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ROCHESTER GAS AND ELECTRIC CORPORATION • 89 EAST AVENUE, ROCHESTER, N.Y. 14649

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October 12, 1978

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Sir:

Rochester Gas and Electric Corporation ("RG&E") or ("the Company") is a New York corporation with its principal place of business at 89 East Avenue, Rochester, New York. RG&E provides gas, steam and electric service to customers in a nine-county region centering on Rochester, New York. The Company owns and operates the R. E. Ginna Nuclear Power Plant Station, located in Ontario, New York, and will operate, on behalf of itself and Niagara Mohawk Power Corporation, Central Hudson Gas & Electric Corporation and Orange and Rockland Utilities, Inc., the proposed Sterling Power Project Nuclear Unit No. 1, to be located in Sterling, New York.

Based on its ownership and operation of these nuclear facilities, RG&E has a particular interest in proposed regulations of the Nuclear Regulatory Commission which affect, or potentially affect, the licensing and operation of such facilities. We have a particular interest in the Commission's proposed regulation and policy statement on Emergency Plans for Production and Utilization Facilities (43 Fed. Reg. 37473, August 23, 1978). In response to the Commission's public notice requesting comments and suggestions on this proposed regulation/policy statement, RG&E submits the following comments:

1. RG&E does not see the need for emergency planning in the "areas beyond the low population zone" ("extra-LPZ" or "XLPZ"). The potential doses due to a postulated LOCA are by regulation required to be very low. Furthermore, the probability of the LOCA scenario, which includes numerous conservative low probability assumptions, is very low. Using the 3-layer "defense-in-depth" concept, the nuclear industry is therefore already at a point where substantial protection is provided for the health and safety of the public.

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It appears possible that this NRC proposal is based on preliminary conclusions of the joint NRC/EPA task force on Class 9 accident planning. RG&E does not feel that there is any merit to a conclusion which is based on the postulated failure of all nuclear safety system barriers. Any condition(s) which could result in such a catastrophic occurrence (loss of all fission product barriers) should be cured via the improved design of safety features, rather than through a solution whose basic premise is a complete lack of faith in the reliability of any other solutions. The addition of another layer of safety provisions as would result from the proposed rule change, based on even more conservative assumptions, could at most result in only the slightest increment in safety from postulated accidents. However, this trivial increment would by far be overshadowed by the substantial increased cost to the states, utilities, and public in terms of licensing delays (due to more extensive site selection requirements, additional potential for litigation, etc.), and the actual formulation and maintenance of XLPZ emergency planning procedures.

2. A major deficiency of the proposed revision to the regulations, and accompanying discussion, is the vagueness of the proposed criteria. The principal regulatory justification as stated in the policy statement for XLPZ planning seems to be that nothing in the Part 100 Siting Criteria should

preclude the consideration of utilizing emergency plans to provide additional protective benefit to persons beyond a LPZ as a matter of reasonable and prudent risk management, to assure protection beyond that afforded by safety designed features in the siting of facilities in accordance with 10 C.F.R. Part 100.

(43 Fed. Reg. at 37474, emphasis added.)

However, since this "reasonable and prudent risk management" objective is itself undefined in a policy or regulatory sense, it is difficult if not impossible to determine from it whether in any particular case, XLPZ planning will be required to meet that objective.

The vagueness of the "reasonable and prudent management" concept brings to mind the New England Power Company Appeals Board comments on changing regulations in mid-stream.

[T]here is the important matter of fundamental fairness. Applicants for nuclear licenses are entitled to know both what they must undertake to do in connection with their applications and against what criteria the acceptability of their proposal will be measured. ALAB-390, 5 NRC 733, 744 (1977).

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In other words, an applicant should be able to make a realistic appraisal of whether its proposal (including whether or not XLPZ planning will be required) will satisfy existing regulatory requirements. We do not think the proposed regulation/policy statement measures up to that regulatory certainty standard. Although we are not unmindful of the difficulty that may attend advance delineation of the specific factors, parameters, or considerations to be associated with the "reasonable and prudent management" emergency planning concept, we believe a more concerted effort is required than is evidenced in the proposed policy statement.

The lack of clearly defined regulatory objectives for emergency planning beyond the LPZ is not, in our view, cured by the proposed utilization of "facility design," "site characteristic" and "emergency protective action" criteria as outlined in the proposed regulation/policy statement. The proposed regulation, for example, provides:

that the extent to which emergency planning, which may include planning for evacuation measures, should extend to areas beyond the LPZ, shall be based on the design features of the facility and the physical characteristics of the environs in the vicinity of the site, taking into account the emergency protective action criteria developed by appropriate federal authorities, and by appropriate state and local governmental authorities in cooperation with the commission. (43 Fed. Reg. at 37475, emphasis added.)

While the use of facility design, site characteristic and emergency protective action criteria for the evaluation of XLPZ impacts parallels the LPZ emergency planning approach, there is an important difference. In the case of the LPZ analysis the applicant proceeds with a definitive regulatory objective in mind. First, the applicant utilizes the facility design, site and protective action criteria to develop the LPZ in the first place. Second, the applicant ensures 1) that specific dose limits will be met and 2) that the number and density of persons in the LPZ are such that there will be a reasonable probability that appropriate protective measures can be taken on their behalf in the event of an accident. In other words, the criteria are to meet the specific regulatory objectives established by 10 C.F.R. Part 100. The applicant is also on notice that the feasibility of emergency planning (including protective measures) for the LPZ will undergo licensing review by the NRC staff pursuant to 10 CFR Part 50, Appendix E. In summary, there is a specific, well defined objective/criteria relationship for the LPZ. The applicant knows what it has to accomplish with respect to the LPZ and it uses the "facility design," "site characteristic" and "protective action" criteria to do so.

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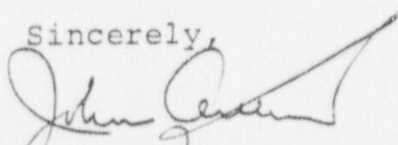
However, according to the proposed regulatory/policy statement, these case by case criteria assume a different function in the XLPZ context. According to the regulation, apparently they are to be used to determine whether XLPZ emergency planning will be required in the first instance. However, we are unable to conclude that these criteria can be used in a meaningful fashion to determine whether XLPZ planning will be required in the absence of further guidance from the Commission. Unlike the LPZ context, (1) there is no guidance on specific zones to be established, (2) there are no suggested dose levels to be met and (3) there are no specific planning feasibility standards for protective measures which are related to the health or safety requirements. The only guidance given to the applicant is the "reasonable and prudent management" concept, which is itself undefined in the policy statement.

3. Since this proposed rule change appears to be of significant consequence in the siting and licensing aspects of nuclear power plants, (due to need for extensive additional site planning and analysis, additional dose analyses based on yet-unspecified source terms using as-yet undefined atmospheric diffusion characteristics over a yet-unspecified area surrounding the plant, and substantial effort to formulate and maintain XLPZ emergency planning procedures), RG&E fully expected to review an NRC-generated Value - Impact Analysis accompanying the proposed rule change. In Federal Register Notice 7590-01, "Improving NRC Regulations; Response to Executive Order 12044," it is stated that (under Section 3(b)), "It will be NRC policy in the future to make any value-impact analyses available for public review at the time proposed or final regulations are published." Such an analysis is clearly necessary for this proposed rule.

4. RG&E does not feel that this version of the proposed Appendix E will emerge from the public comment review period without substantial alteration, and therefore strongly urges that the proposed version not be made effective until it is revised as a result of public comments. We are confident that, when completed, the Value-Impact analysis will disclose a great discrepancy between the potential additional safety margins associated with this proposed rule change, and the large cost/schedule/manpower impact which would result from its promulgation.

RG&E is very interested in the future course of this proposed rule. We would therefore be appreciative of being informed as to the disposition of our comments.

Sincerely,



John Arthur
Chief Engineer