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45FR66754

December 31, 1980



Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Proposed General Statement of Policy and Procedure for Enforcement
Actions (45FR66754-10/7/80)

Dear Sir:

Yankee Atomic Electric Company appreciates the opportunity to comment on the Nuclear Regulatory Commission's proposed general statement of Policy and Procedure for Enforcement Actions. Yankee Atomic owns and operates a nuclear power generating plant in Rowe, Massachusetts. The Nuclear Services Division also provides engineering services for other nuclear power plants in the Northeast including Vermont Yankee, Maine Yankee and Seabrook 1 and 2. Yankee Atomic is also a member of the Nuclear Utility Group on Enforcement (NUGOE) which is submitting extensive comments on the Enforcement Policy. We endorse these efforts and offer our own comments as well as responses to questions (see Attachment) posed by your Mr. James G. Keppler with regard to a public meeting held in Philadelphia on December 4, 1980.

The NRC identifies the primary goals of the enforcement policy as compliance with regulations, prompt correction of licensee weaknesses and the deterrence of future non-compliance through strong enforcement methods. It is our opinion that the enforcement policy over emphasizes the issue of compliance with NRC requirements. This is inconsistent with the Kemeny Commission report which stated that, "It is an absorbing concern with safety that will bring about safety...not just the meeting of narrowly prescribed and complex regulations". By overstressing conformity to rules and regulations, the enforcement program may result in the industry expending a large share of its skill, time and financial resources assuring conformity, perhaps at the expense of safety. Similar concerns with regard to regulations hurting safety have been expressed by other industry officials relative to programs resulting from the accident at TMI (reference WEPCO officials comments in October 30, 1980 Nucleonics Week, page 7).

The basic orientation of the enforcement program is strictly punitive and does not provide positive incentives for a licensee to:

correct or improve a given method of operation for fear that deviation from a standard approach may result in penalties being imposed

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- . initiate and maintain programs which provide for the candid, frank and frequent exchange of detailed information between licensee-organizations
- . develop innovative approaches which strive toward increasingly higher standards of safety and performance.

Recognition of these incentives is very important with regard to improved plant operational safety and improved motivation of operating personnel.

As currently structured, the program provides awesome power for the staff to demand institution of their interpretation or solution to some technical problem. Our experience over the past year has been that the NRC staff is not immune from imposing less than optimally safe requirements (demands for continuous operation of MCPs after LOCA is only one such example). It has been our practice to resist such requirements whenever we felt the obligations under our license would be adversely impacted. It is questionable whether any licensee would be able to challenge the staff in the face of the enforcement policy. Until the staff becomes omniscient this is a potentially unsafe condition.

The subject Federal Register states that the enforcement program, "... will assure that a licensee will not benefit by violating NRC regulations". The very suggestion that any benefit can be derived from non-compliance reflects a misconception by the author of the policy relative to the role regulations fulfill. We find even the most minor discrepancy an embarrassing and potentially costly event regardless of the existence of any enforcement policy at all. In striving to achieve a high level of performance and in the course of fulfilling the obligations of a license, any licensee will necessarily comply with NRC rules and regulations.

Should you have any questions regarding our comments, please contact us.

Very truly yours,

YANKEE ATOMIC ELECTRIC COMPANY

D. W. Edwards

D. W. Edwards, Director
Operational Projects & Licensing

ATTACHMENT

1. Is the policy fair and equitable?

We believe the basic policy to be noticeably lacking in the areas of remedial action and event chronology. We also consider the policy to be somewhat inequitable for reasons stated in our response to question 5 below.

The policy relies on punitive measures to prevent recurrence of noncompliance. We believe that other remedial action should be considered including correspondence, personal interviews, and verbal or written reprimand. We also find the daily multiplier and two year interval both arbitrary and inappropriate. The multiplier, if one should exist at all, should be based on the number of missed opportunities the licensee has had to detect the problem. For example, if the area were required to be checked each shift by station technical specifications, then the multiplier might be the number of undetected shifts. Likewise, if the test were required each week, then the multiplier should be the number of undetected weeks the problem has persisted.

There also appears to be no basis for selecting the two-year interval for combining sanctions. A more logical and consistent interval would be each operating cycle. To a large extent, this is the calendar which regulates our business.

2. Is the policy understandable?

We believe for the most part, the policy is understandable. There are parts of the policy that require clarification as discussed in response to the remaining questions.

3. Are the Severity Levels appropriate?

Severity Levels I through IV should be clarified by including criteria for each level with regard to actual or potential impacts to public health and safety; urgency of the impact; and whether redundant safety systems were involved. These levels are not clearly defined making it difficult to determine whether any criteria was used and there are no distinctions between Levels I, II, and III. For example:

Level I definition should refer to most serious violations which result in actual or potential immediate impact to public health and safety.

Level II should refer to less serious violations which result in no immediate impact or less severe impact to public.

Level III should refer to lesser serious violations and failures to report Level I, II and III violations.

Level IV should refer to recurring violations which if left uncovered would degrade safety systems or procedures important to preventing or mitigating radiological impacts to public.

Severity Levels V and VI should be deleted. These violations are for the most part undefinable and insignificant and should be dealt with on a case-by-case basis. Enforcement action should be warranted only in those cases where an accumulation of minor violations occurs over a prolonged period of time.

The policy should clearly explain that an enforcement action is determined as a result of a number of factors. The severity level is only one step (probably the first). Other steps as discussed or implied throughout the Policy include consideration of licensee's enforcement history and consideration by the Commission (refer to Section V "Responsibilities"). However, the Policy does not seem to be based on a logical systematic consideration of these steps.

Finally, the policy should clearly state that Supplements I through VII of the Enforcement Policy are for guidance only and that they are examples of how certain violations may be handled.

4. Are the different types of activities well enough defined? Should there be others?

The severity categories identified under Fuel Cycle Operations are nearly identical to those already listed as Reactor Operations. Clarification or elimination of one category is suggested.

5. Are the distinctions among various types of licensees shown in Table 1 appropriate?

Civil penalties identified in Table 1 are disproportionately applied to power reactors, especially if discretion is not used in setting the base amount of a civil penalty. While the distinction is allegedly made on the basis of potential public consequences, there appears to be no credit given for the greater safeguards, security, training of operators, or supervision of power reactors. We believe the safety of power reactors has been continuously demonstrated to be at least equal to all other types of reactor licensees.

Furthermore, the premise seems to be that a utility operating a power reactor is necessarily more able to pay a civil penalty than other licensees. This is economically unrealistic and a misguided assumption. The owners of nuclear plants, unlike most other commercial enterprises, are limited by law to a relatively low return on common equity. Windfall profits are not allowed. Any increase in operating expense must impact on the consumer, either directly via pass through cost or indirectly through services. A single unit facility, could account for a large percentage of the total company investment making that company less able to pay a civil penalty than a more diversified company.

6. Are the factors for determining the level of enforcement actions appropriate? Should there be others?

The Enforcement Policy generally includes the factors for determining the level of enforcement action. However, they should be more clearly delineated. First, the Policy should set forth the criteria to be used in assessing which enforcement action should be selected. These factors should include the severity of the violation, the nature of the violation (i.e., whether it is repetitive or continuing), and the licensee's history of compliance. After this step is completed and a tentative sanction is selected, the specific criteria governing the use of that enforcement sanction should be applied. By identifying each of these criteria at a single section of the Policy, the methodology to be applied in selecting an enforcement sanction will be clarified.

The criteria governing specific enforcement actions also should be clarified. Specifically, the Enforcement Policy should amplify and clarify the factors to be taken into account when assessing a civil penalty. These factors include the severity of the violation, the nature of the activity in which the licensee is engaged and the need for its services, the financial impact the penalty will have on the licensee, the duration of the violation, and the effectiveness of licensee safety programs (including its ability in correcting previous violations promptly). In addition, the following mitigating factors should be considered: whether the licensee exercised good faith in complying with the applicable requirement, whether the licensee promptly identified the violation, whether the violation was reported in a timely manner, whether the violation was promptly and expeditiously corrected, and the scope and cost of such correction.

7. Is the degree of discretion allowed to office directors appropriate? Should there be more flexibility? Less?

In order to ensure that the Enforcement Policy is sufficiently flexible to permit sanctions to be tailored to the precise facts of each situation, the Policy must make clear that the Office Directors (as well as Boards and the Commission) have discretion in determining whether and in what form to bring an enforcement action, provided that general criteria are followed. Moreover, the discretion must not be limited by the methodology set forth in the Policy. Rather, after considering the general criteria governing the imposition, those regulators imposing the sanction must be free to modify the sanction otherwise applicable if circumstances warrant. As presently drafted, it appears that to the extent such discretion exists, it is limited in scope by various requirements of the Policy (e.g., the formula used to assess civil penalties). Therefore, more flexibility should be permitted than is now the case.

8. Are the levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?

The levels of civil penalties that require Commission involvement are appropriate.

9. Are the provisions for escalated action, set forth in Table 2, appropriate?

Table 2 appears to remove enforcement discretion while precipitating enforcement action through a combination of unrelated events. Events such as "operator error," "failure to follow procedures," "inadequate review," or "breakdown of controls," may be totally unrelated yet categorized in the same broad area. The Policy indicates that discretion is to be exercised in taking enforcement action and that the "actual progression [of enforcement actions] to be used in a particular case will depend on the circumstances". Reconciliation of how such discretion is to be exercised with the sequence of enforcement action set forth in Table 2 is not discussed. Moreover, because the enforcement options available to the Staff are reasonably limited and guidance is provided in the narrative portions of the Policy, Table 2 is not required for sanctions to be uniformly applied. Therefore, to insure the maximum exercise of discretion by the appropriate NRC Director (as well as the Boards and Commission), a specific sequence of escalation of enforcement actions is not necessary or desirable. We conclude that Table 2 of the Enforcement Policy should be deleted.