

PDR

TEXAS UTILITIES GENERATING COMPANY

2001 BRYAN TOWER • DALLAS, TEXAS 75201

March 18, 1983

PERRY G. BRITTAIN
CHAIRMAN OF THE BOARD
AND CHIEF EXECUTIVE

Mr. James R. Tourtellotte, Chairman
Nuclear Regulatory Reform Task Force
c/o U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Tourtellotte:

Thank you for the copies of your papers on Regulatory Reform enclosed with your letter of December 21, 1982. I appreciate the opportunity to review the papers and to comment on the subject of Regulatory Reform and on the enforcement policy and practices of the Nuclear Regulatory Commission.

With respect to Regulatory Reform, particularly as it applies to the subject of backfitting, the need for "enlightened cost consciousness" is well recognized within the utility industry. I certainly concur that an effective backfit rule is an important issue and should be given a high priority for consideration by the Regulatory Reform Task Force. It is indeed time for "common sense" to prevail and efforts made to correct inadequacies in current regulatory practices. We feel our concern for reform in this area has been demonstrated by our participation in the Nuclear Utility Backfitting and Reform Group (NUBARG). It is my understanding that they have furnished you NUBARG views on a more reasonable backfitting rule. Further, our NUBARG representative informs me that they stand ready to provide additional input into this matter if you wish.

We, at Texas Utilities Generating Company, are justifiably proud that our experience to date with the various divisions of the NRC has been good. However, as we approach the initial operation of Comanche Peak Steam Electric Station, we have become increasingly concerned over several developments in the area of enforcement policy as applied to operating reactors. Our concerns extend both to the current structure of the enforcement policy and to the staff's implementation of this policy.

We do not agree with the provisions of the current enforcement policy that allow monetary penalties to be assessed for severity level IV or V violations at power reactor installations. A civil penalty should be reserved for severity levels I, II, and III violations that clearly represent a threat to the health and safety of the public. It would occupy the middle ground between lesser violations and those that could justifiably result in a license revocation. If the licensee's historical performance or the circumstances surrounding a level IV or V violation are so onerous as to cause the staff to consider a monetary penalty, then a sound argument should exist for upgrading the violation to level III.

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The existing enforcement policy has allowed the staff to routinely and, at times, arbitrarily assess civil penalties. The sheer number of civil penalties issued during the past two years has contributed to a public perception that, despite the efforts of the NRC and industry, power reactors are no safer today than they were five or ten years ago. No one can credibly dispute that as a result of recent improvements in reactor construction and operation, the overall level of safety associated with the construction and operation of power reactors has in fact exceeded that of past years. However, the marked increase in both the number and size of civil penalties issued during this period has often been erroneously cited by critics of the NRC and the industry to "demonstrate" the inadequacy of existing regulations and licensees' ability to meet them. In addition, we are concerned that this increase in the number of civil penalties assessed must eventually foster a tendency within the industry to view them as inevitable. Thus, the routine issuance of civil penalties dilutes any real effectiveness they may have as a deterrent to future violations and directly contradicts the initial premise cited by the Commission in defense of this portion of the revised enforcement policy.

Perhaps the most significant concern that we have with the present enforcement policy relates to the area of assessing civil penalties for licensee identified violations that are corrected and subsequently reported to the NRC. This practice, despite the mitigation allowed by the current enforcement policy, serves no constructive purpose. In fact, it exacts a penalty on a licensee even though his program has functioned as intended. In our opinion, the licensee should be encouraged to conduct diligent reviews rather than be discouraged by the enforcement policy. The policy should be modified to preclude the assessment of a civil penalty for violations identified and suitably corrected by the licensee.

We believe that the concept of assessing fines and civil penalties for violations of NRC regulations is of questionable merit. While there are situations where a civil penalty may be appropriate, I would point out that most, if not all, violations have nothing to do with willful, deliberate or criminal misconduct. Both the NRC and the Nuclear Industry are made up of many professionals striving to ensure that nuclear power will continue to be a safe, reliable means for generating bulk power. The assessment of civil penalties has no place in this effort.

Again, thank you for providing me the opportunity to review and comment on your position concerning Regulatory Reform and to share with you my concerns on the issue of enforcement. As Chairman of the Nuclear Regulatory Reform Task Force, you have a most challenging task laid out for you. I wish you and the Task Force great success in meeting that challenge.

Sincerely,



Perry G. Brittain