

# UNION OF CONCERNED SCIENTISTS

April 4, 1997

Mr. Thomas T. Martin, Director  
Division of Reactor Program Management  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT: PRUDENT REGULATORY PRACTICE**

Dear Mr. Martin:

During the Regulatory Information Conference breakout session on 10 CFR 50.59, you outlined the current staff position on the unreviewed safety question (USQ) threshold as applied to nonconforming and degraded conditions identified during reactor operation. If I understand this staff position correctly, reactor operation can continue after a USQ condition is identified as long as the operability determination guidance in NRC Generic Letter 91-18 is followed and the Technical Specifications are obeyed. However, if the reactor shuts down for any reason, the position requires that the USQ condition be resolved prior to the plant restarting. You indicated that the NRC staff considered this position to reflect "prudent regulatory practice."

This NRC staff position is consistent with the staff position on reactor safety margin as explained by Mr. Samuel J. Collins in his letter dated February 27, 1997. As detailed in my response to Mr. Collins dated March 21, 1997, I fundamentally object to any "prudent regulatory practice" that is controlled by mode switch position and not by safety risk. I believe that "prudent regulatory practices" such as the current NRC positions on reactor safety margin and on USQ threshold for *de facto* changes do not provide adequate protection for the public and are unfair to licensees. Since neither the public nor the licensees are properly served by these positions, I strongly recommend that the NRC staff revise both positions as soon as possible.

To illustrate my opposition to the staff's position on USQ threshold, please consider a licensee with a two unit site. Both units are operating at full power when a nonconforming or degraded condition is identified that applies to both plants. Since the condition does not trigger an Action Statement in the Technical Specifications and operability can be assured using the guidance in Generic Letter 91-18, both units continue to operate. However, if one of the units were to experience an inadvertent trip, the NRC's position dictates that the condition *for that unit and only that unit* be resolved prior to that unit restarting. The other unit, which represents an identical risk to public health and safety, can and does continue to operate in full compliance with the staff's "prudent regulatory practice" position.

Consider, for the sake of argument, that the unit with the unresolved condition experiences an accident whose severity is increased because of that condition. I think that we can agree that it would not be "prudent regulatory practice" to even attempt to defend the staff's USQ threshold position before the Congressional committee investigating this disaster.

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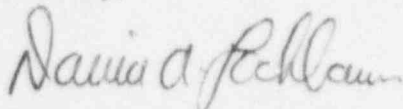
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The preceding example featured a multiple unit site. Consider, for a moment, a nonconforming or degraded condition identified at the single unit Wolf Creek Nuclear Generating Station in Kansas that also affects the other SNUPPS plant, the single unit Callaway plant in Missouri. As in the first example, since the condition does not trigger an Action Statement in the Technical Specifications and operability can be assured using the guidance in Generic Letter 91-18, both units continue to operate. Again, if Callaway experienced an inadvertent trip, the NRC's position dictates that the condition *for that unit and only that unit* be resolved prior to its restart. From a safety perspective, it does not appear prudent to expose the people in Kansas to a safety risk that warrants resolution in Missouri. From an economic perspective, it does not appear prudent to impose sanctions on the utility in Missouri and permit the utility in Kansas to operate with an economic advantage.

A nonconforming or degraded condition should be resolved in a time frame commensurate with its safety significance PERIOD. As illustrated by the examples, reactor restart should not be the governing factor in the resolution schedule. In reality, the NRC staff's current positions on reactor safety margin and USQ threshold do not reflect "prudent regulatory practice;" they represent the staff "punting" on the issue of where to draw the line on safety. "Prudent regulatory practice," in my opinion, would involve providing criteria that can be used by licensees and the staff in objectively defining appropriate resolution times for safety issues. This criteria would include appropriate triggers for immediate plant shut down for conditions not explicitly controlled in the Technical Specifications. The development of such criteria would also support efforts to determine when an aggregate of problems, which individually do not require such action, warrant the plant to be shut down. My concern is that the staff is hiding behind these "prudent regulatory practice" positions, which serve neither the public nor the licensees well, and is thereby avoiding the establishment of meaningful regulatory practices. For these reasons, these staff positions must be expeditiously revised.

I will be glad to answer any questions or provide any clarification for these issues.

Sincerely,



David A. Lochbaum  
Nuclear Safety Engineer

cc: Chairman Shirley Ann Jackson  
Commissioner Kenneth C. Rogers  
Commissioner Greta J. Dicus  
Commissioner Nils J. Diaz  
Commissioner Edward McGaffigan, Jr.  
Mr. Samuel J. Collins  
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