



NUCLEAR ENERGY INSTITUTE

DSI - 13

(14)

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SENIOR VICE PRESIDENT
REGULATORY POLICY & REFORM



November 27, 1996

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Chief, Docketing and Service Branch

SUBJECT: NRC Strategic Assessment and Rebaselining
(61 *Federal Register* 195; October 7, 1996)
Request for Comments

Dear Mr. Hoyle:

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, has reviewed the Direction Setting Issue (DSI) papers which form a part of the NRC Strategic Assessment and Rebaselining Initiative. The purpose of these papers is to discuss key issues affecting the future strategic direction of NRC and provide options for selection by the Commission. The NRC has requested comments from all "stakeholders" to be considered as part of the Commission's decision making process. Our comments on each DSI paper are organized in the following format:

1. What, if any important considerations have been omitted?
2. How accurate are the NRC's assumptions and projections for internal and external factors?

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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3. Do the Commission's preliminary views respond to the current environment and challenge?

4. NEI Recommendations

The NRC is to be commended for undertaking this effort. It is important to periodically review the overall direction of the agency, particularly given the dynamic circumstances in the nuclear industry today. The DSIs identified through the early phases of this assessment are reasonably complete, highlighting the areas in which strategic decisions are needed. Many of our comments highlight areas where the staff analysis of the issues does not include viewpoints significantly different from the status quo.

We are concerned that insufficient review time will reduce the effectiveness of the stakeholder comment process. The stakeholders had a very limited time to solicit and compile comments from their constituencies. We recognize that the public comment period was extended, but the two week extension was announced too late in the process to affect the collection of comments from NEI's members. It is likely that other "stakeholders" representing large constituencies, including licensees with multiple internal organizational groups, were similarly constrained.

Of greater significance is the amount of time the NRC has indicated will be used to assess the comments. NRC staff indicated during the workshops that "Stakeholder Interaction Reports," compiling the comments, would be forwarded to the Commission for consideration within three weeks after the comment deadline. This schedule would make it very difficult for NRC management to consider the variety and volume of public comments that are likely to be received. It could restrict the ability to revise the thinking that went into the initial papers, to define and flesh out new options which may be suggested by the comments, or to provide analysis of such new options for the Commission's consideration. We encourage NRC to take the time necessary to derive full benefit from this important endeavor.

A significant omission from this strategic assessment is the current enforcement policy. That policy has a pervasive effect on the relationship between the NRC and its licensees and on the message the public perceives regarding the safety significance of problems. Other federal agencies with safety mandates, and many foreign nuclear regulatory authorities, have different approaches to enforcement. Some of these are structured differently specifically to encourage compliance, rather than punish non-compliance. NEI strongly encourages the NRC to subject the enforcement policy to the same type of review, examining options different from the

agency's historical practice, as has been applied to other programs in many of the DSIs.

In many of the DSI papers, past actions of the agency are summarized, but often not critically evaluated. Instead, it appears to be accepted that past regulatory actions were necessary and remain appropriate as continuing regulatory requirements. In fact, many of these actions were in response to specific events and issues, may not have been the most effective means of dealing with the issue, and are inappropriate as continuing burdensome requirements since the causes of the events have been dealt with. A more thorough assessment of previous NRC actions could produce lessons on how the agency could have been, and could be, more effective in addressing issues. Today, the regulatory problems at the Millstone station are the issue of the moment. References to these problems permeate the DSI papers. The papers could well have had a different tone had they been prepared a year earlier. While it is necessary to deal with compliance problems when they are found, it seems inappropriate for individual situations such as Millstone to color so completely the strategic picture for a regulatory agency.

There is agreement between the NRC and industry that safety performance has improved over the last several years. Performance indicators monitored by NRC and industry both demonstrate such improvement. Nevertheless, the total burden imposed by regulatory requirements continues to increase. There is danger that this increasing burden will make it economically infeasible for some nuclear power plants to continue operation, thus depriving the nation of a reliable, clean source of electric power. Such an outcome is not in the public interest if safety is not in question. An improved focus is needed in the nuclear regulatory process on safety significance. We note that Chairman Jackson has often expressed her support for the concept of risk-informed, performance-based regulation. We agree that this is an excellent mechanism for providing the needed focus. It would allow issues to be addressed in their appropriate context, considering both their individual significance and the overall level of safety performance in the industry. It would lead to more efficient means to address those issues that require action. It would appropriately allow for individual variation in the response to an issue, as it is seldom the case that a single specific action is the appropriate, effective response for all members of a class of NRC licensees. The regulatory process needs to recognize this, and allow problems to be addressed in the manner which will be most effective given the circumstances of individual licensees. We encourage the NRC to utilize fully this strategic planning process to further the transition to this more effective and efficient regulatory regime.

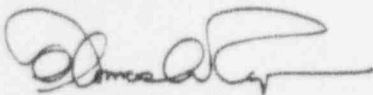
Mr. John C. Hoyle
November 27, 1996
Page 4

Several of the DSIs would benefit from a practical definition of an adequate level of protection of public health and safety. It is difficult to discuss how to (1) improve public communication, (2) improve the efficiency and effectiveness of the regulator, and (3) properly focus a regulatory oversight program without defining the baseline against which effectiveness can be measured. Without a more objective definition of adequate safety levels, one cannot determine when programs are successful or address a perception that more needs to be done. The NRC needs to develop means for applying the safety goals in a practical manner in order to provide a benchmark that is useful for determining when and how much additional action is required to assure safety.

Significant management attention will be required to implement any changes that result from this strategic planning process. The experience with risk-informed performance-based regulation is instructive in that regard. The Commissioners and senior staff management repeatedly have made comments supportive of such approaches to regulation. There appears to be an understanding, at the policy level, that it is appropriate to deal with issues in their particular safety context. This policy has not been effectively transferred to the working level of the staff. Inspectors and reviewers, whose actions impact NRC licensees on a daily basis, remain focused on detailed, prescriptive approaches. They continue to be concerned with how the "requirements" of NRC guidance documents are met, regardless of the safety objective and inherent flexibility of guidance. It will be very important for the Commission and staff management to devote considerable effort to translating any policy changes resulting from this rebaselining to changes in practice at the working level, so that they may indeed improve the effectiveness of the regulatory process.

We appreciate the opportunity to comment on these issues. We are willing to meet with the Commission or staff to discuss our comments or the related broader issues. Please contact me at (202) 739-8013 if there are any questions regarding our comments.

Sincerely,



Thomas D. Ryan

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Enclosure

Mr. John C. Hoyle
November 27, 1996
Page 5

c: Hon. Shirley Ann Jackson, Chairman
Hon. Kenneth C. Rogers, Commissioner
Hon. Greta J. Dicus, Commissioner
Hon. Nils J. Diaz, Commissioner
Hon. Edward McGaffigan, Jr., Commissioner
Mr. James M. Taylor, EDO

Nuclear Energy Institute Comments

on

Direction Setting Issue Papers

from

NRC Strategic Assessment and Rebaselining Initiative

November 27, 1996

DSI 13: Role of Industry

1. What, if any, important considerations have been omitted?

- The paper presumes the need to continue the historical "arms-length" approach to regulation. Other countries' nuclear programs operate successfully with a different regulator-licensee relationship, at least in part (e.g., Japan, France, Germany). It seems appropriate that the NRC at least consider a different regulatory model, in which a more collaborative approach to nuclear safety regulation is developed. A move to a more risk-informed, performance-based regulatory regime is also likely to require a closer working relationship, since licensees are best equipped to determine the risk significance of specific actions at their facilities.
- Even under the present regulatory model, there is a need to create a professional and constructive working relationship with licensees. This should be a fundamental element for enabling the NRC to carry out its mission effectively. Regulatory impact surveys conducted by both NRC and industry over the last ten years have identified the adversarial relationship between many licensees and the NRC as a problem. Addressing this problem would be beneficial to NRC as well as to industry. The paper fails to address the need for this kind of change. In fact, we would suggest that this be cited as a mission-enabling strategic arena in the Strategic Plan. Without it, building public trust and confidence, which is listed as a mission-enabling strategic arena, may be difficult to achieve.
- Little consideration is given to the time which would be required for legislative or regulatory change in comparison to the urgency required to address fundamental problems in the relationship with industry. Problems have been identified in previous reviews, by NRC and industry, reaching back fifteen years, but actions to address those problems have been slow in coming or ineffective.
- The paper fails to recognize that there has been a subtle shift in the underlying objective of safety regulation. The long-term trend has been to move away from a standard of "reasonable assurance" towards one of "proof positive". It has involved regular increases in the margin of safety above levels once accepted as adequate. This has contributed to the increased burden of regulation and to the adversarial relationship between NRC and its licensees. It is an important factor to deal with in attempting to address the role of industry.
- The paper considers, and the Commission's preliminary views embrace, an increased reliance on the codes and standards activities of professional societies. The paper fails to note that NRC currently relies upon the results

of codes and standards activities only when the result suits them. NRC's endorsement of codes and standards by Regulatory Guide often includes exceptions to specific provisions with which NRC disagrees, even though NRC's disagreement has usually been expressed by an NRC representative on the appropriate committee, been considered in the development of the code or standard, and been rejected as part of the consensus development of the final document. Further, NRC does not accept Code Cases, the mechanism established for the standard-setting bodies to render interpretations of their documents, without further NRC review. If the consensus process for developing codes and standards is considered so strong and appropriate, NRC should accept and abide by the entire process rather than picking and choosing from among its output.

- The paper should also consider that an increased NRC emphasis on codes and standards may inhibit their use to improve further plant performance. This could result if standards developing bodies refrain from developing new, or improving existing, standards due to concern that they will be adopted by NRC and become regulatory requirements. Under such circumstances, it should be expected that codification of practices that go beyond assuring adequate safety, that go instead to achieving operational excellence, will not occur. Industry cannot be expected to contribute, through codes and standards activities, to the growth of the margin of safety which will be required by the regulator.
2. How accurate are the NRC's assumptions and projections for internal and external factors?
- The paper assumes that economic factors can only have a negative impact. This fails to consider the demonstrated positive correlation between economic and safety performance. The improvement in plant safety and performance over the last 15 years demonstrates a strong commitment by nuclear utility management to safety as well as the effectiveness of the NRC in contributing to improved performance. Many of these improvements went well beyond what was required by NRC. The strong positive correlation between safety performance and economic performance has been demonstrated repeatedly. The industry clearly has recognized that economic performance and improved safety are driven by the same basic consideration -- doing well whatever must be done. It is in the industry's interest, both long- and short-term, to continue to do so. The underlying assumption that the industry will be driven by economics to the detriment of safety is thus false.
 - Regarding licensee self-assessments, it is stated on page 27 (end of first paragraph) that "superior licensee performance is considered a byproduct of a strong self-assessment capability". This assumption is fundamentally wrong in its implication that superior performance (or safety, or quality) can be

produced by oversight inspection. While a strong self-assessment capability should identify areas where performance can be improved, the capability itself does not improve performance. Superior performance results from effective management and leadership, which is the same foundation for a strong self-assessment capability.

- The paper presumes a continued, and perhaps increased, reliance on industry self-assessments. This can only occur if the use of such assessments results in a more efficient use of industry, and NRC resources. Industry experience to date questions the presumption that costs will be reduced substantially in instances in which credit is given for self-assessments. NRC involvement in the self-assessment itself has been higher than expected in some cases. The follow-up inspection by NRC effectively has then become a second inspection. It may be incorrect to assume that industry will continue to perform self-assessments for regulatory credit if the overall resource burden and enforcement exposure are not decreased.
3. Do the Commission's preliminary views respond to the current environment and challenge?

The Commission's preliminary views embrace Option 1, "Continue Current Program", and Option 4, "Increase Interaction with Industry and Professional Groups". Option 1 would provide for evaluation of future initiatives on a case-by-case basis, and the Commission indicates an intent to require that guidance be developed addressing how future proposals would be evaluated. NEI agrees that these views appropriately respond to the current environment and challenge.

4. NEI Recommendation

NEI believes that industry can play a stronger role in making the regulatory process more effective and efficient. We agree that this increased role should be implemented on a case-by-case basis. This permits the greatest degree of flexibility for NRC and industry to deal with future problems in their own individual context. For certain issues, it may be appropriate to establish accreditation programs, but we agree that this should not be the principal focus of industry/NRC interaction as would be implied by Option 3, "Increase Accreditation and Certification of Licensee Activities". NEI agrees that Option 5, "Designated Industry Representatives" is not appropriate for reactor licensees, but considers that it may be useful for some classes of materials licensees.