

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

December 18, 1980

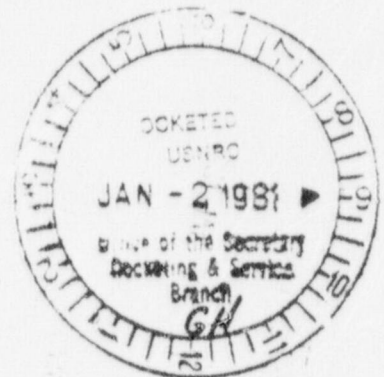
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OFFICE OF THE  
COMMISSIONER

MEMORANDUM FOR: Samuel J. Chila  
Secretary of the Commission

FROM: Joseph M. Hendrie *[Signature]*

SUBJECT: COMMENTS ON PROPOSED ENFORCEMENT POLICY  
STATEMENT



I suggest that applicable portions of the enclosed letter and attachments be regarded as comments on the proposed enforcement policy statement. All of the Commissioners have received copies.

I recommend to the staff reviewing comments and preparing a final version of the policy statement for Commission decision that attention be given to at least two of the matters raised in these documents. The first has to do with licensee liability for a violation notice and civil penalty if a piece of safety-related equipment fails to operate or breaks. On page 11 of the proposed statement is a paragraph saying "Licensees are not ordinarily cited for violations resulting from matters not within the control of the licensee, including its employees, that could not have been reasonably foreseen, such as, equipment failures that are not the result of personnel error or inadequate design, procedures, quality assurance, fabrication, testing, maintenance, or communications." Now I can conceive of no equipment failure that is not due to one or several of the listed causes, and licensees (and perhaps NRC staff) may be reading this to say there is no way they can avoid being cited for an equipment failure. That was certainly not the way I intended that paragraph to be interpreted and apparently it needs some clarifying.

The second matter is the comment that no exception for overexposures due even to life-saving emergency actions is offered in the descriptions of violations in the health physics area. That raises a point we did not cover in the discussions of the proposed statement, at least so far as I can recall. Emergency situations may well require actions, and not only in the radiation protection area, that would be subject to a violation notice in normal operation but are necessary to prevent greater harm to plant personnel or the public. I think there should be a general exemption for such actions in an emergency situation.

Enclosure:  
As stated

cc: Chairman Ahearne  
Commissioner Gilinsky  
Commissioner Bradford

THIS DOCUMENT CONTAINS  
POOR QUALITY PAGES

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*L-4-1, Pt. 2*

ILLINOIS POWER COMPANY

500 SOUTH 27TH STREET, DECATUR, ILLINOIS 62525

December 9, 1960

Honorable James A. McClure  
United States Senator  
5229 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator McClure:

I recently attended a public meeting in Chicago called by the Nuclear Regulatory Commission to describe their "Proposed General Statement of Policy and Procedure for Enforcement Actions." The thrust of the meeting was to provide the NRC representatives an opportunity to describe how they plan to punish licensees for noncompliance (avoidable and unavoidable) and to provide to licensees and the public an opportunity to comment.

I am writing to you because the NRC representatives attribute both the intent and the content of this policy to the Congress and indicated in their responses to questions that the proposed actions were required by law. (Recent events would suggest that their interpretation may be correct.) (1)

The comments were not limited to the utility industry; in fact, the bulk of them represented universities, research establishments, the medical profession, and hospital organizations. I urge you to have the record of this meeting examined and summarized for you. In particular, I recommend the comments of Dr. Lynn Miner, speaking for Marquette University.

I am enclosing a copy of the comments made by Thomas F. Plunkett, Manager of our Clinton Power Station. Mr. Plunkett has chosen a career in nuclear power management and speaks from that perspective. It is a perspective which I believe warrants your attention; particularly the last paragraph.

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- (1) The recent decision of the U.S. Circuit Court of Appeals for the District of Columbia that existing law requires the NRC to hold public hearings on all license amendments if so requested would appear to support the NRC position (notice attached).

The proposed policy describes in detail the basis for the various forms of punishment up to and including criminal action. It establishes six severity levels and seven areas of activities. Civil penalties are required for certain violations even though the licensee has followed properly all applicable procedures and met all regulations. For example, if a piece of equipment fails even though it has been made and inspected in accordance with all applicable codes, standards, and regulations, a fine must be levied. If a worker receives radiation exposure in excess of the prescribed limit, irrespective of the circumstances, a fine must be levied. Mr. Plunkett made the observation in his comments that no allowance is made even for an overexposure resulting during an emergency where a human life is in jeopardy. The reaction of the audience can be summarized best by the simple question, "What happened to the team concept wherein the regulators and those regulated work together to assure a safe and efficient utilization of nuclear energy?"

I believe that this proposed policy and procedure for enforcement contains implications far beyond the nuclear industry. If this concept represents the appropriate approach to regulation, then I can think of no reason why it should not be extended to other areas of regulatory enforcement. For example, the air-transport industry presents a hazard to the public and a schedule of fines for this industry could be established comparable to the schedule of fines proposed in the NRC policy. The loss of an engine from an airplane would surely justify a fine of millions of dollars since it is already established that many lives could be lost when such a failure occurs. Similarly, a failure of a tire on landing would support a sizable fine since this failure also produces a significant potential hazard. It should be noted that to be consistent with the proposed nuclear enforcement policy, this fine would be imposed even though the operator/licensee had carried out a proper tire maintenance program and had performed all required tests, preventive maintenance actions, etc. (The regulators would have the prerogative to reduce the fine, but not eliminate it.)

In a similar vein, fines could be established for the operators of aircraft in the same manner as are being established for operators in nuclear power plants or radiation facilities. The pilot would be fined for a rough landing, he would be fined for departing from his prescribed course, etc. The latter system of fines would be proportional to the amount of departure from the prescribed course (six severity levels might accommodate this industry too).

It is difficult to imagine that a utility company would commit to build new nuclear power capacity in this regulatory environment. (I certainly would not recommend such an action.) In addition, as emphasized by many of the commentators, it will be extremely difficult (hopefully not impossible) to keep qualified people in this industry. Therefore, I conclude that the NRC has effected a moratorium on new nuclear power plants and is slowly strangling the existing industry. If the NRC is correctly interpreting the will of Congress, then Congress has done it.

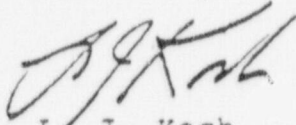
I have been involved in nuclear energy development for almost 33 years; much of it involving EBR-I and EBR-II in your state. During most of that time, the Congress has supported the development of nuclear energy and encouraged its application for peaceful uses. In the 1960's and early 1970's, it would have been almost unpatriotic for a utility company to not use nuclear power if its needs for electricity were large enough and if the economics justified its use. I personally concur with the endorsement of nuclear power which the Congress fostered through the Atomic Energy Act of 1954 and subsequent amendments. I am now very confused as to our national policy regarding nuclear energy. If the national opinion has changed and Congress no longer endorses the use of nuclear energy, then I believe that Congress should make this national opinion known and should take responsible action accordingly. As a minimum, such action should include relieving those utilities who responded in good faith to national policy and built nuclear power plants. The government should assume total responsibility for all existing nuclear installations and utilize them as they deem appropriate.

The path we are on now is placing disproportionate burdens on those organizations that have built and are building nuclear power plants. It is becoming almost impossible to continue, but also impossible to terminate these activities. The total industry is being impacted by this situation and the health and reliability of this vital industry is being jeopardized.

If it is the national will (as established by the Congress of the United States) to kill nuclear energy, then I believe it deserves a decent and honorable burial and not a humiliating slow death by strangulation.

I stand ready to assist in any way I can to resolve this matter and to remove the uncertainty which is draining our nation of valuable resources.

Sincerely,



L. J. Koch  
Vice President

Enclosures

cc: Senator Charles H. Percy  
Senator Elect Alan J. Dixon  
Congressman Edward R. Madigan  
John F. Ahearne, Chairman, NRC  
Peter Bradford, Commissioner, NRC  
Victor Gilinsky, Commissioner, NRC  
Joseph M. Hendrie, Commissioner, NRC ✓

THE DECISION BY A FEDERAL APPEALS COURT THAT THE NUCLEAR REGULATORY COMMISSION SHOULD HAVE HELD PUBLIC HEARINGS BEFORE IT ALLOWED THE METROPOLITAN EDISON COMPANY TO VENT RADIOACTIVE GAS FROM THE DAMAGED THREE MILE ISLAND UNIT 2 REACTOR BUILDING MAY CREATE MAJOR DIFFICULTIES FOR THE NUCLEAR REGULATORY COMMISSION IN ALL LICENSE ALTERATIONS, NRC CHAIRMAN JOHN F. AHEARNE SAID. A three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia ruled November 19, 1980 that the NRC violated provisions of the Atomic Energy Act of 1954 when it denied a hearing on its decision to nuclear opponents and residents living near the plant area.

The purpose of the venting was to remove radioactive krypton gas from the damaged plant's containment building so that manned entry into the building could be made to inspect the damage and begin cleanup operations. The NRC staff had found that venting would be the easiest and best approach and it would offer no damage to public health. NRC had determined that "no significant hazards" were likely from the venting and felt that this finding meant it did not have to hold a hearing. Several citizens' groups filed suits to stop the venting but as courts did not intervene, the gas was vented in June and July. NRC took its venting action by modifying the operating license of the TMI-2 plant.

The Court ruled that the Atomic Energy Act of 1954 only permits the NRC "to issue a license amendment without a hearing when there has been no hearing request." Chairman Ahearne noted that the ruling seems to indicate that NRC will have to hold public hearings on all license changes except for major emergencies, and with hundreds of proposed changes pending, it could hinder the agency's work tremendously.

REMARKS BY THOMAS F. PLUNKETT  
PLANT MANAGER

CLINTON POWER STATION  
ILLINOIS POWER COMPANY

GENTLEMEN:

THANK YOU FOR GIVING ME THE OPPORTUNITY TO COMMENT ON THE PROPOSED CHANGES TO 10CFR2.

ALTHOUGH I AM SPEAKING AS AN ILLINOIS POWER COMPANY REPRESENTATIVE, MY BACKGROUND HAS BEEN IN THE AREA OF NUCLEAR POWER PLANT STARTUP AND OPERATION. THUS, I WOULD HOPE THAT I AM ALSO SPEAKING FOR SOME OF MY COLLEAGUES WHO ARE WORKING IN THE POWER PLANTS TODAY AND CANNOT BE HERE. THESE ARE THE PEOPLE WHO ARE THE ONES THAT HAVE TO LIVE WITH AND INTERPRET THE PLETHORA OF REGULATIONS THAT FALL ON THEIR BACKS DAILY.

MY REMARKS ARE AS FOLLOWS:

1. THE NRC NEEDS TO PROVIDE TRUE INCENTIVES FOR ACCURATE, HONEST PROMPT REPORTING. CONSEQUENTLY, THERE SHOULD BE NO PUNITIVE OR REGULATORY ACTION ASSOCIATED WITH SUCH REPORTING. I DOUBT VERY MUCH IF THE REDUCTION OF THE CIVIL PENALTY BY AS MUCH AS 50 PERCENT FOR LICENSEE REPORTED VIOLATIONS WILL HAVE THE AFFECT INTENDED. FURTHERMORE, THE PROPOSED REDUCTION IN FINES AS INCENTIVES IS NOT CLEARLY DEFINED AND PLACES RELIANCE ON SUBJECTIVE DECISIONS FROM I & E RELATING TO THE GOOD FAITH OF LICENSEES, THE PROMPTNESS OF THE REPORT AND THE COMPREHENSIVENESS OF CORRECTIVE ACTION. SUBJECTIVE DECISIONS ARE NOT ACCEPTABLE IN LIGHT OF THE LARGE FINES BEING PROPOSED. PUNITIVE OR REGULATORY ACTIONS ARE ONLY APPROPRIATE WHEN THERE IS A FAILURE TO REPORT OR A FAILURE TO IDENTIFY A VIOLATION.

2. THE PROPOSED BASE CIVIL PENALTIES ARE DISCRIMINATORY WHEN BASED ON ABILITY TO PAY AND POTENTIAL PUBLIC CONSEQUENCES. THE TRUE PUBLIC CONSEQUENCES OF ACCIDENTS AT THE FUEL FACILITIES, FOR EXAMPLE, CAN BE GREATER THAN AT POWER REACTORS. MOREOVER MANY OF THE VIOLATIONS RELATE TO "ON-PUBLIC" INCIDENTS SUCH AS RADIATION EXPOSURE TO WORKERS. THE SERIOUSNESS OF AN OVEREXPOSURE IS EQUAL AT ALL LICENSEES, THE CIVIL PENALTY SHOULD BE EQUAL AS WELL.
3. IMPOSING CIVIL PENALTIES FOR EVERY DAY THAT A VIOLATION OCCURS IS CONTRARY TO THE APPROACH THAT SHOULD BE TAKEN TO IMPROVE PERFORMANCE. IT IS FAIRLY WELL RECOGNIZED THAT REWARDS AND INCENTIVES ARE MORE EFFECTIVE THAN PUNISHMENT YET THE TONE OF THIS PROPOSED REGULATORY CHANGE IS PURELY PUNITIVE. I WOULD SUGGEST THE AUTHORS OF THIS DOCUMENT MAY WANT TO INVESTIGATE OTHER TYPES OF MOTIVATIONAL TECHNIQUES. I WOULD ALSO RECOMMEND THAT ALL FINES MUST BE APPROVED BY THE COMMISSION. THE INCLUSION OF AN APPEAL PATH WITH NO ACTION TAKEN UNTIL THE APPEAL IS RULED ON SHOULD ALSO BE INCLUDED.
4. THE PROPOSED RULE CHANGE REFERS TO ADHERENCE TO INFORMAL OBLIGATIONS AND INFORMAL AGREEMENTS. IT WOULD CLEAR THE AIR CONSIDERABLY IF THE WORD "WRITTEN" WAS PLACED IN FRONT OF THE WORD INFORMAL.
5. I CAN UNDERSTAND THE NEED FOR PROGRESSIVE ESCALATION ACTIONS WITH RESPECT TO NONRESPONSIVE LICENSEES. HOWEVER, I FEEL THAT TABLE 2 WOULD EVENTUALLY RESULT IN THE SHUTDOWN OF MOST OPERATING UNITS. I'M PARTICULARLY REFERRING TO SEVERITY OF VIOLATION CATEGORIES II AND I WHERE I COULD EASILY POSTULATE EQUIPMENT FAILURES WHICH COULD OCCUR OVER A TWO YEAR PERIOD THEREBY RESULTING IN SUSPENSION OF OPERATIONS.

I BELIEVE YOU NEED TO QUALIFY THIS TABLE SOMEWHAT TO INSURE THAT EQUIPMENT WHICH IS SUBJECT TO SOME PROBABILITY OF FAILURE, WHICH IS TRUE OF ALL EQUIPMENT, IS NOT SUBJECT TO PUNITIVE ENFORCEMENT ACTION. THIS COMMENT ALSO APPLIES TO A CONSIDERABLE NUMBER OF SEVERITY CATEGORY EXAMPLES. I FIND IT DIFFICULT TO BELIEVE THAT THE LICENSEE IS SUSCEPTABLE TO FINES FOR HARDWARE FAILURES.

A FEW BRIEF COMMENTS PERTAINING TO THE SEVERITY CATEGORIES ARE AS FOLLOWS:

#### REACTOR OPERATIONS

1. "A SYSTEM DESIGNED TO PREVENT OR MITIGATE A SERIOUS SAFETY EVENT NOT BEING ABLE TO PERFORM ITS INTENDED FUNCTION UNDER CERTAIN CONDITIONS" MAY NOT REPRESENT A VIOLATION DUE TO THE REDUNDANCY OF SAFETY SYSTEMS. IN ANY EVENT, IF THE MATTER IS WITHIN THE BOUNDS OF TECHNICAL SPECIFICATION LIMITING CONDITIONS FOR OPERATION, THERE SHOULD BE NO PENALTY

#### HEALTH PHYSICS

1. NO ALLOWANCE IS MADE FOR ONE TIME EMERGENCY EXPOSURES WHERE POSSIBLE HARM TO HUMAN LIFE IS CONCERNED.
2. "FAILURE TO DECONTAMINATE PLANT AREAS AS REQUIRED" IS MENTIONED. I AM UNAWARE OF NRC STANDARDS FOR DECONTAMINATION.

IN GENERAL, THE SEVERITY CATEGORIES ARE POORLY DEFINED AND PRONE TO SUBJECTIVE JUDGMENTS OF THE NRC

FINALLY, I AM PERSONALLY TIRED AND OFFENDED WITH THE USE OF THE WORDS CRIMINAL, CRIMINAL OFFENSE, ETC. WHICH APPEARS THROUGHOUT THIS DOCUMENT. THE NRC IS MISTAKEN IF THEY BELIEVE THAT BY USING FEAR TACTICS SUCH AS THREATS OF INVESTIGATION BY THE FBI AND THE DEPARTMENT OF JUSTICE, COMPLIANCE WITH ALL REGULATIONS CAN BE ACHIEVED. THE

ONLY AFFECT THESE TYPES OF THREATS HAVE IS TO EVENTUALLY DISGUST  
GOOD DEDICATED EMPLOYEES TO THE POINT THEY FEEL LIFE IS TOO SHORT  
TO WORK IN THIS KIND OF INDUSTRY AND ENVIRONMENT. WHEN THEY LEAVE,  
USUALLY LESS EXPERIENCED PEOPLE TAKE THEIR PLACE. THIS DOES NOT  
ACHIEVE THE STATED GOAL OF "TO ENCOURAGE IMPROVEMENT OF LICENSEE  
PERFORMANCE."

THANK YOU AGAIN FOR GIVING ME AN OPPORTUNITY TO COMMENT.