



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

Attachment 2 to
Enclosure 5

DEC 10 1984

MEMORANDUM FOR: Victor Stello, Jr., DEDROGR
Harold R. Denton, Director, NRR
Richard C. DeYoung, Director, IE

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: FIRE PROTECTION POLICY STEERING COMMITTEE RECOMMENDATIONS

In a memorandum dated October 26, 1984, the Fire Protection Policy Steering Committee provided me with their recommended actions on the fire protection policy and program. Comments on these recommendations have been received from the appropriate program and regional offices. The individual comments are enclosed.

These comments, although generally supportive of the Steering Committee's work, raise a number of serious questions which need to be answered before we can proceed to the Commission on this matter. They are:

1. Are all the recommendations technically justified from the safety standpoint?
2. Are the resource estimates correct?
3. How will the inspection program be impacted to the extent that resources will be diverted from other activities?
4. Considering the current status of fire protection capability at operating plants, does the current risk dictate the reprogramming of inspection resources for fire protection inspection?
5. Is the magnitude of the safety problem commensurate with the proposed actions; e.g., no further scheduler exemptions?
6. Should the revised interpretations and questions and answers be issued and what impact will they have on the overall program?
7. Do the recommendations go beyond what the Commission intended in promulgating Appendix R?

In light of the above, I have decided to proceed in the following way:

1. The Director, NRR, should release the report of the Steering Committee to the PDR and invite comment by interested parties. Comments should be analyzed by NRR with assistance from IE and ELD as needed. This analysis should be provided as part of a Commission paper.

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2. The Director, NRR, should provide a quantitative estimate of the public risk associated with fire from operating plants based on their current status; i.e., incomplete compliance with Appendix R. This estimate should be based on your review of pertinent existing PRAs that have been reviewed by NRC. The ROGR staff should be kept informed of progress in this area. This estimate and associated basis should be provided in the Commission paper.
3. The Director, IE, should provide an evaluation of the reprogramming of inspection activities that will be necessary in order to implement the Steering Committee's recommendations regarding inspection. Inspection activities to be reprogrammed shall be identified and a basis provided. This report shall be provided to NRR for the Commission paper and shall be consistent with the results of Task 2.
4. The Director, NRR, with assistance from the Directors of IE and ELD should prepare a Commission paper that addresses the activities to date and provides specific recommendations for Commission approval. That paper should address the specific questions identified above. Target date for providing the paper to the CRGR for review is February 1, 1985.
5. CRGR should review the proposed Commission paper, address each of the above questions, and make specific recommendations to me not later than 30 days after receipt from NRR.

I expect appropriate management representatives from NRR, IE and the Steering Committee to attend the CRGR meetings on this issue to respond to CRGR questions.

(Signed) William J. Dircks

William J. Dircks
Executive Director
for Operations

Enclosures: As stated

cc: R. Minogue
G. Cunningham
Regional Administrators

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CRGR Briefing on Fire Protection

The Committee was briefed by NRR (W. Johnston) on matters addressed in the proposed Fire Protection Guidance Package now scheduled for full review by CRGR at Meeting No. 79 on July 24, 1985. The package being discussed was that submitted by NRR to the EDO by memorandum dated June 24, 1985, Denton to Dircks; that material was in turn distributed to CRGR members by memorandum dated July 25, 1985, Stello to Bernero, et al. No additional briefing material was provided to the Committee in connection with this briefing.

The issues involved in completing implementation of the Appendix R rule regarding Fire Protection programs at operating reactors are long standing; and the Fire Protection Guidance Package that has been submitted for EDO office-level consideration now reflects a complex chronology of evolution over several years. This briefing was scheduled, therefore, in advance of final review by CRGR, to clarify any points or details identified by the Committee in its review of that material to date, and hopefully to better focus the presentations and discussions regarding the proposed Fire Protection guidance package at Meeting No. 79.

The principal points developed in the discussions at this briefing were as follows:

1. The staff's position is that the new Fire Protection Guidance Package addresses procedural changes and clarifications of interpretations of existing requirements that do not result in imposition of new requirements on licensees. Accordingly, NRR believes that the package would not necessarily require CRGR review. It was noted in this context, that the EDO has indicated (in a memo dated 12/10/84, Dircks to Stello/Denton/DeYoung) that the Commission Paper involved should be reviewed by the Committee; but it was also recognized that, with the passage of time and the turn of events since then (including extensive consideration by a senior management review team appointed by EDO), review by CRGR may no longer be considered necessary.
2. The staff emphasized that the proposed Fire Protection Tech Specs, which were considered by the Fire Protection Steering Group in their review of the new Fire Protection Guidance documents included in this package, are not now included in the package being considered by CRGR. The proposed Tech Specs involved are being further reviewed/developed in conjunction with the broader Tech Spec review and improvement efforts now underway separately within NRR. They will be submitted for CRGR review later, as appropriate.
3. NRR has not prepared a cost-benefit analysis in connection with this Fire Protection Guidance Package, because no new requirements are proposed/imposed or need justification. The NRR view is that this

guidance package only reflects an attempt to expedite implementation of actions already specified or agreed to by the Commission.

4. Much discussion focused on the proposed Standard (Fire Protection) License Condition. The staff believes that it is necessary to put existing Fire Protection Program commitments into a more binding form for some licensees, as part of an overall effort to better control/monitor changes made to previously approved Fire Protection system features or configurations. The staff also believes that it is appropriate to have all licensees on an equal footing with regard to documentation of plant-specific Fire Protection commitments (i.e., in the license condition format already specified by the Commission for the more recently licensed plants).

The CRGR view was that the proposed Standard License Condition would, in effect, make legal requirements out of what have previously been recognized as commitments to guidance (in effect elevating guidance to the stature of a regulation or other such legal requirement). The proposed license condition does, therefore, involve new requirements (although, as proposed by the staff, the new legal requirements involved would not be imposed, but would be accepted voluntarily in response to "encouragement" by the Commission). The Committee felt, therefore, that the proposed license condition was inconsistent with the suggestion that CRGR review was not really required. Alternative ways of achieving the staff's stated objectives in proposing the Standard (Fire Protection) License Condition for all licensees were discussed. One alternative mentioned was for staff to identify the Fire Protection Program features over which the staff thought it necessary to exert improved control/monitoring, and to make Tech Spec items of those features. The discussions on this point at this briefing were inconclusive; but this topic area was identified as a principal area for further treatment in CRGR Meeting No. 79 scheduled for July 24, 1985.

Attachment 4 to
Enclosure 5

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA United States Court of Appeals
District of Columbia Court

No. 81-1050 FILED MAR 16 1982

THE CONNECTICUT LIGHT AND POWER COMPANY, ET AL
PETITIONERS **GEORGE A. FISHER**
CLERK

v.

NUCLEAR REGULATORY COMMISSION, RESPONDENT
CAROLINA POWER AND LIGHT COMPANY, INTERVENOR

Petition for Review of an Order of the
Nuclear Regulatory Commission

Argued January 29, 1982

Decided March 16, 1982

James Michael McGarry, III, with whom *McNeill Watkins II* was on the brief for appellant, and entered appearances for intervenor.

Sheldon L. Trybatch, Attorney, Nuclear Regulatory Commission, with whom *Anne S. Almy* and *Martin Green*, Attorneys, Department of Justice, and *Stephen F. Euperin*, Solicitor, Nuclear Regulatory Commission, were on the brief for respondent. *Harvey J. Shulman* and *G. Paul Bollwoerk, III*, also entered appearances for respondent.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

plants.⁴ The Commission, however, concluded that only an oil collection system could sufficiently protect the coolant pump lubricant from fire. The final rule, therefore, stipulates only one method for protecting the lubrication oil: an oil collection system. 10 C.F.R. § 50, App. R, III.O (1980).

This rule-making followed an extensive process of plant by plant evaluations that had culminated in NRC staff approval of entire fire protection programs at many nuclear power plants and of important portions of such programs at others. Even so, the original notice of proposed rule-making contained no indication of whether plants would be required to alter approved features to comply with the new regulations. The final rule specified that most of the particular requirements would not be imposed upon plants that had received staff approval of features before the effective date of the new rule. 10 C.F.R. § 50.48(b) (1980). Three particular requirements, however, were to be applied to all nuclear plants operating before January 1, 1979, regardless of whether they had received staff approval of these aspects of their fire protection program. *Id.* These include the portions of the fire protection program challenged here: the standards for protecting duplicate and alternative safe shutdown capacity and the method for protecting the reactor coolant pump lubricant.⁵

The final rules, however, contain an additional, critical element of flexibility. Within thirty days of the rules'

⁴ An example is the Robinson 2 unit, owned by Carolina Power & Light Company. Carolina Power and Light is an intervenor in this lawsuit. Its brief explains in great detail how the fire protection program as finally adopted by the NRC may require operating plants to make changes beyond those already undertaken at the direction of NRC staff during the plant by plant evaluation process.

⁵ They also include an emergency lighting requirement not challenged here. 10 C.F.R. § 50.48(b) & App. R, III.J (1980).

effective date, licensees were allowed to apply for exemptions from any aspect of the fire protection program, including those requirements applied to plants in spite of prior staff approval of protection systems that did not conform to the new rules. *Id.* § 50.43(c)(6). Implementation of the new rules is tolled pending final Commission action on the exemption request. *Id.* Exemptions are to be granted by the Commission upon a showing by the licensee that the required plant modification "would not enhance fire protection safety in the facility or that such modifications may be detrimental to overall facility safety." *Id.* Apparently a number of such exemption requests were filed within the time provided and are now under consideration by the NRC. Final decisions by the NRC on the exemption requests will themselves be subject to judicial review, 5 U.S.C. § 702 (1976).

II. THE ADEQUACY OF THE NOTICE OF PROPOSED RULE-MAKING

A. Disclosure of the Technical Basis for the Proposed Rules. The Administrative Procedure Act requires an agency engaged in informal rule-making to publish a notice of proposed rule-making in the Federal Register that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3) (1976). Connecticut Light's most serious complaint about the notice of proposed rule-making here is that it failed to indicate or explain the technical basis on which the Commission had relied in selecting the proposed rules.

The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process. If the notice of proposed rule-making fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the

V. CONCLUSION

Our decision to uphold the NRC's adoption of the fire protection program is reluctant. At almost every step of the way, the NRC's procedures were less than exemplary. The notice of proposed rule-making was cursory and gave the industry the minimum acceptable opportunity to respond. The agency's statement of the basis for the program in its final form provided limited technical guidance indeed. Surely, the NRC is entitled to use its discretion to err on the side of protecting the public safety when it regulates nuclear power plants. If the NRC treats the safeguards of the administrative process in too cavalier a fashion, however, it may be impossible for the reviewing court to discern that its action has indeed furthered the public safety.

Nonetheless, this is a case in which the rule as tempered by the exemption procedure must be upheld. The fire protection program with the exemption procedure is not a radical departure from the program as it was developed after the Browns Ferry fire and as it was originally proposed. With the exemption procedure, power plants will be able to show that alternative fire protection systems protect the public safety at the same high level as the system chosen by the Commission. Their failure to make such showings will only be further proof that the Commission was indeed correct that the public safety urgently required a stringent fire protection program for nuclear power plants.