NORTHEAST UTILITIES

THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
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August 31, 1984

Docket Nos. 50-213
50-245
50-336
50-423
B11296

Hon. Nunzio J. Palladino, Chairman
U. S. Nuclear Regulatory Commission
1717 H. Street, N.W.
Washington, D.C. 20555

Dear Dr. Palladino:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3
Comments on Standards for Exemptions

On July 17, 1984 SECY-84-290, Need and Standards for Exemptions, was transmitted to the Commissioners. SECY-84-290 requested additional guidance for the Staff regarding the exemption process and posed six questions with respect to the Commission's May 16, 1984 Order in the Shoreham case.(1) In SECY-84-290, the Staff noted that with regard to the standards for granting exemptions pursuant to 10CFR50.12, the Shoreham decision "establishes practices and requirements for licensing which differ significantly from prior regulatory interpretation and practice."

On July 24, 1984 SECY-84-290A was filed with the Commission. SECY-84-290A provided the opinion of the General Counsel regarding the regulatory philosophy behind the exemption process and recommendations for handling future exemptions in light of Shoreham.

In an open meeting on July 25, 1984, the Commission discussed SECY-84-290 and 290A and the Shoreham decision. The intended purpose of the meeting was to provide guidance to the Staff (in response to SECY-84-290) on the handling of future exemption requests and to clarify the basis for the Shoreham decision and its implications on future exemptions. Northeast Utilities Service Company, on behalf of Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, (Licensees for the Haddam Neck Plant and Millstone Unit Nos. 1, 2, and 3) has reviewed SECY-84-290, SECY-84-290A, and the Shoreham decision of May 16, 1984, and we are taking this opportunity to provide you with comments on the potential impact of these documents on the exemption process. Our comments are set forth in detail below.

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(1) Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, slip op. May 16, 1984.

The Shoreham Decision (CLI-84-8)

At the outset, we emphatically endorse the Commission's position that the standards set forth in Shoreham regarding the conditions for granting the specific exemption in question be limited to that particular plant. Satisfying the standards in Shoreham regarding the "exigent circumstances" showing and the "as safe as" determination are much more restrictive than what is required by 10CFR50.12.(2) However, based on our review of the July 25, 1984 Commission meeting, it is our understanding that the conditions set forth in Shoreham were based not on what was required by 10CFR50.12 but rather on what the applicant had already agreed in oral argument on May 7, 1984 to demonstrate. Thus, the Shoreham order did not provide the Commission's interpretation of the minimum standards for granting exemptions. Instead, with respect to the "as safe as" determination, it requested only that the applicant provide its basis for the conclusion that low power operation would be as safe as operation with a fully qualified onsite AC power source. Nowhere does the Shoreham order state that this finding is required by 10CFR50.12.

SECY-84-290

It appears to us that the position taken by the Staff regarding elevated standards for granting of exemptions is an entirely inappropriate extrapolation of the Commission's decision in Shoreham. In SECY-84-290, the Staff states that:

> "The Commission's Shoreham decision, although rendered in the context of a consideration of the need for onsite AC power sources for low power operation, appears to have broad ramifications. That decision, we believe, can be read as establishing that:
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> (1) for the issuance of any operating license, regardless of power level or mode of operation authorized, there must be either full compliance with the letter of all NRC regulations (assuming reactor operation at full power), or an explicit exemption from those regulations for which full compliance at full power has not yet been achieved;
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> (2) for granting any exemption from the regulations pursuant to 10CFR 50.12, related not only to initial licensing but also to subsequent operations after achieving full power, it must be established that
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> (a) the traditional standards of Section 50.12(a) are met and

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(2) See from 10CFR50.12(a).

(b) exigent circumstances or exceptional circumstances or the equities of the situation warrant the exemption and

(c) operation with the exemption, at the particular power level authorized, will be as safe as operation with full compliance with the regulation from which the exemption is sought."

We cannot understand the basis for the Staff's interpretation as described above, and we share the Commission's belief that this is an extrapolation of the standards set forth in Shoreham.

10CFR Section 50.12(a) provides for the granting of exemptions from Commission regulations.[3] The Staff is correct in (2)(a), above, that in granting an exemption from any regulation it must be established that the standards in 10CFR50.12(a) are met. However, to add preconditions (2)(b) and (2)(c) above would necessitate that two assumptions be made:

- The Commission has altered existing regulations by adding requirements not presently embodied in 10CFR, without soliciting public comment, and
- That Shoreham represents a valid interpretation of existing requirements that must be equally applied to all plants.

To assume the former may well be incorrect given past Commission practice regarding the resolution of generic issues through rulemaking. To assume the latter would be inconsistent with the explicit wording of 10CFR50.12. We believe that the only need for the demonstration of exigent circumstances in the exemption process has to do with the granting of a Limited Work Authorization pursuant to 10CFR50.12(b). The exigent circumstance standard does not appear to apply to the exemption process across the board.

Further, to assume that "as safe as" is a valid interpretation of "not endanger life or property or the common defense and security" would raise other inconsistencies. For example, if it were possible to demonstrate "as safe as" to justify an exemption, that would seem to imply that the regulation from which the exemption is sought provides essentially no increase in safety. This would raise questions as to the basis for that regulation in the first place. Also, certain Commission regulations[4] provide for schedular exemptions, explicitly

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(3) 10CFR50.12(a) provides that the Commission may grant such exemptions as it determines "are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

(4) For example, see 10CFR50.54(m) governing shift manning or 10CFR50.48, fire protection, or 10CFR50.49, environmental qualification.

recognizing the potential for generically derived deadlines to be inappropriate. History has clearly proven that potential to be a real one.(5) In a case where compliance with a regulation is deemed necessary but the schedule cannot be met, it would be impossible to satisfy the "as safe as" criterion. Thus, if the "as safe as" standard were applied, there could be no schedular exemptions. If the "as safe as" criterion could be met without being in compliance with the regulation, then an exemption from the regulation would be justified instead of a schedular exemption.

The ultimate standard for judging the acceptability of an exemption remains unchanged by Shoreham. The primary responsibility of the Staff and the Commission is to ensure that there is no undue risk to the public health and safety. An example of what we believe to be proper criteria for judging the merits of exemption requests appears in 10CFR50.60(b), which states that in applying for an exemption from 10CFR50 Appendices G and H, the applicant must satisfy 10CFR50.12 and demonstrate that:

(i) compliance with the specific requirements would result in hardships or unusual difficulties without a compensating increase in the level of quality and safety, and

(ii) the proposed alternatives would provide an adequate level of quality and safety (emphasis added).

As well as being fully consistent with the regulations, the interpretation we promote has the additional feature of representing a perfectly logical and sound regulatory policy, one that has its focus on getting the job done.

SECY-84-290A

As with the Staff, the General Counsel appears to take the position in SECY-84-290A that Shoreham has implications on handling of exemptions for all facilities and that the same standards must be met. While SECY-84-290A states that while 10CFR50.12 does not require findings of "exceptional circumstances" or "as safe as", it also states that both standards are legally defensible. However, the General Counsel also takes the position that all exemptions need not be treated the same. The General Counsel's view is that regulations of lesser prominence in nuclear safety need not be subjected to the especially stringent test of Shoreham. We disagree with the opinion of the General Counsel, and maintain that past Staff practice of handling exemptions under 10CFR50.12 is entirely adequate to ensure the continued protection of public health and safety.

One aspect of SECY-84-290A which causes us particular concern is the recommendation that no exemptions be granted for operating reactors. Indeed the General Counsel advises that from a purely legal standpoint, enforcement action for noncompliance with a regulation may be warranted. We could not have any stronger disagreement with this approach. Our experience on the prompt

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(5) The NRC has more recently recognized the importance of plant-specific factors when implementation schedules are developed. Generic Letter 83-20 represents one example of the agency promoting the "Living Schedule" concept for industry-wide implementation.

notification issue[6] is an excellent example of the inappropriateness of generic deadlines and enforcement action without basis. Additionally, there are literally dozens of issued or pending schedular exemption requests dealing with Appendix R alone. We do not believe that issuing numerous notices of violation is the appropriate way to handle these exemption requests. To the layman, a notice of violation connotes an unacceptable risk posed by the facility when in fact there may be a technically valid justification for an exemption. It also connotes a licensees failure to satisfy a legally and technically justifiable requirement. Moreover, in some cases it could likely be shown that compliance with the regulation would result in a decrease in safety and a notice of violation would convey the opposite message. The end result could be the dilution in effectiveness of the Commissions enforcement authority.

With regard to the severity of the enforcement action, the General Counsel suggests that "where the safety significance of the violation does not warrant immediate shutdown or other "escalated" enforcement action, a schedule for compliance would be established to control future enforcement actions."

With this position in mind, take for example the case where a licensee is unable to comply with a regulation on the required schedule but will be in full compliance within 6 months after the required date. Non-compliance would then be cited as a violation of NRC regulations. Assuming that the Staff concludes that the 6 month delay does not constitute an unacceptable risk, operation in the interim could be allowed and a revised schedule for compliance would be agreed upon with the understanding that non-compliance by the revised schedule would result in escalated enforcement action. Through this process, the Staff would be granting a de facto exemption for a period of 6 months without making findings of "exceptional circumstances" or "as safe as".[7] We see no difference between this approach and the current Staff practice of handling exemption requests under 10CFR50.12 with the exception that the General Counsel's approach would result in issuance of numerous superfluous notices of violation, conveying the impression to the public that those plants are unsafe when in fact that would not be the case. Moreover we believe that this approach could unjustifiably undermine public confidence in nuclear power.

One additional adverse result of implementing the OGC recommendation will be an increase in the number of enforcement actions taken. These data are relevant to SALP ratings, enforcement history, and other factors which may influence the public perception of the technical competance of the utility. This in turn could influence utility stock values and other financial matters. Licensees should not be held accountable to generic deadlines which may be wholly inappropriate when plant-specific factors are considered.

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(6) A detailed explanation of this matter was provided in the W. G. Counsil letter to R. DeYoung dated May 10, 1982. Suffice to say that it was not reasonable to promulgate a regulation requiring Northeast Utilities to install 325 new sirens coordinated with 28 independent local communities in the same time interval as other licensees had to install prompt modification systems in comparatively isolated areas dealing with only one local community.

(7) As stated previously, the recommended standard would be "no undue risk."

In summary, we do not agree with the General Counsel's recommendations on handling of exemption requests. We maintain that the current Staff practice meets the requirements of 10CFR50.12 and is not inconsistent with Shoreham.

Northeast Utilities' Position on Exemptions

10CFR50.12 provides that licensees may request exemptions from Commission regulations provided it can be demonstrated that it is in the public interest and will not endanger the health and safety of the public. Historically, the Commission's regulations have been promulgated on a generic basis without detailed consideration of plant-specific factors. 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 protection of public health and safety, failure to comply with one or more regulations does not automatically imply an inadequate level of protection. While such a regulatory scheme may be theoretically possible, it does not currently exist at the NRC. Thus, the "as safe as" standard cannot be absolute. The criterion that must be met is that the exemption will not results in any undue risk to the public. To suggest that any other standard is appropriate is to assert that all regulations set the minimum acceptable level of protection for all plants without any consideration of other extremely pertinent factors.

There are a number of examples which support our position that the regulations cannot be treated as the minimum acceptable standard. For example:

o Appendix R, Fire Protection

The most significant example of where the regulations cannot be assumed to represent the minimum acceptable standard and where the exemption process provides a necessary means for obtaining relief concerns Appendix R to 10CFR50. In this case, the Staff promulgated an extremely prescriptive rule which had a significant impact on operating plants and which resulted in the filing of literally hundreds of exemption requests. If the "as safe as" standard were applied to these exemption requests, it may be difficult in some cases to make that demonstration assuming that the regulations set the minimum acceptable standard.

In its decision regarding the validity of the Appendix R rulemaking, the United States Court of Appeals for the District of Columbia Circuit stated(8) that:

(8) Opinion of the U. S. Court of Appeals for the District of Columbia Circuit, No. 81-1050, The Connecticut Light and Power Company, Et. Al, V. Nuclear Regulatory Commission, March 16, 1982.

"The statement that "based on present information, the Commission does not expect to be able to approve exemptions for fire retardant coatings used for fire barriers," 45 Fed. Reg. 76609 (Nov. 19, 1980), must therefore be regarded as mere mischievous dictum. Whatever the Commission's present expectations, it must remain open to power companies to show in individual exemption applications that fire retardant coating in conjunction with other protective means can provide adequate levels of fire protection."

Thus, the Court of Appeals has recognized that the regulations cannot set the minimum standard and that the exemption process must provide avenues for relief when it can be demonstrated that alternate factors can provide an adequate level of safety.

o General Design Criterion 4

10CFR50 Appendix A, GDC 4, states that systems, structures, and components important to safety shall be designed to accommodate the effects of postulated accidents, including loss of coolant accidents. This would mean that primary system components must be designed to accommodate the effects of the design basis LOCA, including reaction loads, pipe whip, and jet impingement effects. However, since the time the GDC's were promulgated, it has been demonstrated that for certain plants, operating conditions and material properties are such that leakage through pipe walls will be detected and corrective action taken before the crack can become unstable and propagate around the circumference of the pipe resulting in a break. Thus, for these plants it can be shown that the design basis break will not occur and therefore literal compliance with GDC-4 is not necessary from a safety standpoint.(9)

o 10CFR50 Appendix J

Another example of where the regulations set more than minimum standards is Appendix J to 10CFR50. The Commission has already entertained a lengthy discussion of Appendix J in its July 25, 1984 meeting and we will not repeat it here. We mention it as one example where the Staff has concluded that non-compliance with certain regulations is acceptable from a safety standpoint. Thus, Appendix J has certainly demonstrated that compliance with all regulations is not necessary to ensure that there is no undue risk to the public health and safety.

o Systematic Evaluation Program Findings

An additional example which supports our position is the Systematic Evaluation Program (SEP) review of the oldest operating nuclear power plants. The SEP involved a review of older plants against current licensing criteria, including the General Design Criteria and selected Regulatory, Guides and Standard Review Plan Sections. While the Commission's

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(9) This alternative was recognized by the Staff in Generic Letter 84-01, which acknowledged that the affected licensees could apply for an exemption from GDC-4.

requirements appear in 10CFR, the Staff's position regarding acceptable means of meeting those requirements are embodied in the Regulatory Guides and Standard Review Plan. We note that the SEP review identified literally hundreds of areas in which these plants did not meet the currently accepted standards. However, in most of those cases, the differences from current Staff criteria, were either judged not to be significant from a safety standpoint or it was determined that there were alternate means of meeting the intent of the design criteria which provided an adequate level of safety. In these cases, the plants did not meet the letter of the current Staff criteria, yet the Staff was able to conclude adequate protection of the public health and safety and no exemptions were issued. Our experience has been that the standard of demonstrating compliance with the GDC's is higher for our Millstone 3 plant currently under review as contrasted with the recent SEP process involving Connecticut Yankee and Millstone 1. We emphasize that we have met and continue to meet all applicable regulations, yet we may not always meet the latest Staff position regarding those regulations.

o Hydrogen Recombiner Issue

In promulgating a revision to 10CFR50.44 in December of 1981, the NRC intended to require that all inerted BWR plants install hydrogen recombiners. Culminating with the issuance of Generic Letter 84-09, the NRC has recognized that it is not appropriate to require these plants to backfit their facilities with hydrogen recombiners. This particular item is somewhat unique from the previous examples in that for some plants, compliance with the regulation has been demonstrated, and in others exemptions are being sought. The point here is that the NRC promulgated a regulation which clearly attempted to require more than the minimum necessary to assure continued protection of the public health and safety. In cases such as this, satisfying the "as safe as" standard would be an unnecessarily restrictive standard.

Treatment of Exemptions

Shortly after issuance of the Sholly regulations(10), we provided comments on the entire scope of these new regulations. Pages 7 through 9 of my letter to S. J. Chilk dated May 10, 1983, a copy of which is attached, are devoted to our perspectives on how exemptions should be treated in light of the Sholly regulations. We believe those comments remain relevant and call them to your attention in this context.

Conclusion

In summary, we believe that the Commission has appropriately limited the criteria in Shoreham to that specific case. We believe that the Staff need not apply the "exigent circumstances" and "as safe as" tests to other exemption

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(10) 48FR14864 and 48FR14873

requests filed pursuant to 10CFR50.12. These additional criteria are not necessary for the NRC to fulfill its primary responsibility; ensuring no undue risk to the public health and safety. While the Staff has requested guidance from the Commission in light of Shoreham, it is our position that the appropriate guidance is to maintain status quo. Past practice of handling exemptions under 10CFR50.12 is entirely adequate to ensure the continued protection of public health and safety.

We are available to discuss this matter should you have any questions or comments.

Very truly yours,

CONNECTICUT YANKEE ATOMIC POWER COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY
NORTHEAST UTILITIES SERVICE COMPANY

W. G. Counsil
Senior Vice President

cc: Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
Commissioner Frederick Bernthal
Commissioner Lando Zech, Jr.
Mr. W. J. Dircks, Executive Director of Operations
Mr. Guy Cunningham, Executive Legal Director
Mr. Hertzel Plaine, General Counsel

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May 10, 1983

Docket Nos. 50-213
50-245
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Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
1717 H Street
Washington, D. C. 20555

Gentlemen:

Haddam Neck Plant
Millstone Nuclear Power Station, Unit Nos. 1, 2, & 3
Comments on Interim Final Rules
Notice and State Consultation
Standards for Determining Whether License
Amendments Involve No Significant Hazards Considerations

In 48FR14864 and 48FR14873, the Commission promulgated interim final rules on the above captioned subjects, in accordance with the provisions of Public Law 97-415. Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO) hereby provide the following comments on these interim final rules.

General Comments

Our general perspective is that these regulations will not significantly, if at all, improve the safety of nuclear power plants. The reviews and evaluations previously utilized to process license amendments were adequate to assure continued public health and safety. As with many other previous NRC initiatives, these new regulations will require the use of our limited resources in areas which we perceive will not enhance nuclear safety. The additional resources being expended to fulfill these new regulations are therefore being applied at the expense of other voluntary activities which could otherwise be accomplished. However, we fully recognize that these rules are being implemented to fulfill congressional mandates, and that under these circumstances the NRC has considerably less latitude regarding the final scope and specific provisions of these rules than would otherwise be the case. Given that Congress has required their implementation, we offer the following comments and observations in the interest of minimizing their negative impact.

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The trend within NRC for the past several years has been to dramatically increase the scope and volume of Technical Specifications. Over the course of time, the Technical Specifications have become cluttered with a considerable amount of superfluous detail not truly appropriate or necessary to satisfy the intent of 10CFR50.36. One of the by-products of this trend is that more license amendments are being processed than nuclear safety considerations warrant.

The Commission apparently recognizes this problem and has published a proposed rule (47FR13369) which is stated to be directed at addressing this concern. Our general endorsement of this concept and other pertinent observations were provided in previous correspondence(1). The subject interim final rules further serve to heighten the importance of taking steps to alleviate this situation in the near term. However, we are concerned that the Commission may not have fully recognized the synergistic effects which would occur if both these proposals are implemented in their current form. There are also a number of other issues where the implications of these interim final rules either lack clarity or have the potential to yield additional adverse synergistic effects. The balance of this letter is intended to identify and discuss these matters.

Interpretation of 10CFR Part 170

In a recent proposed rule (47FR52454), the NRC has proposed to amend the existing regulations governing payment of fees associated with, among other things, processing of license amendment requests. The key element of the proposed changes relates to assessment of fees based upon actual NRC resources expended rather than a fixed fee for various classes of amendments.

If the Part 170 changes are issued as proposed, after May 6, 1983 resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It is our view that licensees would not be the "identifiable recipient of benefits" resulting from this more involved process. As such, licensees should not be assessed fees for any expenses resulting from the public notice, State consultation, and other consequential or follow-up activities which may result. The legislative history behind Public Law 97-415 makes it clear that licensees are not the prime beneficiaries of this new license amendment process. Therefore, licensees should not be assessed additional fees to finance this activity.

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(1) Previous submittals addressing this matter include the following:

- W. G. Counsil letter to the Secretary of the Commission dated September 8, 1980, Proposed Rulemaking Regarding Technical Specifications.
- W. G. Counsil letter to the Secretary of the Commission dated May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.
- W. G. Counsil letter to the Secretary of the Commission dated April 25, 1983, Proposed Rulemaking Regarding Technical Specifications.

Interpretation of the Term "Emergency"

The term "emergency" suggests the occurrence of a nuclear plant situation where public health and safety is in immediate jeopardy. The interim final rules use the term "emergency" to describe situations where failure to act in a timely fashion on a proposed license amendment would result in derating or shutdown of a plant. While in isolation this term may be appropriate, its use in this context may result in considerable confusion, especially in light of a recently issued final rule (48FR13966) regarding departures from license conditions or technical specifications in an "emergency" situation.

A member of the NRC Staff has called this potential conflict in terminology to our attention, and we agree that it is desirable to eliminate any potential confusion before it occurs, especially when the public may be asked to provide comments via a toll-free hotline or in response to newspaper articles describing a power plant "emergency". In this forum, the term "emergency" carries with it a connotation not accurate when describing license amendments which warrant expedited treatment. Frequently the situations which arise have very little nuclear safety significance but the wording of the technical specifications is such that a plant shutdown would be necessary within a matter of hours or days unless an amendment is issued promptly.

Use of the term "emergency" in the context of the final rule (48FR13966) is more appropriate from our perspective. The stated purpose of that rule is to allow licensees to take reasonable action that departs from a license condition or technical specification when such action is immediately needed to protect the public health and safety. While we are hopeful that such situations would rarely if ever arise, the situations contemplated are authentic emergencies which have some safety significance. The rule correctly recognizes that not all plant conditions can be anticipated in the license and technical specifications, and provisions have been taken to allow departures.

In light of the above, we propose that the term "emergency" be reserved exclusively for use in the context of 48FR13966, and that alternate wording be developed for use in the interim final rule. For instance, the initial portions of 10CFR50.91(a)(5) could be reworded as follows:

> "Where the Commission finds that plant conditions exist warranting expedited treatment of a proposed license amendment, in that failure ....."

Other provisions of the interim final rules which currently use the word "emergency" could similarly be reworded. We believe this recommendation will eliminate both an unnecessary source of concern for the public and potential confusion with the provisions of 10CFR50.54(x) and 50.72(c).

Use of Media to Obtain Public Comment

In the Supplementary Information section of the interim final rule on Notice and State Consultation, the NRC describes various means of obtaining public comment under exigent circumstances. Two options specifically mentioned

include use of a local newspaper to inform residents of proposed amendments, and use of a toll-free hotline to facilitate receipt of public comment.

We are hard pressed to envision circumstances under which these measures will truly enhance nuclear safety. It is far more likely that such actions will serve to unnecessarily alarm the public. Routine power plant evolutions, which in some cases result in the need for prompt processing of license amendments, are not appropriate subjects for newspaper articles and toll-free hotlines. They imply a sense of urgency and significance which, with respect to impact on the public health and safety, is simply not there. Our concerns regarding media exposure are not conjecture or speculation, but are based on our experience including a New York Times article on the Pressurized Thermal Shock issue for one of our plants, and on adverse and unjustified media exposure regarding the Interim Reliability Evaluation Program for another of our units. We refer you to our letters to H. R. Denton and Chairman Palladino[2] for additional details on these issues.

In response to our letter to Chairman Palladino, Mr. Dircks invited us[3] to provide additional suggestions on how to more effectively deal with the issue of media use of nuclear power plant data and information. In response to that invitation and to the concerns raised by the interim final rules, we offer two recommendations.

First, use of the media to provide information on nuclear power plant operations is a delicate matter which must be carefully administered. The perspectives of the public are markedly different from those directly associated with nuclear power regulation, and these differences must be recognized in preparing media releases. In the interest of optimizing this public comment process, we recommend that the NRC consult with the licensees on a proposed release before action is taken. Licensees would have a greater degree of familiarity with both the issue at hand and with local media personnel. The NRC would of course retain the final authority in the event of an impasse, but licensee input should be solicited. This measure would also improve the ability of licensees to respond to media inquiries by allowing more time for licensees to prepare information and to ensure the availability of knowledgable personnel.

Second, we recommend that all inputs provided by the States and the public to the NRC be made available to licensees. Copies of all correspondence should be

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(2) The referenced documents are:

- W. G. Counsil letter to H. R. Denton dated, October 23, 1981, Pressurized Thermal Shock of Reactor Vessels.
- W. G. Counsil letter to N. J. Palladino dated February 16, 1983, Interim Reliability Evaluation Program.

(3) W. J. Dircks letter to W. G. Counsil dated April 11, 1983, Interim Reliability Evaluation Program.

forwarded promptly to licensees. If a hotline is established, all conversations should be taped and copies be provided to licensees. Such measures are appropriate because it is the licensees who are responsible for public health and safety, and any potentially relevant input should promptly be made available to licensees. Further, licensees invest substantial resources in public information programs and these inputs could be used to assess their effectiveness and identify potential areas of improvement. We remain dedicated to the safety of nuclear power plant operations, and we are willing to provide information to the States or the public to demonstrate our corporate commitment. We are in a better position to respond to the public's questions and comments, and should be provided all inputs provided to NRC under these circumstances.

Implications of NRC's Regionalization Plans

In 48FR12619, the NRC noticed a summary of its plans regarding regionalization of selected licensing functions. The issue which has attracted the most attention during the regional meetings and in other forums is the regionalization of certain power reactor licensing functions, with a resulting division of licensing responsibilities between NRC headquarters and the Regional Offices. We believe that such a step may prove beneficial, provided a reasonable concensus is reached regarding which functions are regionalized and which are retained at headquarters. We fully recognize that final decisions have not been reached and therefore NRC's current regionalization plans have no immediate impact on the interim final rules. However, we wish to ensure a smooth transition and believe some advance planning will facilitate the process. This matter was addressed briefly in previous correspondence(4); further clarification is provided here.

Most of the discussions we have participated in suggest that the delineation of responsibilities will be issue-oriented. Implicit in this approach is the fact that review and issuance of license amendments would also be shared. The "routine" amendments would be processed by the Regions and the "complex" amendments would be dispositioned by headquarters. Certain internal NRC memoranda(5) appear to support this type of approach. If this situation materializes without further guidance, licensees would be unsure where to direct license amendments requiring expedited treatment since by definition the plant situation would not have been previously contemplated. Given the extensive amounts of telephone contact normally associated with these situations, we believe it is desirable that communications with the responsible NRC Office be initiated from the beginning. Hence, we recommend that before any transfer of authority of facility licenses occurs, a clear understanding of the groundrules for the transfer is reached. We are confident that a mutually acceptable approach can be defined in the context of finalizing the details of the entire regionalization process.

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(4) W. G. Counsil letter to D. G. Eisenhut dated, March 24, 1983, Comments on Draft NUREG-0737 PWR Technical Specifications.

(5) J. G. Keppler memorandum to H. R. Denton dated, January 13, 1982, Regionalization of NRR Functions.
H. R. Denton memorandum to V. Stello dated February 5, 1982, Regionalization of Regulatory Functions.

Further, independent of where licensee amendments are evaluated, it is necessary that thorough and precise procedures be in place to provide a road map for the NRC Staff on the steps to be taken to promptly process a license amendment request(6). Before the NRC can establish the optimum method of regionalizing this function, it now must address the new elements of Federal Register notice coordination, public comment review, State consultation, and coping with exigent circumstances. We merely wish to avoid a situation where the Regional Offices have the responsibility of dealing with a proposal requiring prompt attention, and working level personnel are unfamiliar with any of the steps necessary to process the request. In summary, we believe that the interim final rules introduce new considerations into the evaluation of regionalizing authority to issue license amendments. These and other factors should be considered by both the NRC and the industry before a decision is reached.

No Significant Hazards Consideration - Reracking of Spent Fuel Pools

We strongly support the Commission's decision to not include reracking in the list of examples that will be considered likely to involve a significant hazard consideration.(7) It is clearly inappropriate to publish a policy which ignores and runs contrary to the documented technical NRC conclusions published in numerous Safety Evaluation Reports. A decision to classify all rerackings as actions constituting significant hazards considerations, applied to certain realistic scenarios, would yield some rather bizarre conclusions. For example, a licensee operating several facilities may have previously reracked a spent fuel pool and have therefore received a Staff SER containing the typical findings such as:

- The new racks do not alter the potential consequences of the design basis accident for the spent fuel pool, and
- The new racks will not change the radiological consequences of a postulated fuel handling accident or spent fuel caskdrop.

The same licensee may now wish to expand its spent fuel storage capacity at a sister unit using an identical design, and the Commission would find a "significant hazard" associated with a previously explicitly approved and successfully implemented design if this example was reinstated. In short, nuclear safety decisions should be reached using technical input. Significantly, adopting our recommendation would send an appropriate and interpretable signal regarding the meaning of the criteria associated with making the no significant hazards consideration determination on issues not explicitly covered in the examples.

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(6) Specific recommendations in this regard were provided in the W. G. Counsil letter to D. G. Eisenhut dated April 25, 1983, Public Law 97-415.

(7) The basis for our support was summarized in the W. G. Counsil letter to Chairman Palladino dated, February 9, 1983, Significant Hazards Considerations.

Amendments Requiring Expedited Treatment and Involving a Significant Hazards Consideration

The Commission's interim final rules identify the procedural differences between amendments involving a significant hazards consideration from those which do not. Where conditions warrant and the amendment does not involve a significant hazards consideration, there is a process available to have amendments issued on an expedited basis. However, there is no process identified to disposition amendment requests which both require expedited treatment and involve a significant hazards consideration. While we recognize that it is unlikely for such a situation to arise, it is nonetheless conceivable. The scenario takes on additional credibility when one hypothesizes a situation where ample lead time was provided, a hearing was convened, and protracted administrative delays consumed all the time originally allocated to secure regulatory approval. In these or other circumstances delaying issuance of an amendment could even run contrary to the interests of overall plant safety.

While various organizations may have differing views in the probability of such a scenario, prudence dictates that some mechanism be established to deal with this situation. One possibility would be Commission issuance of an immediately effective Order (10CFR2.204). We would welcome the opportunity to discuss this matter further with the NRC.

Treatment of Exemptions from NRC Regulations

The subject interim final rules contain no explicit reference to exemptions(8) from NRC regulations which are issued. However, we are concerned that the various methods the Commission has used to issue exemptions may result in unjustifiably complicating their disposition by subjecting all such future requests to this new OL amendment process. It is our view that exemption requests need not automatically be considered license amendments, even though the NRC has occasionally elected to notice such actions in the Federal Register and/or assign license amendment numbers to the issuing documents. Support for our position can be found from both the technical and legal perspectives.

From a technical standpoint, many exemptions which licensees are obligated to seek are the direct result of poorly worded or inappropriate regulations. Far fewer exemptions would be needed if the NRC was more sensitive to industry perspectives in its rulemaking proceedings. The most blatant example of this trend are NRC's fire protection regulations, 10CFR50.48 and Appendix R to 10CFR50. The regulated industry has already submitted hundreds of exemption requests from these regulations, and the unfortunate truth is that thousands may be dispositioned before the issue is resolved. The word exemption carries with it a connotation to the layman of a reduction in the protection of public health and

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(8) Requests for relief from NRC regulations generally filed pursuant to 10CFR50.12, or other provisions of limited applicability such as 10CFR50.48(c)(6).

safety. Of course, this is not the case. In fact, the criteria for submitting under 50.48(c)(6) are that implementation of NRC requirements would not enhance fire protection safety or may be detrimental to overall facility safety. Such issues should not, as a matter of standard practice, be elevated to the status of license amendments.

From a legal standpoint, ample precedent has been set in that there have been numerous instances in the past of the NRC issuing exemptions and not assigning license amendment numbers to the issuing documents(9). The precedent has already been firmly established and the interim final rules do not disturb this practice. Adoption of this recommendation would yield no conflict with any existing NRC regulation.

Support from our position can also be found in 10CFR170.22, schedule of fees for facility license amendments. This paragraph describes the current six classes of amendments, and identifies the required fee for review. The description for Classes III through VI contain the following:

"Amendments, exemptions, or required approvals ....."

The above wording indicates that amendments and exemptions are distinct actions, and that exemptions should not automatically be considered license amendments. In addition, the NRC has issued at least one clarification letter(10) on Part 170 in which further support for this position can be found.

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(9) Examples of this approach include the following:

D. M. Crutchfield letter to W. G. Counsil dated, April 21, 1983. Exemption related to the Annual Emergency Preparedness Exercise, Millstone Station, Units No. 1 and 2.

D. M. Crutchfield letter to W. G. Counsil dated, December 21, 1982. Inservice Inspection Relief, Reactor Coolant Pump Inspection Program, Haddam Neck Plant.

H. R. Denton letter to W. G. Counsil dated, November 11, 1981. Fire Protection Exemption, Haddam Neck Plant and Millstone Station, Unit No. 2.

(10) A July 12, 1979 letter from W. O. Miller to W. G. Counsil provided guidance for interpreting the requirements of Part 170. Enclosure No. 7 of that document makes it explicitly clear that review of proposed amendments are separate and distinct from reviews of exemption requests, even when only one safety issue is involved.

To consider all exemptions as amendments would merely add more administrative hurdles, paperwork, and time delays to an already sufficiently cumbersome process. More importantly, it would add nothing to nuclear safety. In several recent instances the NRC has either acted or proposed to act in a fashion suggesting that the need for exemptions will continue to escalate. On the issue of prompt notification systems, the NRC established a deadline knowing with virtual certainty that several licensees would be incapable of complying. In the proposed rule on shift staffing (47FR38135), the NRC described how licensees could merely seek exemptions if they could not meet the proposed deadline. Appendix E to 10CFR50 requires annual emergency planning exercises, even though the lead governmental agency on this issue, FEMA, believes a lesser frequency is adequate. Often the annual frequency cannot be met because FEMA, the States, the local communities, other involved agencies cannot support that schedule.(11) Even when the licensee is not responsible for the deferral, the licensee is obligated to seek and justify the exemption. We believe that no additional obstacles should be erected in the exemption process, and we urge the NRC to let nuclear safety considerations play a paramount role in reaching a decision in this regard.

Relationship to Proposed Rule on Technical Specifications for Nuclear Power Reactors

In 47FR13369, the NRC proposed to amend existing regulations governing Technical Specifications by introducing a bi-level system of Technical Specifications and Supplemental Specifications. Only the former would be made directly a part of the operating license, and any changes would continue to require prior NRC approval. According to the explanation provided in the Federal Register notice, the Supplemental Specifications can be changed by the licensee within certain bounds and under prescribed conditions. A process similar to plant changes made under 50.59 is envisioned.

The major difficulty we forsee when looking at this process in the context of the interim final rules concerns proposed 10CFR50.36(f)(7). Even though the Supplemental Specifications would not be a part of the license, there are conditions (described in 50.36(f)(7)) under which proposed changes must be treated as license amendments and applications must be filed pursuant to 50.90. It is unclear why applications for license amendments must be submitted to change a document which is to be designated not a part of the operating license. There are also implications in proposed 50.54(x)(12) of instances where changes to the Supplemental Specifications may involve license amendments in that "prior Commission approval" is required.

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(11) Additional examples of this trend can be found in the W. G. Counsil letter to the Secretary of the Commission dated, February 2, 1983, Comments on the Proposed Rule Regarding Revision of License Fee Schedules.

(12) Apparently to be re-designated in light of the change issued in 48FR13966, which promulgates a different provision designated as 50.54(x).

While the above questions need to be resolved independent of the interim final rules, they acquire additional significance in light of the new license amendment process. The attractiveness of this proposed rule is diminished if a significant percentage of changes to the provisions which would be included within the Supplemental Specifications have to be processed as amendments, especially in light of these interim final rules. Among the comments we submitted previously(13) on this proposed rule, we suggested that the constraints within which changes could be implemented by the licensee are unnecessarily restrictive. Specific recommendations regarding relaxation of the proposed criteria were also provided.

Question of Retroactivity

The interim final rules become effective on May 6, 1983. In recent conversations with the Staff, we have been verbally informed that the NRC intends to process all amendment requests not issued by May 6, 1983 by following the steps contained in the interim final rules. We find such a position to be totally inappropriate and, in fact, contrary to the rule itself. We believe that all amendment requests docketed by May 6, 1983 should be dispositioned using the conventional (pre-interim final rule) process.

The new 10CFR50.91 contains the following paragraph:

> "The Commission will use the following procedures on an application received after May 6, 1983 requesting an amendment to an operating license ....."

The Supplementary Information Section further clarifies the statement in the rule as follows:

> "Finally, with respect to amendment requests received before the interim final rule takes effect, the Commission proposes to keep its present procedures and not provide notice for public comment on amendments on which the Commission has not acted before the effective date of the interim final rule."

The above explanation is unambiguous and, when coupled with the previously quoted excerpt from the new 50.91, leaves no doubt that pending amendment requests should be processed using the original procedures. No explanation for any other approach has been offered, and we strongly believe that the statements in the rule should be adhered to.

Criteria Used to Make the No Significant Hazards Consideration Determination

The NRC is undoubtedly aware of the strong similarity between the criteria to be used to make the no significant hazards consideration determination with the criteria of 50.59 which define the tests associated with making the unreviewed safety question determination. While we offer no explicit comments on the

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(13) W. G. Counsil letter to the Secretary of the Commission dated, May 28, 1982, Proposed Rule, Technical Specifications for Nuclear Power Reactors.

actual criteria (vs. their interpretation) for making the former determination, the interim final rule has raised an important question regarding the interpretation of the criteria in 50.59.

The most important difference between the two sets of criteria relates to the absence of the word "significant" in either 50.59(a)(2)(i) or 50.59 (a)(2)(iii). When interpreted literally, the absence of the word significant results in an extremely rigid set of criteria which unjustifiably complicates the process of implementing changes to facility design or procedures.

To illustrate this point, the following examples are presented. The legal limit on site boundary dose for a certain accident may be 300 rem. The licensing basis analysis for this event may have a dose consequence of 0.001 rem, many orders of magnitude below the regulatory limit. A design change may result in a doubling of the calculated dose, which constitutes an "increase in the consequences of a previously analyzed accident". This situation could result in a positive unreviewed safety question determination, when in fact this safety significance of the change is trivial. One example of such a change concerns the transition from manual to automatic initiation of auxiliary feedwater systems for PWR's.

Similarly, the probability of a given accident resulting in a core melt may be 10^{-7}, several orders of magnitude below the proposed safety goal. A plant design change may increase this probability by a factor of 2, yet not have any significant impact on the overall probability of core melt for the facility. It is our view that this situation should not result in a positive unreviewed safety question determination, yet a literal interpretation of the currently phrased 50.59 has this effect.

The criteria of 50.59 can be interpreted a number of ways, and our review has revealed that little if any relevant guidance from the NRC exists in this regard. Consequently, we believe that the most appropriate action is to formally amend the first and third criteria as follows:

- If the probability of occurence where the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be <u>significantly</u> increased,

- If the margin of safety as defined in the basis for any technical specification is <u>significantly</u> reduced.

We believe these changes would streamline the process by eliminating ambiguity and reducing the number of positive unreviewed safety question determinations and consequently reducing the volume of paperwork required, yet nuclear safety considerations would not be compromised. These changes would clearly place the responsibility for nuclear safety where it belongs, in the hands of licensees.

We intend to discuss this recommendation with members of the Staff and, if appropriate, file a petition for rulemaking to accomplish this objective.

Looking at the license amendment situation from a more global perspective, it has become eminently clear that far too many license amendments are being processed using increasing complex procedures. Several independent alternatives, or a combination of them, should be pursued to alleviate this situation. One alternative identified above is to relax the criteria governing what constitutes an unreviewed safety question. A second approach is conceptually identified in the proposed rulemaking on Technical Specifications, involving the creation of a bi-level system of specifications. A third alternative would be to establish a system whereby many of the provisions currently contained in the Technical Specifications could be amended by the licensee without explicit prior NRC approval. The common theme behind each of these alternatives is a reduction in the paper pushed to implement plant changes and license amendments with an equivalent or improved assurance of nuclear safety. The objective is to clearly articulate that licensees have the responsibility for plant safety, and the NRC functions in an audit-only role whenever possible. We suggest that these possibilities be explored further to bring the optimum solution to fruition.

Interpretation of Criteria Used to Make the No Signification Hazards Consideration Determination

The pivotal word in three criteria used to make the no significant hazards consideration determination is the word "significant". Obviously this word can connote different meanings to different people. We believe that licensees are best qualified to interpret this term in the context of their own amendment requests, and consequently the Commission should avoid publishing rigid "guidance" documents in this regard. We are currently preparing a guidance document for our use internally, and its purpose will be to ensure company-wide consistency without prescribing a cookbook approach.

For example, it is inappropriate to specify a percentage change above which the change becomes "significant" in all circumstances. When the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant. When the safety margin is fifteen percent, a comparable percentage reduction may in fact be significant. The cummulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

In addition, our guidance document will provide information regarding the "design basis envelope" for our facilities. Our accident probability or consequence determinations will be limited to our design basis requirements and other credible scenarios and not to all hypotheses of third-party reviewers.

Conclusion

We appreciate the opportunity to provide our comments on these interim final rules, and are available to provide further clarification if desired by the Staff.

Very truly yours,

W. G. Counsil

W. G. Counsil
Senior Vice President