

DOCKETED (61FR54461)
USNRC

November 18, 1996

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ComEd

The Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
Attn: Docketing and Service Branch

OFFICE
DOCKET

SUBJECT: Commonwealth Edison (ComEd) Comments on Policy and Procedure for Enforcement Actions; Departures From FSAR (FR 54461, Vol. 61, No. 203)

The purpose of this memo is to provide comments to the NRC Staff on the revision to its General Statement of Policy and Procedure for Enforcement Actions as applied to departures from the Final Safety Analysis Report. The comment period for this revision of the policy expires November 18, 1996. ComEd's comments are provided below:

ComEd's comparison of this portion (i.e., SUPPLEMENTARY INFORMATION) of the policy revision identified an apparent discrepancy within a later section of the policy statement, regarding the following section:

"In some cases, the departure from the FSAR, if it does not involve a change to the facility, procedures, or tests or experiments described in the FSAR, may not cause the licensee to be in violation of any legal requirement. In such cases, the departure from the FSAR would not be a violation, and only a Notice of Deviation may be warranted."

ComEd agrees with the above statement. However, in later portions of this policy statement, most notably, Section 1 - Severity Levels, within the discussion regarding Severity Level III violations, the following excerpt appears to conflict with the aforementioned statement and is incongruous:

"It also includes situations not involving an unreviewed safety question where the licensee would need to perform a detailed evaluation before it would have had a reasonable expectation that an unreviewed safety question was not involved without the performance of a detailed evaluation. This is significant because of the importance of licensees using the required process for maintaining and operating the facilities in accordance with the design and procedures described in the FSAR when there is uncertainty as to whether an unreviewed safety question is present. An after-the-fact evaluation that demonstrates that an unreviewed safety question was not involved would, in general, not mitigate the regulatory significance of failing to perform an appropriate evaluation prior to implementation of the change."

This policy revision appears in conflict with NRC staff guidance provided to licensees in Generic Letter 91-18 and the statement within the basis for issuing a Level III violation:

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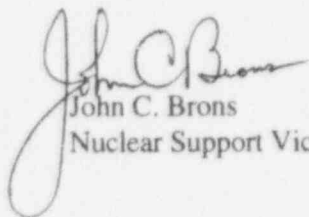
"A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought."

If an issue arises where an after-the-fact evaluation shows that an unreviewed safety question does not exist, then it is inappropriate to submit this issue to the NRC staff for review and approval as required by 10 CFR 50.59. We agree that the above example highlights imprudent action and poor application of engineering evaluation. However, the above statement within the policy revision is subjective language, destined for inconsistent application and does not appear to result in a violation of a legal requirement to the extent that a Severity Level III violation is warranted. We believe that the incongruity between a policy where a FSAR discrepancy is treated as a deviation when such a discrepancy does not involve a change to the facility, procedures, or tests or experiments described in the FSAR, and a FSAR change where an unreviewed safety question does not exist, indirectly results in a retroactive change to 10 CFR 50.59 (default to an unreviewed safety question and submit license amendment requests). We recommend that the NRC staff re-evaluate its proposed policy change and apply its rulemaking methodology, where appropriate.

Upon issuance of plant licenses, the SAR/FSAR's were issued without complete evaluations of situations where minor deviations were expected to be permitted without explicit discussion and description in the plant safety analyses. Plant application of the SAR/FSAR as updated through the UFSARs has generally been accomplished on a case-by-case basis using plant policies, procedures or other administrative means. The NRC staff has been inspecting and assessing our plants for over 25 years, thus providing implicit acceptance (unless otherwise noted and cited) of such plant policies, procedures and administrative means. We believe such a change in policy by the NRC does result in a backfit to our accepted plant policies, procedures, licensing basis and should be evaluated, by the NRC staff, per the provisions of 10 CFR 50.109.

Please feel free to contact this office if you have any questions pertaining to this review.

Sincerely,



John C. Brons
Nuclear Support Vice President

bcc: Attachment - Recommendations

RECOMMENDATIONS

In Section 4, Old Design Issues, the NRC staff policy addressees:

"... enforcement discretion for old design issues and may be applicable to some 10 CFR 50.59 violations to the extent that voluntary action by a licensee identifies a past problem, such as in engineering, design, or installation. This discretion addresses violations that would not likely be identified by routine licensee efforts such as normal surveillance or quality assurance activities. Identification of past violations through required efforts would be treated using the normal policy."

Furthermore, the NRC staff is willing to exercise discretion for identification of old design issues if an extraordinary inspection effort is undertaken by licensees and such an inspection effort is described to the NRC staff in writing. The period of time encompassed by this policy change is **two years**. For such initiatives to be fruitful, ComEd's Engineering organization needs to evaluate the benefits of undertaking such an initiative, develop a plan which includes the scope and schedule of proposed corrective actions to address identified discrepancies. This plan needs to be provided to the NRC staff such that the initiative is complete prior to **October 18, 1998**.