



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

OCT 31 1984

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MEMORANDUM FOR: G. Wayne Kerr, Director
Office of State Programs

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

SUBJECT: INCENTIVE REGULATION OF NUCLEAR GENERATING
FACILITIES BY STATE PUBLIC UTILITY COMMISSIONS

Your memorandum of October 9, 1984 expressed concerns over the imposition of incentive plans by Public Utility Commissions (PUC) on licensees of nuclear power plants. It is still the licensee's responsibility to comply with the Commission's Rules, Regulations, Orders and all Conditions of its License with respect to the conduct of operations at its facility. Violations of those Rules, Regulations, Orders and License conditions, especially those done deliberately in the wake of economic "incentives" which may compromise the public health and safety, are subject to the strictest enforcement action including revocation of the facility license, and may also be subject to criminal investigation and prosecution.

You expressly addressed your concerns with the potential effect of incentive plans on marginal safety improvements. We note that in addition, these plans also potentially effect Enforcement Policy (by increasing the economic penalty for forced shutdowns), the Backfit Policy (which requires a cost-benefit analysis before requiring a backfit), and possibly the proposed Commission policy statement on Safety Goals (which involves an economic analysis of proposed improvements).

We, therefore, agree that the development and implementation of "incentive plans" should be tracked by the NRC. Since you have direct contact with State PUCs, we agree that you are in the best position to coordinate and track "incentive plans" in place and under development.

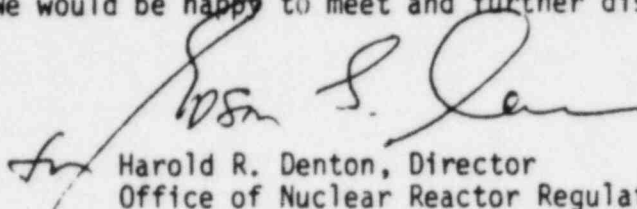
We would recommend that you advise the appropriate Regional Administrator, NRR Office Director, I&E Office Director, and NMSS Office Director when incentive plans become effective. Periodically, perhaps semi-annually, we would recommend that you update these same offices when and if the various incentives were actually applied to a licensee. Appropriate data would include the size of the incentive and the dates over which it was applied plus any other data you

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feel appropriate. This approach would alert the appropriate Regional Administrators and Office Directors of the potential for any conflict between safety and economic considerations. These offices would then be responsible for any follow-up action. We would be happy to meet and further discuss this matter with you.

A handwritten signature in dark ink, appearing to read "H. R. Denton", is written over the typed name.

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

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MEMORANDUM FOR: Robert D. Martin, Regional Administrator
Region IV

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

SUBJECT: PUBLIC UTILITIES COMMISSION INCENTIVE
PLAN FOR FORT ST. VRAIN

We have received Region IV's memorandum of September 12, 1984 and its attachments concerning the proposed Public Utilities Commission (PUC) of Colorado's Incentive Plan for Fort St. Vrain. We understand from Mr. William Brown (Region IV counsel) that, in a decision dated September 11, 1984 (Decision No. C84-1018), PUC adopted this plan for Fort St. Vrain and Public Service Company of Colorado (licensee for Fort St. Vrain) is appealing the decision.

While the imposition of such "incentive" plans by a Public Utility Commission on a licensee concerning operation of a facility may be unusual, it is not clear that they constitute a clear and present threat to public health and safety. It is still the licensee's responsibility to comply with the Commission's Rules, Regulations, Orders and all Conditions of its License with respect to the conduct of operations at the Fort St. Vrain Nuclear Generating Station. Violations of those Rules, Regulations, Orders and License conditions, especially those done deliberately in the wake of economic "incentives" which may compromise the public health and safety, are subject to the strictest enforcement action including revocation of the Facility License for Fort St. Vrain, and may also be subject to criminal investigation and prosecution.

The PUC appears to be exercising its discretionary powers in enforcing its mandate to the utility ratepayers of providing low cost power generation by enacting some fairly severe negative economic incentives concerning the operation of Fort St. Vrain. There is no evidence that these "incentives" are so severe as to force the utility into a conflict whereby it could not avoid economic penalties without operating in a manner which might adversely affect public health and safety. On the contrary, we believe that the licensee may be able to take advantage of the PUC mandated incentive plan to put capital improvements in place to improve plant availability and pass the related cost for implementing such improvements into the rate base. It is our understanding that a public utility commission sometimes resist transfer of such capital improvements expenditures to the rate base. Such improvements might well prove to be beneficial to safety.

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Therefore, we believe that, while the PUC penalties do appear fairly severe for Fort St. Vrain, there is no record of evidence to suggest that the licensee might compromise public health and safety in order to avoid such economic penalties. To suggest to the PUC that their incentive plan provides direct or indirect adverse impact on public health and safety might unnecessarily intimidate the PUC from fulfilling its mandate and would demonstrate lack of faith in our ability to regulate the utility and enforce the Commission's Rules and Regulations with respect to Fort St. Vrain.

Original Signed By
E. G. Case

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
As stated

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