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GANNETT
NEWS SERVICE

December 2, 1996

FOIA/PA REQUEST
Case No: 96-514
Date Rec'd: 12-9-96
Action Off: Brown
Related Case:

Nuclear Regulatory Commission
Chief, FOIA/LPDR
Publications Services Division
Washington, D.C. 20555
(301) 415-7169

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. s. 552, I request access to and copies of all correspondence, since Jan. 1, 1995, between the following members of Congress from New York state and your agency: Reps. Eliot Engel, Nita Lowey, Sue Kelly, Maurice Hinchey, Sherwood Boehlert, and Ben Gilman.

I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed $100. However, please notify me prior to your incurring any expenses in excess of that amount.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on the members' activities that is of current interest to the public because of their role in setting policy and helping constituents This information is being sought on behalf of *Gannett News Service* for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Very truly yours,

Carl Weiser

1000 WILSON BLVD., ARLINGTON, VA 22229-0001
(703) 276-5800

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 4, 1995

The Honorable Sherwood Boehlert
United States House of Representatives
Washington, DC 20515-3223

Dear Congressman Boehlert:

I am responding to your letter of February 6, 1995, in which you requested comments on an article appearing in Nucleus regarding the Nuclear Regulatory Commission's General Design Criteria (GDC) for nuclear power plants. The article stated that many licensed nuclear power plants do not have to meet the minimum requirements of the GDC. The assertion was based on the Commission's decision not to apply the GDC in Appendix A to 10 CFR 50 to plants with construction permits issued prior to May 21, 1971.

The Commission based its decision on the following. At the time the GDC were promulgated, the Commission emphasized that the GDC were not new requirements and were being issued to more clearly articulate the licensing requirements and practices that were in effect when the rule was published. Although the Commission acknowledged the importance of compliance with the intent of the GDC, it also recognized that each plant issued a construction permit (CP) before the GDC were formally adopted was evaluated on a plant-specific basis, determined to be safe, and subsequently issued an operating license by the Commission. Furthermore, current regulatory processes ensure that all plants continue to be operated safely and comply with their licensing bases. As discussed by the staff in SECY-92-223 ("Resolution of Deviations Identified During the Systematic Evaluation Program," dated June 19, 1992 (enclosed)), requiring plants issued CPs before May 1971 to comply with the GDC would provide little or no safety benefit, but would require an extensive commitment of resources.

Therefore, the article was correct in stating that the NRC did not apply the specific GDC to nuclear power plants with CPs issued before 1971. This does not mean that these plants are unsafe. Substantive criteria contained in the GDC were applied to plants with CPs issued before May 1971 and the GDC have been applied to all other plants since the rule was effective. The significant instances of nonconformance with the regulations were evaluated collectively in an integrated assessment and determined not to have immediate safety significance. These items are being prioritized and addressed within an established regulatory process for handling generic safety issues.

If you have any other questions, please do not hesitate to contact me.

Sincerely,

James M. Taylor
Executive Director
for Operations

Enclosure: As stated

9504140210

POLICY ISSUE
(Notation Vote)

June 19, 1992 SECY-92-223

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: RESOLUTION OF DEVIATIONS IDENTIFIED DURING THE SYSTEMATIC EVALUATION PROGRAM

Purpose: To present options for the Commission to consider regarding the resolution of deviations from regulations the staff identified during the Systematic Evaluation Program (SEP). The staff requests the Commission to issue guidance on this matter.

Background: In 1977, the U.S. Nuclear Regulatory Commission (NRC) initiated the SEP to review the designs of older operating nuclear power plants. The original SEP objectives were that the NRC should

(1) assess the safety adequacy of the design and operation of currently licensed nuclear power plants,

(2) establish documentation which shows how each operating plant reviewed compares with current criteria on significant safety issues and provide a rationale for acceptable departures from these criteria,

Contact:
Marylee Slosson, NRR
504-1282

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Enclosure

(3) provide the capability to make integrated and balanced decisions about any required backfitting,

(4) structure the program to identify early and resolve any significant deficiencies,

(5) use available resources efficiently and minimize requirements for additional resources by the NRC or the industry.

In Phase I of the SEP, the staff performed a comprehensive review of existing safety issues to define an optimum set of review areas (topics) for evaluating the older plants. The staff defined 137 issues from an original list of about 800 topics and found that the regulatory requirements for these 137 issues had changed enough to warrant evaluating those plants licensed before the staff had issued the Standard Review Plan (SRP) in 1975. In Phase II of the SEP, the staff compared the designs of 10 of the older plants to the licensing criteria delineated in the SRP. These 10 plants are called the "SEP plants." The staff identified approximately 80 to 90 issues from the original 137 issues that applied to each SEP facility, although the specific issues varied among the facilities. The staff determined that the SEP plants met the current criteria or were "acceptable on another defined basis" for about 50 of the issues. The staff considered the 30 to 40 remaining issues when it performed the integrated assessment for each plant. The staff documented each of these 30 to 40 issues, which required further action or review, in Integrated Plant Safety Assessment Reports (IPSARs) as well as in individual safety evaluation reports (SERs). The staff documented the safety reviews for issues found acceptable before it conducted the integrated assessments in individual SERs and did not specifically discuss these issues in detail in the IPSAR itself.

Upon reviewing the lists of the 30 to 40 issues that required further action or review for each of the SEP plants, the staff identified 27 issues that required some corrective action at one or more of the SEP plants and whose resolution could lead to safety improvements for other operating plants built at about the same time. These 27 issues are known as the "SEP lessons learned issues."

In SECY-84-133, "Integrated Safety Assessment Program" of March 23, 1984, the staff presented the 27 SEP lessons learned issues to the Commission as part of a proposal for an Integrated Safety Assessment Program (ISAP). The staff developed the ISAP to review safety issues for a specific plant in an integrated manner instead of continuing Phase III of the SEP at other older operating reactors, as proposed previously. In the "Commission Policy Statement on the Systematic Evaluation of Operating Nuclear Power Reactors" of November 15, 1984, the Commission described the ISAP program and discussed Public Law (PL) 96-295, the NRC Authorization Bill for Fiscal Year 1980, enacted by Congress. Section 110 of PL 96-295 required the NRC to develop a program by which to systematically evaluate the safety of all operating reactors. The program proposal would have extended the SEP to require each licensee to perform an evaluation to compare its plant design to the acceptance criteria in the Standard Review Plan. However, this program was not implemented for operating reactors. The Commission determined, and Congress agreed, that the scope of the program was too broad to efficiently evaluate the safety of operating reactors. Congress specified in later authorization bills that funds should not be spent to implement the program. In May 1985, the NRC initiated the ISAP pilot program at two plants, Millstone 1 and Haddam Neck, which were also SEP plants. After reviewing these two plants, the NRC did not further pursue the ISAP.

During Phase II of the SEP, the staff identified deviations (1) from the requirements of the regulations [in some cases the general design criteria (GDC) of Appendix A to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50)] or (2) from the staff's positions on compliance with regulations (the 1975 version of the SRP). The staff evaluated each deviation to identify either the safety need for and proposed methods of satisfying the regulation or the adequacy of proposed compensatory measures.

In SECY-87-100, "Systematic Evaluation Program (SEP) Plant Exemptions," of April 14, 1987, the staff recommended that the Commission approve a procedure for processing exemptions from those regulations for which deviations were identified in the IPSARs for the SEP plants. The staff stated that the proposed exemptions satisfied the special circumstances criterion in 10 CFR 50.12(a)(2)(ii); that is,

applying the regulation would not achieve the underlying purpose of the rule.

In a memorandum of June 22, 1987, from Samuel J. Chilk, Secretary, to Victor Stello, Jr., Executive Director for Operations, and William C. Parler, General Counsel, the Commission disapproved the recommended procedure and requested the staff to provide it with a range of options to consider. It also requested that the staff provide it with a legal analysis for each option and address the legal necessity for processing the exemptions.

The staff has delayed the response to this issue until now because of the tie between its response to the Commission's request and the Commission's actions regarding license renewal, particulary actions pertaining to the current licensing basis. With the Commission's development of the regulatory framework for license renewal through issuance of 10 CFR Part 54 in December 1991, the staff is now able to provide options to the Commission and to make a recommendation consistent with the Commission's direction on license renewal.

Discussion: Responding to the Commission's direction, the staff has reexamined the SEP and has developed a range of options, an analysis of each option, and a position on the legal necessity of issuing exemptions.

The NRC decided in 1984, with agreement of Congress, not to extend the full scope SEP to other operating reactors built at about the same time. However, the staff recommended conducting a generic review of the 27 SEP lessons learned issues. While preparing the proposed license renewal rule, the staff reviewed the issues and reported in SECY 91-330, "Final Rule on Nuclear Power Plant License Renewal," of October 18, 1991, that it had determined that 4 of the 27 issues had been completely resolved for all plants and that one was of such low safety significance as to require no regulatory action. The staff determined that none of the remaining 22 issues require immediate action to protect the health and safety of the public. The staff is addressing these 22 issues in the established regulatory process for determining the safety significance of generic safety issues (GSIs) as described in NUREG-0933, "A Prioritization of Generic Safety Issues." In SECY 91-330, the staff stated that none of the SEP lessons learned issues should require immediate action as part of an application for license renewal. The staff has

completed the prioritization of seven of the SEP lessons learned issues. Each of the seven issues has been dropped from further pursuit because they are being addressed by other ongoing NRC programs. If any of the SEP lessons learned issues are determined to require generic resolution they will be pursued for all applicable plants.

The staff identified four basic considerations in determining the need for exemptions: (1) the Commission's policy on applying the GDC to the SEP plants; (2) the applicability of other regulations promulgated after the SEP plants received their construction permits (CPs) or operating licenses (OLs); (3) the difference between a finding that the criterion of a regulation was met and a finding that it was acceptable on another defined basis; and (4) the difference between deviations from the rules themselves and deviations from the staff's positions or review criteria for meeting the rule. The analysis of these considerations will affect the Commission's decision concerning the range of options. Therefore, the staff will discuss these considerations before presenting the range of options.

Many of the deviations identified during the SEP and all but 1 of the 27 SEP lessons learned issues concern deviations associated with the GDC in Appendix A to 10 CFR Part 50 which became effective on May 21, 1971. Therefore, to determine the necessity of issuing exemptions for many of the SEP issues, the staff must address the Commission's policy regarding application of the GDC to the plants that had their construction permit by that date but did not have an operating license.

The Office of the General Counsel (OGC) believes that the intent of the Commission when it promulgated the GDC regulation is not clear and that the Commission can, as a matter of safety policy, choose to interpret the GDC as applying to all plants with operating licenses issued after May 21, 1971, or can restrict applicability of the GDC to plants with CPs issued after May 21, 1971.

A discussion of both interpretrations follows, including the consequences for NRC's regulatory programs.

The staff believes that the current policy on applying the GDC to plants with CPs issued prior to

May 21, 1971 is that the substantive criteria of the GDC apply through individual licensing actions rather than through the application of the GDC regulation. The rationale supporting this policy is that in 10 CFR 50.34 (a)(3), the NRC requires applicants for CPs to include the principal design criteria for the facility in the preliminary safety analysis report (PSAR). This is the only reference in Part 50 to Appendix A. The Commission's regulations do not require the applicant to include the Appendix A criteria in the final safety analysis report (FSAR). However, other appendices in Part 50 specifically reference both the 10 CFR 50.34 (a) requirements for CP applicants and the 10 CFR 50.34 (b) requirements for OL applicants. The implication of this dissimilarity in treatment, and the literal wording of 10 CFR 50.34 (a)(3)(i) which restricts Appendix A to applicants for construction permits, support the policy that the Commission consciously restricted the application of the GDC regulation to plants with construction permits issued after May 21, 1971.

This is not to say, however, that the substantive criteria contained in the GDC have not been applied to plants with construction permits issued before May 21, 1971. In the supplementary information of the proposed GDC rule, the Commission emphasized that the GDC were not new requirements. Rather, the Commission issued them to more clearly articulate the licensing requirements and practice that were in effect when the rule was published. This is reinforced by the statement in the rule that the GDC,

> establish minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have been issued by the Commission.

Furthermore, existing regulatory processes are sufficiently broad and rigorous to ensure that the plants continue to be safe and to comply with the intent of the GDC. This process was the basis for the Commission's recently promulgated rule on renewal of nuclear power plant licenses, 10 CFR Part 54. Therefore safety does not require application of the GDC to the older plants.

The staff's practice has not been to apply the specific GDC contained in Appendix A to facilities with construction permits issued before May 21, 1971. Furthermore, issuing exemptions for deviations in the

SEP will add no safety benefit or perspective to those issues already documented in the SERs, IPSARs, and SERs on the conversion from provisional operating licenses (POLs) to full term operating licenses (FTOLs). However, a view that the GDC do apply might reasonably be viewed as a change in practice and therefore as a backfit. The staff does not believe that the substantial increase in protection criteria of the backfit rule can be met. Therefore, the staff does not believe that exemptions for deviations from the GDC identified during the SEP process are necessary or appropriate.

The rationale for a contrary policy or interpretation that the GDC apply to all plants with operating licenses issued after May 21, 1971 is also suggested by the introduction to Appendix A, which states that the GDC establish the minimum requirements for the principal design criteria necessary to provide reasonable assurance that the facility can be operated without undue risk to the public health and safety. The phrase "without undue risk" represents the statutory requirements of Section 182 of the Atomic Energy Act for "adequate protection of public health and safety." The use of the statutory standard implies that the GDC represent the minimum standard for all licensees. Furthermore, in the supplementary information of the final rule, the Commission stated that, in considering issuing an operating license under Part 50, it would require assurance that these criteria have been satisfied in the detailed documentation on the design and construction of the facility. Thus application of the GDC to the older plants would establish a basis in the regulations for the safety analyses supporting licensing for all plants.

On the other hand, exemptions would be required for deviations from the GDC if the Commission, upon reviewing this issue, decides to apply the GDC to plants whose construction permits were issued before May 21, 1971, but whose operating licenses were issued after May 21, 1971. The staff did not review and document the SEP issues in SERs for the non-SEP plants as it did for the SEP plants. Therefore, any actions required to resolve the issues at the SEP plants will require far greater resources if applied to the non-SEP plants built at about the same time.

Moreover, although the SEP identified "deviations", it is unclear whether these deviations are from the requirements of the regulations themselves, or simply from staff guidance or practice on acceptable methods of compliance with the regulations. The IPSARs often state that the facility does not meet the regulation as implemented by a staff position such as that provided in a regulatory guide or an SRP section. If the deviations are departures from staff guidance or practice, but the requirements of the regulation are met, there is no problem of compliance and no exemptions are necessary. Further staff review would be required to determine if the deviations are deviations from the regulations or from staff positions. This review, while necessary to establish the need for exemptions, will not contribute to the issue from a safety perspective.

In conducting the SEP, the staff also identified possible deviations from other NRC regulations. Some examples of the other regulations referenced in the reviews of SEP issues are 10 CFR Part 20; Appendixes B, E, G, I, J, and K to 10 CFR Part 50; 10 CFR 50.36; 10 CFR 50.44; 10 CFR 50.46; 10 CFR 50.55(a); 10 CFR Part 70; 10 CFR Part 73; and 10 CFR Part 100. Most if not all of these regulations were promulgated by the Commission with the understanding that they were to be backfit to the existing plants[1], because the regulation makes no distinction in implementation or applicability with respect to the licensing date of the plants[2]. For a specific SEP issue, if the staff determined that the plant was acceptable without meeting the exact requirements of a regulation that was backfit, then an exemption would be required.

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[1]Pursuant to 10 CFR 50.54(h), all Part 50 licenses are subject to those regulations, adopted after issuance of the licenses, which are intended to be retroactive in effect.

[2]Although the 1970 Backfit Rule required the Commission to find that a backfit will provide "substantial, additional protection which is required for the public health and safety or common defense and security," the 1970 rule did not require the basis for that finding to be documented, unlike the 1985 or 1988 backfit rules. Accordingly, the basis for the Commission's conclusion that the Backfit Rule's criteria had been satisfied may be incomplete or absent form the records for many rulemakings predating the 1985 Backfit Rule.

Options

The staff suggests that the Commission consider the following options.

OPTION 1

Action

Retain the staff's current policy on requiring no specific backfit of the GDC to plants whose construction permits were issued before May 21, 1971, the effective date of the GDC rule. Issue no exemptions for deviations identified in the SEP. Continue to document the resolution of similar deviations for other plants in this situation in SERs and other appropriate licensing documents.

Analysis

The NRC began the SEP to review the design of older nuclear power plants to document their safety in light of current licensing requirements. The staff has documented this review by issuing SERs on individual issues, IPSARs, SERs on the conversion from POLs to FTOLs, and the continuing process of identifying and resolving generic safety issues (GSIs). Further safety benefit will not be obtained by additionally documenting this review as an exemption. Moreover, applying the GDC to these older plants might be a backfit, and the substantial increase in protection criteria in the backfit rule cannot be met.

On the other hand, if the GDC do not apply to plants with CPs issued prior to the effective date of the GDC but with OL's issued after that date, there will be a substantial number of plants for which no documented regulatory standards will exist to determine compliance with the Atomic Energy Act other than the issued license. This means that it would be difficult, absent reconstruction of the licensing basis, to determine what standards were applied during the staff OL safety review. There would, however, be a plant specific standard, as documented in the specific license, licensing Safety Evaluation Report, and the Final Safety Analysis Report.[3]

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[3]Except in rare situations, NRC has not taken enforcement action for failures to meet GDC. Normally, a violation is cited by focusing on a Technical Specification, specific regulation, or the

OPTION 2

Action

Revise the staff's current policy and specifically backfit the GDC to all plants whose operating licenses were issued after the effective date of the GDC rule. Issue exemptions from the GDC or any other backfitted regulations after reviewing the SEP topics listed in the IPSARs, including both those that were found acceptable on another defined basis before the IPSAR review and those for which deviations were identified during the integrated assessment.

Analysis

The Commission would determine that the GDC apply to plants with operating licenses issued after May 21, 1971. The Commission would direct the staff to perform a review to ensure (1) that identified deviations are actually deviations from the regulation and not from the staff's positions, (2) that issues previously found acceptable on another defined basis do not also require exemptions, and (3) that regulations other than the GDC for which there are deviations are not backfitted regulations that would require exemptions. The staff would need to evaluate each of the 80 to 90 plant-specific issues for each of the 7 currently operating SEP plants (the evaluation would exclude the Lacrosse and Yankee Rowe plants which are permanently shut down, and San Onofre 1 which is scheduled to be shutdown within two years), or approximately 600 evaluations. To conduct this review and process the exemptions for the issues, the staff would need to allot from 6 to 12 staff full-time equivalents (FTEs) assuming that the review would require from 16 to 32 hours per issue.

The staff would limit its review for Big Rock Point to regulations other than the GDC because the CP and OL for this plant were issued before May 21, 1971.[4]

FSAR through 50.59.

[4]Big Rock Point is the only currently operating SEP plant for which the CP and OL were issued prior to May 21, 1971. Point Beach 1 and Robinson 2 are the only currently operating non-SEP plants for which the CP and OL were issued prior to May 21, 1971.

The staff recommends that, if this option is selected, the staff should conduct a pilot program for one or two SEP plants. The program can be expanded or contracted based on the lessons learned from this pilot program.

The objective of SEP was to identify how plants licensed before the 1975 version of the SRP met the then current licensing requirements or equivalent. Where differences were identified which were judged to be potentially significant, they were evaluated collectively in an integrated assessment. This process focused on the safety of the SEP plants when evaluated against specific review criteria which evolved after plant licensing. The review did not have as its objective a detailed review of conformance to all of the specific elements of the GDCs or the then current staff positions of what was necessary to conform to the GDCs. If exemptions are deemed to be required for SEP plants, the staff may need to expand its review beyond that already completed for the SEP plants and would need to perform similar reviews for older non-SEP plants which were licensed without using the 1975 version of the SRP. Such a review would require extensive resources with little or no safety benefit.

On the other hand, the Commission would avoid not having any readily documented standards for determining compliance with the Atomic Energy Act for these plants.

Licensees may claim that choosing this option represents a backfit from previous staff practice and that a backfit is not justified in view of ongoing regulatory processes to assure that plants' licensing bases provide at least adequate protection.

OPTION 3

Action

Revise the Commission's current policy and specifically backfit the GDC to all plants whose operating licenses were issued after the effective date of the GDC rule. Issue exemptions from the GDC or any other backfitted regulation after reviewing the deviations for only those issues considered in the integrated assessment summary in the IPSARs. This option differs from Option 2 in that it does not include evaluation of the issues determined in the

SEP to be "acceptable on another defined basis." The review would be limited to the issues considered in the integrated assessment summary because they are the ones for which the staff determined upon initial review that (1) the plant was not consistent with the current criteria, (2) the deviations were significant to safety, and (3) the staff deferred resolution of these issues to the integrated assessment.

Analysis

The Commission would determine that the GDC apply to plants with operating licenses issued after May 21, 1971 as in Option 2. The Commission would direct the staff to perform a review to ensure (1) that identified deviations are actually deviations from the regulations and not from the staff's positions, and (2) that regulations other than the GDC for which there are deviations are not backfitted regulations that would require exemptions. The staff would need to evaluate each of the 30 to 40 plant-specific issues for each of the 7 currently operating SEP plants, or approximately 250 evaluations. To conduct this review effort and process the exemptions for the issues, the staff would need to allot from 2 to 5 staff full-time equivalents (FTEs) assuming that the review would require from 16 to 32 hours per issue.

The staff would limit its review for Big Rock Point to regulations other than the GDC because the CP and OL for this plant were issued before May 21, 1971.

The staff recommends that, if this option is adopted, the staff should conduct a pilot program for one or two SEP plants. The program can be expanded or contracted based on the lessons learned from this pilot program.

This option includes the steps necessary to determine if the deviations considered in the integrated assessment in the IPSARs require exemptions from both the GDC and other regulations. However, it does not address the plant-specific issues omitted from the integrated assessment reviews because they were found acceptable on "another defined basis." A review could indicate that some of these issues could also require exemptions.

The objective of SEP was to identify how plants licensed before the 1975 version of the SRP met the then current licensing requirements or equivalent. Where differences were identified which were judged

to be potentially significant, they were evaluated collectively in an integrated assessment. This process focused on the safety of specific review criteria which evolved after plant licensing. The review did not have as its objective a detailed review of conformance to all of the specific elements of the GDCs or the then current staff positions of what was necessary to conform to the GDCs. If exemptions are deemed to be required for SEP plants, the staff may need to expand its review beyond that already completed for the SEP plants and would need to perform similar reviews for older non-SEP plants which were licensed without using the 1975 version of the SRP. Such a review would require extensive resources with little or no safety benefit.

This option requires less resources, but leaves the need for exemptions for some GDC's for the SEP plants unresolved.

Recommendations: The staff recommends that the Commission:

1. Approve Option 1:

   a. Continue the current policy of not applying the GDC to plants with construction permits issued before May 21, 1971.

   b. Direct the staff to conduct no further review because exemptions from the GDC are inappropriate.

   c. Close the SEP program for the SEP plants.

2. Note that the Office of General Counsel (OGC) has reviewed this paper and has no legal objection.

3. Note that staff will ensure that the actions it conducts as prompted by the Commission in selecting any of the options will be conducted within the scope of the NRC Five Year Plan.

James M. Taylor
Executive Director
for Operations

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, July 7, 1992.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, June 29, 1992, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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February 6, 1995

Mr. Ivan Selin
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Selin:

I'm enclosing a recent Nucleus article on the Nuclear Regulatory Commission (NRC), which my constituent, Norman Von Wettberg, of Hamilton, New York, brought to my attention. I would appreciate your comments on this piece.

Thank you for your attention to this matter.

Sincerely,

Sherwood Boehlert
Member of Congress

SB:mf
enclosure

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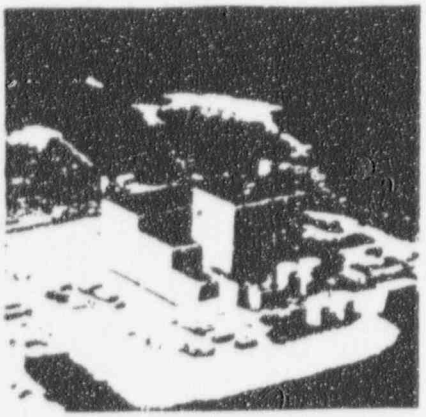
There they go **again...**



The US Nuclear Regulatory Commission (NRC), never at a loss for ways to avoid enforcing its own safety requirements, has found yet another way. I recently discovered that in 1992 the NRC decided that 63 of the 109 licensed nuclear power plants do not have to meet the "minimum requirements" of the agency's General Design Criteria (GDC)—regulations that were set forth on May 21, 1971, to "establish minimum requirements for systems important to safety."

In the wake of Three Mile Island, Congress required the NRC to identify which of its regulations have "particular significance" for public safety and to determine whether *all* operating plants meet those regulations. In September 1992, after reviewing only *10* plants and finding violations of the GDC safety requirements, the NRC decided to close its Systematic Evaluation Program. Although claiming that "compliance with the intent of the GDC is important," the NRC decided that the GDC regulations did not apply to plants that began construction prior to May 21, 1971.

In 1971 the Commission emphasized that the GDC were not new regulations but were issued to articulate the requirements and practices in effect at the time. In 1992, however, the NRC's lawyers claimed that it "is not clear" whether the Commission intended, in 1971, to apply the GDC regulations to plants that received their construction permits before May 21, 1971. No such confusion existed in 1976, when I was the NRC licensing project manager for Indian Point Unit 3 near New York City. Then, the NRC's lawyers made it clear to me that the plant had to meet the GDC regulations in order to obtain an operating license, even though it had begun construction in August 1969—prior to adoption of the GDC. In fact, the plant's design did violate the GDC, but the NRC ultimately managed to circumvent the regulations by substituting the claim that the design met the "intent" of the GDC. (I refused to go along with this distinction and resigned from the NRC.)

Although in that instance the decision to allow a violation of the GDC was hidden, in 1992 such decisions became official NRC policy. But this policy is illogical: If compliance with the *intent* of the GDC requirements is as safe as compliance with the *letter* of these safety regulations, why distinguish between plants that began construction before May 21, 1971, and those whose construction began after that date? And since compliance with NRC regulations is necessary for obtaining a nuclear power plant operating license, if the GDC requirements do not apply, what regulatory standards were used as a basis for issuing the operating licenses? The NRC's decision to avoid enforcement of its regulations by claiming that the GDC do not apply to most operating nuclear power plants may be in the interest of the nuclear power industry, but it is not in the interest of public safety.

—Robert Pollard, Senior Nuclear Safety Engineer

Plants Affected by the NRC Decision

Alabama: Browns Ferry 1, 2, & 3

Arkansas: Arkansas 1

California: Diablo Canyon 1 & 2

Connecticut: Haddam Neck, Millstone 1 & 2

Florida: Crystal River 3, St. Lucie 1, Turkey Point 3 & 4

Georgia: Hatch 1

Illinois: Dresden 2 & 3, Quad Cities 1 & 2, Zion 1 & 2

Iowa: Duane Arnold

Maine: Maine Yankee

Maryland: Calvert Cliffs 1 & 2

Massachusetts: Pilgrim

Michigan: Big Rock Point, Cook 1 & 2, Palisades

Minnesota: Monticello, Prairie Island 1 & 2

Nebraska: Cooper, Fort Calhoun

New Jersey: Oyster Creek, Salem 1 & 2

New York: Fitzpatrick, Ginna, Indian Point 2 & 3, Nine Mile Point 1

Ohio: Davis-Besse

Pennsylvania: Beaver Valley 1, Peach Bottom 2 & 3, Three Mile Island 1

South Carolina: Brunswick 1 & 2, Oconee 1 2, & 3, Robinson 2

Tennessee: Sequoyah 1 & 2

Vermont: Vermont Yankee

Virginia: North Anna 1 & 2, Surry 1 & 2

Wisconsin: Kewaunee, Point Beach 1 & 2