

DS09
J. Lieberman

62FR 5494
Feb 5, 1997

RUG IV

REGION IV UTILITY GROUP

(2)

April 7, 1997

Mr. David Meyer
Chief, Rules Review and Directives Branch
Office of Administration
MAIL STOP: T6D59
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

RECEIVED
1997 APR -7 PM 1:26
RULES REVIEW & DIR. BR.
USNRC

Dear Mr. Meyer:

Subject: RUG IV Comments to NRC Enforcement Policy (NUREG-1600)

Reference: FR. 97-2805, Opportunity for Public Comment, NRC Enforcement Policy

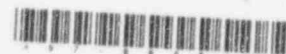
The referenced Federal Register Notice announced the opportunity for public comment on NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions." This letter and its enclosure provide generic comments which were developed by members of the Region IV Utility Group (RUG IV). The RUG IV is composed of Licensing/Compliance Managers from each plant in Region IV.

The comments reflect consensus positions of the RUG IV participants, and are not necessarily those of the individual utilities or individual participants. RUG IV members have met with counterparts in each of the other Regions. We believe the comments provided are generally concurred in by most utilities, although we do not have their explicit approval.

RUG IV would like to provide the Commission with the following general comments (below) and specific recommended changes to NUREG-1600 in the enclosure. As over 95% of NRC identified violations do not involve escalated enforcement and NEI is providing comments on escalated enforcement, RUG IV has focused on the non-escalated portion of the Enforcement Policy, as follows:

9704150314 970407
PDR NUREG
1660 C PDR

I+P-11
Guides
memos



I. NEED FOR PUBLIC COMMENT

The Commission is best served when public comments are solicited and considered when important changes to existing NRC staff positions are issued. It is sometimes difficult to determine when NRC staff guidance and clarification on an existing rule or policy, become a change to a previous NRC staff position.

RUG IV notes that within the past nine months, the Office of Enforcement has issued several Enforcement Guidance Memorandums (EGM) to provide clarification and/or initial guidance to be used in the application of the NRC Enforcement Policy. Of the more noteworthy EGMs:

EGM 96-002, August 21, 1996, Interim Guidance for 10 CFR 50.65 - The Maintenance Rule

EGM 96-003, September 26, 1996, Steam Generator Tube Inspections

EGM 96-005, October 21, 1996, Enforcement Issues Associated with FSARS, Section 8.1.3 Enforcement of FSAR Commitments.

RUG IV believes that these EGMs represent new directions and potential changes to previous NRC staff positions. Accordingly, these EGMs could have benefitted from public comment. RUG IV recommends that future EGMs be noticed, public comment considered, and issued with an effectivity date specifically established.

II. NEW RULEMAKING AND THE ENFORCEMENT POLICY

EGM 96-002 was issued on August 21, 1996. The implementation date of the Maintenance Rule was July 10, 1996. RUG IV recommends that EGMs or similar clarification of how the NRC staff will apply the Enforcement Policy to new rules, be issued and evaluated concurrently with the proposed new rulemaking.

III. DUE PROCESS

RUG IV notes that the existing Enforcement Policy does not establish a formal process by which licensees may appeal non-escalated enforcement actions beyond the initial denial in the Reply to the Notice of Violation. RUG IV recommends that the Commission develop a formal non-escalated enforcement action appeals process.

IV. NRC BULLETINS, NOTICES, AND ADMINISTRATIVE LETTERS

RUG IV notes that several non-escalated enforcement actions are identified each year which are very similar to non-escalated enforcement actions at other facilities, a significant number of these non-escalated enforcement actions result from an incomplete understanding of the regulations or an unanticipated clarification of the regulations (as opposed to an isolated personnel error or equipment malfunction). Although licensees do monitor non-escalated enforcement actions at other facilities, it appears that opportunities for early NRC identification and notification to all licensees are being missed. The NRC Bulletin, Notice, and Administrative Letter processes appear to be appropriate communication vehicles to promptly inform all licensees of enforcement actions (escalated and non-escalated) which may have generic applicability. Therefore, RUG IV recommends that to improve overall safety, the NRC should develop a process where potentially generic non-escalated enforcement issues are promptly identified and disseminated (including a discussion of the NRC's assessment of safety/regulatory consequence or concern).

V. DOCUMENTATION OF MINOR VIOLATIONS

The NRC Enforcement Policy currently states that minor violations will not be documented in inspection reports. Further, the Policy requires that if a minor violation (for whatever reason) is discussed in an NRC inspection report, it will be characterized as a Non-Cited Violation (NCV). NCVs, however, are typically issued for Severity Level IV violations where the licensee has identified, promptly corrected, and (if applicable) reported the violation. This "escalation" of a minor violation to an NCV, because of the need to document interesting aspects of the event in the inspection report, can create confusion for licensees and the public (i.e., was the event a minor violation or was it a mitigated Severity Level IV?). To ensure completeness and accuracy, RUG IV recommends the Commission amend the Enforcement Policy to allow minor violations to be discussed in inspection reports without escalation to NCVs. Documentation wording in the inspection report could be "This is a minor violation for which no citation is being assessed."

VI. NO RESPONSE REQUIRED

On occasion, licensees will have completed their investigation and initiated corrective actions for a Severity Level IV non-escalated enforcement action prior to the NRC inspection exit interview or shortly thereafter. Under such circumstances, the NRC inspection report usually documents the reason for the

violation and the corrective actions taken or that will be taken. In such cases, the NRC may not require a formal reply to the Notice of Violation. RUG IV believes that consistent with the purpose of the Enforcement Policy, the NRC should encourage prompt licensee corrective actions through increased use of "No response required."

VII. PROCEDURE COMPLIANCE - REGULATORY ENVELOPE

All licensees have a requirement to establish, implement, and maintain procedures in accordance with Regulatory Guide 1.33. In developing procedures, licensees frequently go beyond the regulatory requirement and include additional information, direction, and specificity. Also, most procedures have a requirement for final supervisory review and approval prior to completion, for the purpose of ensuring that all steps/elements of the procedure have been completed.

There are at least two types of procedures: "linear" and "cumulative." "Linear" procedures are typically operations-type procedures involving specific sequencing steps for operation or for performing evolutions - and a failure to follow an individual specific step may have immediate "consequence" [a self-revealing error such as flow diversion, trip, inadvertent valve repositioning, system energization, or inadvertent alarm/actuation]. "Cumulative" procedures are typically maintenance or surveillance procedures where the system is not operational (it is formally taken out of service), and only after post maintenance testing and procedure close out is the system returned to service.

For the "cumulative" procedures, a failure to perform a specific step is likely to be caught and corrected by the licensee's established review and approval process, and/or the associated post-maintenance test program. RUG IV believes that enforcement action should not be prematurely taken for a failure to follow "cumulative" procedures when opportunities remain for licensee identification and correction of the error or omission.

VIII. ASSESSMENT OF NON-ESCALATED ENFORCEMENT ACTIONS

RUG IV believes that consistent, uniform application of the Enforcement Policy is in the Commission's, public's, and industry's best interest. To ensure uniform application of the Enforcement Policy between NRC Regions, RUG IV recommends increased oversight by the NRC's Office of Enforcement (OE) and the Office for the Analysis and Evaluation of Operational Data (AEOD) of non-escalated enforcement actions.

RUG IV appreciates the opportunity to provide general (above) and specific (enclosure) comments on the non-escalated portion of NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions." RUG IV would also like to take this opportunity to endorse the comments and positions which are being separately submitted by NEI.

If you have any questions or require additional information, please contact me as Chairman, Region IV Utility Group at (714) 368-9050 or by email at gibsongt@songs.sce.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Gibson", written over a horizontal line.

Greg Gibson
Chairman
Region IV Utility Group

Enclosure: As Stated

cc: NEI
RUG IV Primary Contacts