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DOCKET NUMBER **PR-50**
 PROPOSED RULE **(50 FR 16506)** **(5)**

May 28, 1985

Docket Nos. 50-213

50-245
 50-336
 50-423
 B11551

Mr. Samuel J. Chilk, Secretary
 U.S. Nuclear Regulatory Commission
 Attn: Docketing and Service Branch
 Washington, D.C. 20555

Gentlemen:

Hadam Neck Plant
 Millstone Nuclear Power Station Unit Nos. 1, 2 and 3
Comments on Proposed Rulemaking on Exemptions



On April 26, 1985, the NRC published in the Federal Register (50FR16506) a proposed revision to 10CFR, Part 50.12, regarding the standards that will be applied when it considers whether to grant exemptions from the regulatory requirements of 10CFR50. Connecticut Yankee Atomic Power Company (CYAPCO), licensee for the Hadam Neck Plant, and Northeast Nuclear Energy Company (NNECO), licensee for Millstone Unit Nos. 1 and 2 and operating license applicant for Millstone Unit No. 3, are taking this opportunity to provide comments on the proposed rulemaking.

We have previously provided comments to the Commission on this issue,⁽¹⁾ a copy of which is attached for reference. These comments were based on our review of SECY-84-290, SECY-84-290A and the Shoreham decision of May 16, 1984,⁽²⁾ were fully supportive of the Commission's decision that Shoreham was to apply only to the particular circumstances of that case, and endorsed the past Staff practice of handling exemptions under 10CFR50.12. We reiterate the comments in our August 31, 1984 letter regarding the appropriate standards for the granting of exemptions.

- (1) W. G. Council letter to N. J. Palladino, dated August 31, 1984.
- (2) Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1), (CLI-84-8, slip op., May 16, 1984).

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As a result of the discussions resulting from Shoreham, the Staff is proposing to revise 10CFR50.12 to "fashion a comprehensive, consistent, practicable, and appropriate framework for reviewing exemption requests," and to provide criteria or standards for judging the acceptability of proposed exemptions. We generally endorse the Staff's proposal and we believe that the proposed rulemaking will serve to eliminate some of the apparent confusion or inconsistencies regarding the exemption process. In addition, we support the Commission's direction to continue with pre-Shoreham exemption practices pending promulgation of a final rule. As stated in our August 31, 1984 letter, it must be recognized that certain regulations are of lesser safety significance for some plants than for others and that compliance with all regulations at a particular plant may not be necessary to ensure adequate protection of public health and safety. While compliance with the regulations provides assurance of public health and safety, failure to comply with one or more regulations does not automatically imply an inadequate level of protection. The fundamental criterion which must be met is that the exemption will not result in any undue risk to the public, as reflected in the proposed rule.

In its discussion of the proposed rule, the Commission correctly recognizes that the "no undue risk" test should explicitly consider such factors as the purpose of the regulation involved, the licensee's compensatory measures, length of time the exemption will be in effect, and the plant operating conditions (e.g. - stage of plant operation). We believe that this approach provides the Staff with the appropriate and necessary flexibility to effectively deal with each exemption request on its technical merits. Although we agree with this guidance, we strongly urge that this Commission guidance be reiterated in the Statement of Considerations for the final rule.

The proposed revisions to 10CFR50.12 would also add seven additional criteria, one of which must be satisfied in order to justify granting of an exemption. These are in addition to the findings of being authorized by law, presenting no undue risk, consistent with the common defense and security, and in the public interest.⁽³⁾ These seven criteria appear to us to encompass most of the relevant bases which might be advanced in support of an exemption request. In particular, we are encouraged by proposed criteria (ii) and (iii) of 10CFR50.12(a)(2). These criteria provide explicit recognition that generic regulation, by definition, cannot consider all of the relevant factors for a

(3) From proposed 10CFR50.12(a)(1).

particular plant and that, in some cases, detailed plant design requirements are inappropriate either because they would not, on a given plant, achieve the intended end result of the regulation, or because there are alternate and possibly more effective means for achieving the underlying purpose of the regulation. Our own files and the NRC's Public Document Room are replete with examples of these.⁽⁴⁾

While we strongly endorse the proposed revisions, we would suggest one additional criterion to be added to the proposed 10CFR50.12(a)(2). We would propose the following as 10CFR50.12(a)(2)(viii):

"It is demonstrated to the satisfaction of the Commission through an integrated plant safety review that compliance with the regulation should not be required for the particular facility."

CYAPCO and NNECO are participating in the NRC's Integrated Safety Assessment Program (ISAP) on behalf of Haddam Neck and Millstone Unit 1. The ISAP program plan, SECY-84-133, which was unanimously approved by the Commission, supports this concept. For example, SECY-84-133 states that following the review of existing regulatory requirements, "the subsequent integrated assessment process would likely cause some of the deferred NRC requirements to be modified or deleted on a plant-specific basis." Additionally, and more strongly stated, SECY-84-133 provides that:

"Departures from literal compliance with regulatory guidance would be considered when (1) the safety objectives can be met in a less costly or more expeditious way through alternatives, or can be met in a way that better strengthens defense in-depth, (2) the probabilistic safety analysis might suggest that more stringent requirements may be appropriate to deal with dominant contributors to risk and (3) when it can be shown unambiguously that the safety issue is not significant to off-site radiological risk at the facility. When regulations or license conditions are not explicitly complied with, exemption requests will be processed in accordance with established procedures."

(4) One of the recent and more notable examples of detailed requirements that are inappropriate for a particular plant concerns the December, 1981 revisions to 10CFR50.44 dealing with hydrogen control. The revised 50.44 was intended to require licensees of all inerted BWR plants to install hydrogen recombiners. Our own analysis of hydrogen generation, which was ultimately accepted by the Staff, demonstrated that for all design basis accidents it would be impossible to attain flammable hydrogen mixtures since insufficient oxygen would be present to support combustion. Thus, the addition of hydrogen recombiners was not required in order to satisfy the intent of the rule, nor was it technically justified. While an exemption from 10CFR 50.44 was not required due to the precise language of the regulation, this example illustrates the potential flaws of generic regulation.

Thus, we believe that the proposed revisions to 10CFR50.12 should include reference to this type of review program as a potential basis for justifying proposed exemptions. As stated earlier, the Commission has unanimously approved the ISAP program as presented in SECY-84-133, and we firmly believe, as does the Staff, that the program will result in effective and balanced decision-making regarding individual regulatory requirements.⁽⁵⁾ We would be disappointed if the criteria for exemptions did not recognize the valuable contribution this type of program could have in plant-specific backfitting decisions. Although some of the criteria for 50.12(a)(2) proposed by the Staff would appear to be related to the ISAP concept, we do not believe that any one criterion or combination of those criteria would encompass all of the factors to be considered in ISAP. Specifically excluded from the seven criteria is a situation where compliance with a regulation would yield an incremental improvement in plant safety, but would not pass the tests outlined in the ISAP concept. Given the amount of discussion that resulted from the Commissioner's deliberations on the exemption process, we are not convinced that adapting one or more of the seven literal criteria proposed by the Staff to the ISAP results would be successful. For this reason, we urge the NRC to consider an additional criterion that would explicitly recognize an ISAP-type of program.

Addition of a criterion such as the above would also provide for implementation of a safety goal program, should such a program be approved for implementation.⁽⁶⁾ We do not believe that any of the Staff's proposed criteria would be compatible with the safety goal concept. We encourage the Staff to consider such an addition as we believe that there exists widespread support for a safety goal program.

It appears from the supplementary information accompanying the proposed revisions that addition of such a criterion would be well supported by previous judicial decisions. For example, in the Supplementary Information accompanying the proposed rule, the Staff quotes from WAIT Radio⁽⁷⁾ that the D.C. Circuit believed that an exemption or waiver provision might account for considerations of "hardship, equity or more effective implementation of overall policy."

(5) This perspective is also shared by Commissioner Asselstine, as evidenced by his comments regarding ISAP in his April 17, 1985 statement before the House Committee on Energy and Commerce, Subcommittee on Energy Conservation and Power.

(6) In a presentation to the Advisory Committee on Reactor Safeguards on May 9, 1985, Dr. T. Murley informed the ACRS that the Staff recommends that the Commission issue a Policy Statement on safety goals. Dr. Murley recommended a phased implementation of the safety goal concept into the regulatory process, where they would be used in conjunction with traditional safety reviews in making regulatory decisions. Among his recommended uses for implementation of safety goals concept was the evaluation of license exemptions. The proposed rule could therefore be improved by explicit recognition of this potential application.

(7) WAIT Radio vs. FCC, 418 F.2d 1153, (D.C. Circuit, 1969).

We view ISAP as being the most effective vehicle for implementation of overall Commission policy. This is echoed in SECY-84-133, which states that:

"This new approach has evolved from a growing need to provide order and efficiency to the implementation and resolution of licensing requirements for operating nuclear power plants. The benefits of conducting ISAP would be sound regulatory management of the licensing requirements for operating reactors on a plant-specific basis, assurance that the greatest measure of safety is accomplished in the near term and the most efficient use of both staff and licensee resources."

We believe that the above statement and, in fact, every reason advanced in support of the ISAP program serve to reinforce our position that ISAP represents the most effective implementation of overall agency policy. Based on this, we view our proposed criterion (viii) above to be a logical element of the revised 10CFR50.12. This could be accomplished using one "integrated plant review" standard such as the one presented above, or by separate standards addressing the ISAP concept and the safety goal concept separately. We believe that this is necessary in order for the Commission to achieve consistency between the regulations and its stated policies, intentions, and ongoing programs.

Comments on Separate Views of Commissioner Asselstine

We have reviewed the separate views of Commissioner Asselstine included with the proposed rule, and would like to provide our comments on his alternative.

We generally endorse the approach of Commissioner Asselstine in adopting two general standards for exemptions rather than prescribing specific criteria to be met. That is, we believe that the "special circumstances" test is more appropriate than the required finding of "in the public interest" contained in the Staff's proposed rule. We believe that "special circumstances" is also more in keeping with past Staff practice and an equitable balancing of relevant factors. However, we also believe that the examples provided in Commissioner Asselstine's proposal are too narrow and do not reflect all possible factors which should be considered.

In particular, Commissioner Asselstine's proposal does not provide for interim schedular exemptions. We believe that situations allowing exemptions for a limited period of time, provided no undue risk is present, should be included in the proposed rule. As stated in our August 31, 1984 comment letter on this subject, we strongly disagree with the approach of handling non-compliance with regulations for a limited period of time as enforcement actions, which would appear to be the only option under Commissioner Asselstine's proposal. We refer you to our comments regarding the opinion of the General Counsel in SECY-84-290A, provided in our August 31, 1984 letter, attached.

Consistency With Other NRC Regulations

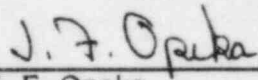
Finally, we urge the Commission to take whatever steps are necessary to ensure consistency between the proposed 10 CFR 50.12 and the existing (and proposed) 10 CFR 50.109.

The Commission's backfitting rule in 10CFR50.109 requires a showing of "substantial, additional protection" by the Staff in promulgating new requirements, while the proposed 10CFR50.12(a)(2) would require the licensee to demonstrate that one of seven criteria are met in order to obtain an exemption. It appears that none of the seven proposed criteria permit a licensee to demonstrate that the standards of 10CFR50.109 are not met. This "special circumstance" should be included in the revised 10CFR50.12, otherwise the protection afforded by 10CFR50.109 would be moot.

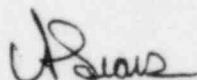
In summary, we endorse the proposed rulemaking and the adoption of the "no undue risk" standard. We believe that addition of our proposed criterion will result in a regulation that is workable, provides for adequate protection of public health and safety and recognizes the consideration of plant-specific features and integrated safety reviews. We would welcome the opportunity to discuss our views on this matter with the Staff should any questions arise.

Very truly yours,

CONNECTICUT YANKEE ATOMIC POWER COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY



J. F. Opeka
Senior Vice President



By: C. F. Sears
Vice President

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Commissioner T. M. Roberts
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