the Commission to support the planned approach by affirming that the MBDBE rulemaking needs to require mitigating strategies that are able to address the reevaluated flooding hazards developed in response to the § 50.54(f) letters in order to ensure reasonable assurance of adequate protection of the public health and safety.” *Id.* at 7. The paper further stated: “The results of the reevaluation of the flooding hazard are important to define the necessary attributes of the mitigating strategies equipment and actions to adequately protect against external events. The NRC staff plans to include this requirement in the pending MBDBE rulemaking. As such, the strategies required by the MBDBE rulemaking cannot be completed without information about the site-specific reevaluated flooding hazards.” *Id.* at 6.

<sup>2</sup> Staff Requirements Memorandum for COMSECY-14-0037.

<sup>3</sup> SECY-15-0065 at 7. See also Proposed Rule Draft *Federal Register* Notice at 22, 69, 71, 102, 118-119, 124-125.