

(6)

*AEOD* *Frank (Miraglio)*

**From:** James Conran  
**To:** ELJ1, DFR, WND2.WNP4.FJM, WND1.WNP2.JEM, KPD1.KPP1...  
**Date:** 8/23/96 4:24pm  
**Subject:** Revised 50.54f letter on Design Bases Information

Enclosed are the revised subject 50.54f letter and the associated Commission Paper. These items were sent forward to the EDO yesterday without my knowledge and without my having completed the review I was instructed to perform by the Committee, to meet an EDO-office imposed deadline of COB yesterday. I completed my review of these items at home late last night (actually very early this morning); and, in a telcon with the cognizant staff before 8 o'clock this morning to convey the results of my review, I learned that the package had been already been sent forward in the attached form. I think this raises legitimate process questions that the Committee may wish to address further; but as a first order of business, I will address the content of the revised 50.54f letter.

On the basis of my review and discussion with the cognizant staff this morning, the proposed changes appear consistent with what the Committee agreed to yesterday EXCEPT for the following:

*PROBLEM*

1. On p.6 (in my printout of the revised letter), in the sentence immediately following Action Item (2), my notes markup indicate that the Committee agreed to the words "...consistent with..." rather than "...as expressed in..." preceding "NUMARC 90-12...", (the same wording was to be used in the last sentence of the first paragraph under "CURRENT POSITION" in the letter). I was unable to readily find explicitly "expressed in" the Commission Policy Statement (the Committee's preferred background source document from the discussions in the meeting) all that follows in subitems (a) thru (g). (Looking for such explicitly expressed wording occupied considerable review time and prevented completion of my review yesterday afternoon.) I think "...consistent with..." (the wording that the Committee agreed to explicitly) is just about fuzzy enough to accommodate the lack of precision inherent in the rest of the sentence; but the staff for some reason seems to strongly prefer "...expressed in...". I would ask the members, therefore, to consider whether that wording satisfies the Committee's intent/concerns that resulted in such attention being given to the wording at this location in the letter in yesterday's discussion with the staff.

2. In subitem (a) under Action Item (2), the Committee agreed to the wording "...control processes that/which implement 50.59, 50.71 and Appendix B;" but the revised letter reads "...control processes INCLUDING THOSE THAT implement 50.59...". This wording change may seem subtle but it could be very expansive, i.e., may go well beyond what the Committee agreed to by way of scope. In talking to the staff this morning, it did not appear that any great increase in scope was intended; apparently this different wording was thought of be clarifying; but, again, it got in the way of my giving a simple clean go-ahead on behalf of CRGR. Said simply, the revised wording is sufficiently different than what the Committee agreed to explicitly in the line-by-line

*TO: E. Jordan, AEOD*  
*D. Ross, AEOD*  
*E. Miraglio WND*

*J. Moore, PDR*  
9704020132 970327  
PDR FOIA  
WILLIAM96-466 PDR

*D/21*

scrub given the letter in the meeting. I could not, therefore, readily accept it on behalf of the Committee. The members will have to decide whether the revised wording is close enough to the straightforward wording agreed to at the meeting.

Please let me know if you have any objections/questions regarding the proposed final wording; the staff has indicated that if changes resulted from the EDO review; there may be opportunity to change the final wording of the letter before it goes forward.

---

Now in further regard to the process questions alluded to above, I should say first that I do not fault the staff for going forward with the package by COB yesterday in response to EDOO demand for such accelerated treatment. The staff was free to go forward without CRGR review at all (prior review, that is ) if the circumstances were that urgent. At a minimum, however, it seems to me appropriate that the EDO should have been advised that the CRGR "process" (including review of proposed revisions by CRGR staff as instructed by the Committee was not yet completed). I don't know that that occurred; and the one person that I have spoken to in EDOO (i.e., Mr. McCabe, acting today for Mr. Dean) was not sure either. Secondly, it seems to me appropriate that CFGR/CRGR staff should have been informed of the accelerated drop dead deadline for forwarding to EDOO. For my part at least, that did not occur (although the staff indicated that Frank Miraglia was aware of these circumstances/developments). Had I been informed of that the EDO schedule was COB Thursday, I would have been working hand-in-glove (i.e., directly) with NRR all day to meet that schedule, instead of turning my attention to preparations for the next urgent CRGR meeting requested by NRR (i.e., for the Wolf Creek GL) and other matters, rather than waiting to receive something from NRR. As things developed, unaware of the accelerated schedule that had been imposed, I telephoned the cognizant staff to inform them that I was unable to complete my review yesterday (due to complications introduced by the unilateral NRR changes to the wording agreed to just hours earlier by CRGR) but would be working on the item at home last night (which I did). )The cognizant staff were not at their phones when I called; so I left a message informing them of the status of my review.) The outcome of this somewhat "ragged" process may be acceptable to the members; but there may be some lessons to be learned from it that the members may wish to address further at a future time.

Other process type questions are raised by 50.54f "request" language incorporated in the is letter, however, that in my view are serious enough that I would ask the members to consider on a shorter time frame, specifically, with regard to use of the word "required" vs "requested" in the specific wording of the formal request for information in the letter (in my printed version, at the top of p.6, in the paragraph that begins "Please submit your response...")

The proposed 50.54f letter is put forward as a COMPLIANCE based action; and, in the brief time given to review the letter for issue identification, the basic question I asked

myself was "compliance with which specific legal requirements"? 50.2 and 50.34 seemed pretty basic regulations to start with in this context because 50.2 gives the definition of "design bases"; and 50.34 specifies clearly that, AT A MINIMUM, the "design bases" for a plant shall be included in the application (i.e., PSAR and FSAR). From context, it is clear that the intent of this regulation is that the information needed to make the requisite licensing finding must be included in the SAR. If the staff granted a license based on what was submitted by the applicant in the P/FSAR, then it does not seem at all clear that the staff can demand as a matter of COMPLIANCE that licensees produce substantially more detailed design-type information than was accepted by the Agency as sufficient basis for initial licensing, when addressing current concerns regarding proper understanding/implementation/maintenance of the design bases for the existing plants, and in our current efforts to identify more completely/better understand/hopefully improve current documentation of the complete design bases for the operating plants.

This is not to say that I disagree that there is a legitimate technical safety reason for the staff seeking on a current basis that licensees identify or develop a more complete set of design type information than that documented in the FSAR to properly understand the safety role of SSCs in the operating plants and the safety implications of changes to those SSCs and/or current licensing bases. It is certainly appropriate to seek (i.e., REQUEST) such information to address valid current concerns regarding adequacy and availability of complete design information; but it does violence to our process, I believe, to REQUIRE as a matter of COMPLIANCE (as in this immediate proposed action) that licensees produce information clearly beyond what was provided in the FSAR by the licensee in response to the explicit requirement in 50.34 and was accepted by the Agency as sufficient basis for licensing. To try to do so in this manner ignores the substantial degree of responsibility that NRC bears in creating the conditions of concern; and to contemplate/allude to/hint at enforcement actions to address licensees' non-compliance in such circumstances seems to me to raise hard questions regarding proper justification for regulatory actions that the CRGR process was intended to address, ~~designed to fairness and candor in the regulatory~~.

A real problem with taking regulatory actions at a full gallop as has been done in this case is that it often leaves insufficient time to give full, independent consideration of what is proposed, and the specific details of how what is proposed is to be implemented. I regret not being able (due to the press of time) to articulate clearly and completely to the Committee in a proper Issue Sheet these serious process type questions for your full consideration. But even now, I would urge the members (as I have already urged cognizant legal staff in discussion with them today) to consider again whether the language in which this letter is currently framed for final issuance is completely appropriate. I think that it will tend to undo literally years of effort that has been given in the CRGR context to always clearly distinguish between what can be done by regulation (or Order, or License Condition), i.e., require or compel something, vs other lesser regulatory vehicles.



appropriate. I think that it will tend to undo literally years of effort that has been given in the CRGR context to always clearly distinguish between what can be done by regulation (or Order, or License Condition), i.e., require or compel something, vs other

At this point, I have not reviewed carefully the revised Commission Paper for conforming changes as recommended by the Committee. The staff claims to have made them as agreed at the meeting. If you need any additional information, or need to discuss any of the preceding to make your final decision/recommendations, please give me a call.

Jim

<<<<<<<<<<<<<<<<

Jim - With respect to the issues raised. I have no additional concerns as a CRGR member. I believe it was clearly understood that we were under a mandate to have to DEO by cob Thurs. I was informed that you had not completed your review and was apprised of some issues you had raised at that time. I called Ed J but he was gone. I believe all the issues you raise in the attached have been addressed. The EDO was apprised that CRGR had not completed review and Bill Dean was also aware. With respect to "request" vice "require" that was left to Janice to resolve and the letter reflects that resolution. I suggest that if the CRGR has any issues that Ed can raise with me an/or the EDO on Monday.

6. a

<<<<<<<<<<<<<<<

Frank: Thanks for the response. Do you want me to forward it to other members (or did you include them on cc)? Sorry about the missed communication re: Thurs. COB deadline. From talking with Janice today, she apparently misread it too. Jim

<<<<<<<<<<<<<

6.6

Jim - I sent to all recipients of your note. I do not recall what was said at meeting re date, but I believe Ed was aware of EDO's deadline. The EDO is not expected to sign out the pkg until Mon at earliest. We all stand ready to serve.

G.C

<<<<<<<<<<<<<<<<

Frank: Amen! Have a good weekend. P.S. On the basis of availability info, provided the best time for the next CRGR meeting seems to be 2:00p on Tues, 8/27. We'll do it again then.

6. d

Jim