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December 28, 1992

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

RE: **Response to Advance Notice of Proposed Rulemaking --
Acceptability of Plant Performance for Severe Accidents;
Scope of Consideration in Safety Regulations
57 Fed. Reg. 44,513 (September 28, 1992)**

The Nuclear Regulatory Commission ("NRC") recently published an advanced notice of proposed rulemaking ("ANPR") that would, for the first time, require new nuclear power facilities to be designed to withstand the effects of a severe accident. 57 Fed. Reg. 44,513 (September 28, 1992). On behalf of the licensees identified below,^{1/} we are filing the following comments in response to two aspects of the ANPR: (1) the propriety of a rule amending 10 C.F.R. Part 50, as opposed to utilization of the existing design certification process codified in 10 C.F.R. Part 52; and (2) reliance on severe accident mitigation design requirements as the basis for amending 10 C.F.R. Part 51 to preclude consideration of Severe Accident Mitigation Design Alternatives ("SAMDAs"). These comments are timely filed in accordance with the September 28 Federal Register notice.

1. The NRC Staff Should Refrain from Proposing Regulations that Specifically Address Severe Accident Mitigation, and Instead Pursue Such Issues In the Part 52 Design Certification Process

The ANPR evidences a fundamental shift in the NRC approach to severe accident risk. In the past, the Staff chose to limit consideration of issues involving severe accidents to

^{1/} These comments are submitted on behalf of the following licensees of existing nuclear power facilities: Niagara Mohawk Power Corp., Northeast Nuclear Energy Co., TU Electric, Tennessee Valley Authority, and Washington Public Power Supply System.

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environmental evaluations and general safety goals, articulating this position in two separate policy statements.^{2/} Even when the Staff recommended in a generic industry communication that existing nuclear facilities with Mark I containments consider beyond-design basis over-pressurization events, the Commission recognized that, absent voluntary commitment, the limitations of the backfitting rule applied.^{2/}

In the ANPR, however, the Staff proposes to require future facilities to specifically design against a severe accident, i.e., an accident beyond current design bases, in accordance with discrete design requirements to be codified in 10 C.F.R. Part 50. Not only is the Staff now focusing on an entirely new and previously undefined realm of design requirements (as opposed to the consideration of alternatives in an environmental review) associated with severe accident mitigation, but also, at the same time, the Staff is proposing to implement this new philosophy in binding regulatory requirements to be codified in 10 C.F.R. Part 50, thereby casting doubt as to the appropriateness of the design basis for existing facilities.

This approach, if adopted, should not be implemented via a rulemaking that would amend 10 C.F.R. Part 50. Rather, the NRC should implement design criteria of the posited nature by means of the design certification rulemaking process codified in 10 C.F.R. Part 52. Because the ANPR would require new design criteria only in connection with the licensing of future light water reactors, and because, as a practical matter, the design of such plants will be certified by rulemaking pursuant to 10 C.F.R. Part 52, design criteria governing the performance of future LWRs under severe accident conditions should be promulgated in the context of a design certification rulemaking.^{3/}

^{2/} See 50 Fed. Reg. 32,133 (Aug. 8, 1985), "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants;" 51 Fed. Reg. 30,028 (Aug. 21, 1986), "Safety Goals for the Operations of Nuclear Power Plants; Policy Statement."

^{2/} See Generic Letter 89-16, "Installation of a Hardened Wetwell Vent," September 1, 1989.

^{4/} Indeed, the Staff has proposed the form and content for a design certification rule. See SECY-92-287, "Form and Content For a Design Certification Rule," August 18, 1992. In pertinent part, the proposed rule would require the consolidation of all design-related information into a single, stand-alone document called the Design Control Document ("DCD").

2. NRC Should Not Revise The Part 51 "Remote and Speculative" Finding On the Basis of The Proposed Severe Accident Design Requirements

The Staff specifically asked for comments on the advisability of using a new containment performance design requirement as the basis for revising 10 C.F.R. Part 51 to "define a point of truncation" and to eliminate "the need for further review" of SAMDAs.² Presumably, the Staff would cite compliance with the proposed Part 50 severe accident design requirements as the basis for concluding that severe accident risk, as a result of implementation of the proposed severe accident design criteria, is "remote and speculative" within the context of the National Environmental Policy Act ("NEPA"). 42 U.S.C. 4331 *et seq.* As a result, the benefit to be realized from the installation of SAMDAs would not have to be cost-justified under NEPA. Under such a scheme, the proposed Part 50 severe accident design requirements would become a "floor" below which environmental alternatives regarding severe accident need not be considered further.

To proceed with such a plan would inappropriately precondition a Part 51 finding of "remote and speculative" risk on the inclusion of SAMDAs in plant design. To date, the NRC has dismissed SAMDAs in its NEPA analyses without requiring that facilities specifically be designed to withstand the challenges of severe accidents. For example, in an operating license proceeding that focused, in part, on the need to consider the mitigating effects of SAMDAs in an accompanying NEPA analysis (where the plant was not designed to withstand severe accidents), the Staff "discovered no substantial changes in the proposed action as previously evaluated in the FES [Final Environmental Statement] that are relevant to environmental concerns nor significant new circumstances or information relevant to environmental concerns and bearing on the licensing of Limerick Generating Station, Units 1 and 2."³

Moreover, the United States Court of Appeals for the Third Circuit has aptly observed that the Commission itself has noted that the impact of SAMDAs on the environment will differ with a particular plant's design, construction, and location. Limerick

² 57 Fed. Reg. at 44,518 (Question 15).

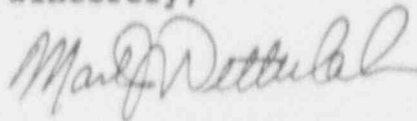
³ Supplement to the Environmental Impact Statement, Limerick Generating Station, Units 1 and 2, at 1, quoted in Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-89-24, 30 N.R.C. 152, 153 (1989).

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Ecology Action, Inc. v. United States Nuclear Regulatory Comm'n, 869 F.2d 719, 738 (3d Cir. 1989). Thus, the Court expressed doubt as to the feasibility and validity of according SAMDAs generic treatment under NEPA. Id. ("it is unlikely that severe accident mitigation can be treated as a generic issue.") Even if feasible, generic treatment of SAMDAs, as a practical matter, may deter the development and installation of cost-beneficial design changes at individual facilities.

In sum, we reiterate that Part 50 should not be amended because there is no need to require design changes to accommodate remote and speculative accidents. In addition, in response to the question posed concerning Part 51, we believe that even if the Staff should proceed with rule changes to Part 50 to address severe accident risk, those changes should not be used as the basis for revision of Part 51.

Sincerely,



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