

## DUKE POWER COMPANY

45 FR 66754

LEGAL DEPARTMENT

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ASSOCIATE GENERAL COUNSEL

December 31, 1980

704-373-4825

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

Attention: Docketing and Service Branch

Re: Proposed General Statement of Policy  
and Procedure for Enforcement Actions  
45 Federal Register 66754, Dated  
October 7, 1980

Dear Sir:

On October 7, 1980, a notice was published in the Federal Register (45 Fed. Reg. 66754) indicating that the Nuclear Regulatory Commission had under consideration a staff proposed policy statement on enforcement policies and procedures. This notice requested comments on or before December 31, 1980. This letter is Duke's response.

Duke Power Company designs, constructs, and operates nuclear power reactors and, as such, will be greatly involved in the use of any new enforcement policy. Duke has three operating nuclear reactors and anticipates additional operating nuclear reactors. We are a member of an industry group which is preparing extensive comments to file with the Commission. We have attended numerous meetings with the Commission concerning an enforcement policy, including a meeting with the Commission in Atlanta, Georgia on December 1, 1980. At that meeting we filed general comments on the NRC enforcement program. A copy of those comments is enclosed with this letter.

As a general comment, we would note that it is necessary that any change in current enforcement policy should not be punitive in nature. If it is, it will likely detract from licensee performance. We also believe that the enforcement policy must not necessarily imply an attitude of infallibility on the part of the NRC Staff. Further, we believe that the Commission itself must set the standard to insure that the enforcement policy is applied in a fair and equitable manner with a goal of insuring safe operation of nuclear facilities.

Acknowledged by card... 1/2/81...

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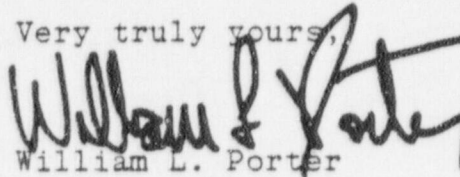
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U. S. Nuclear Regulatory Commission  
December 31, 1980  
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The enclosed comments reflect our general comments on the proposed NRC enforcement program. We also adopt the specific comments which will be filed by the Nuclear Utility Group on Enforcement.

Very truly yours,



William L. Porter

WLP/fhb  
Encl.

cc: Mr. Nicholas S. Reynolds  
Mr. K. S. Canady  
Mr. D. B. Blackmon

COMMENTS ON NRC ENFORCEMENT PROGRAM:  
PUBLIC MEETING  
ATLANTA, GEORGIA ON  
DECEMBER 1, 1980

On September 4, 1980, the Nuclear Regulatory Commission approved publication of a proposed general policy statement on enforcement actions for public comment and interim use. The interim policy statement was published in the Federal Register on October 7, 1980. The notice of October 17, 1980 gave notice that the Nuclear Regulatory Commission is specifically seeking comments on questions set forth in the notice. The following are the questions and my comments:

1. IS THE POLICY FAIR AND EQUITABLE?

In order for the Enforcement Policy to be fair and equitable, it must set up a system whereby the Staff, Boards and Commission will be able to apply uniform criteria to the facts of each case. The Policy also must reserve to the Staff, Boards and Commission sufficient discretion to apply all enforcement sanctions only when and where such sanctions will protect the public health and safety.

As presently drafted, the Enforcement Policy generally recognizes this critically important point and to that extent it can be viewed as fair and equitable. However, the more important question is whether the Policy will be applied in a fair and equitable manner. The answer to this question can only come from the Commission itself.

2. IS THE POLICY UNDERSTANDABLE?

The Enforcement Policy is for the most part understandable. There are portions of the Policy which require clarification, and these portions are discussed in the responses to the seven remaining questions.

3. ARE THE SEVERITY LEVELS APPROPRIATE?

The use of Severity Levels is an appropriate means by which to identify the relative severity of a particular violation. First, the Policy should state that identifying the Severity Level of a particular violation is only the first step in determining what enforcement sanction will ultimately be imposed on licensees. Other steps include reviewing a licensee's enforcement history, and, in certain instances, consulting with the Commission.



Second, the Policy does not clearly define each of the Severity Levels. As a result, it is impossible to determine what, if any, criteria are used to place particular violations in their corresponding Severity Level.

4. ARE THE DIFFERENT TYPES OF ACTIVITIES WELL ENOUGH DEFINED? SHOULD THERE BE OTHERS?

The different categories of activities regulated by the NRC and set forth in Supplements I through VII are sufficiently well defined and complete.

5. ARE THE DISTINCTIONS AMONG VARIOUS TYPES OF LICENSEES SHOWN IN TABLE I APPROPRIATE?

Provided that discretion may be used in setting the base amount of a civil penalty, the distinctions among the various types of licensees shown in Table I are, for the most part, appropriate. The exercise of discretion in setting the base amount of a civil penalty is necessary since, for example, it is possible that the licensee of a power reactor may be a smaller organization than the licensee of a research reactor, thereby possibly requiring a modification of the base civil penalty.

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 PERMITTED? 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 ENFORCEMENT ACTION, SET FORTH IN TABLE II, APPROPRIATE?

Table II of the Enforcement Policy should be deleted. 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" (45 Fed. Reg. 66758 (1980)). Reconciliation of how such discretion is to be exercised with the sequence of enforcement action set forth in Table II 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 II 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.

In the event the Commission concludes that Table II should be included in the Enforcement Policy, it should be clearly identified as guidance and should not be applied by the Staff in every case regardless of its facts. To accomplish this, the Enforcement Policy should state that the examples of enforcement actions in Table II are those which could be taken for Severity I, II or III violations and not those which will normally be taken.

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