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July 3, 1997

AEP:NRC:0508AU

Docket Nos.: 50-315
50-316

Secretary of the Commission
U. S. Nuclear Regulatory Commission
ATTN: Docketing and Service Branch
Washington, D. C. 20555

Gentlemen:

Donald C. Cook Nuclear Plant Units 1 and 2
COMMENTS ON PROPOSED REGULATORY GUIDANCE
RELATED TO IMPLEMENTATION OF 10 CFR 50.59
(CHANGES, TESTS, OR EXPERIMENTS) NUREG-1606

References:

1. "Federal Register Notice Vol. 62, No. 88/Wednesday, May 7, 1997"
2. NEI 96-07, "Guidelines for 10 CFR 50.59 Safety Evaluations"
3. NSAC-125, "Guidelines for 10 CFR 50.59 Safety Evaluations", June 1989

This letter provides comments on the proposed regulatory guidance related to implementation of 10 CFR 50.59 (changes, tests, or experiments), NUREG-1606.

Reference 1 transmitted NUREG-1606, "Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59", for public comment and requested comments within sixty days. In preparing our response to this request, we have reviewed NUREG-1606, and have participated in the NEI workshop on June 17 and 18, 1997. The latter involved detailed discussions and comments on drafts of 1) NEI 96-07 (reference 2); 2) NEI comments on reference 1; and 3) NEI "Analysis of Industry Guidance for Implementing 10 CFR 50.59". Input from licensees attending the workshop will be factored into the drafts of these three documents. We understand comments will be sent directly from Nuclear Energy Institute (NEI), and from the law firm, Shaw Pittman Potts & Trowbridge, to the NRC regarding NUREG-1606. These forthcoming comments appropriately reflect our views on the content of NUREG-1606. It is not our intent to repeat those comments; therefore, the attachment to this letter highlights those issues we believe are of most importance to the proper implementation of 10 CFR 50.59.

As a general comment, we do not believe any significant changes are needed to the industry's present 10 CFR 50.59 implementation guideline (reference 3). Although the NRC has not endorsed reference 3, they have noted general acceptance of licensee

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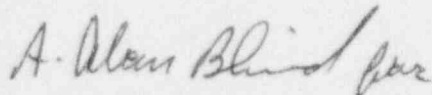
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programs that are consistent with NSAC-125. This has been true for Cook Nuclear Plant since NSAC-125 was adopted in 1989. Since the implementation of a program consistent with NSAC-125, NRC inspections have not found major process issues with our 10 CFR 50.59 program. The changes proposed in NUREG-1606 will have a significant impact on licensee programs. These changes will also result in impacts on both licensee and NRC resources due to a significant increase in the number of unreviewed safety question findings rising out of changes to the plant of insignificant or negligible safety consequence. We believe that such an increase is unwarranted, will not benefit public health and safety interests, and will detract limited resources from other areas that warrant more attention. In contrast to NUREG-1606, we believe only slight enhancements to the 10 CFR 50.59 process are needed to factor in lessons learned over the last decade. It is our opinion that NEI 96-07 (reference 2) will provide the proper guidance for the 10 CFR 50.59 process, and we strongly encourage the NRC's formal endorsement of NEI 96-07 in lieu of NUREG-1606.

Sincerely,



E. E. Fitzpatrick
Vice President

vlb

Attachment

c: A. A. Blind
 A. B. Beach
 MDEQ - DW & RPD
 NRC Resident Inspector
 J. R. Padgett

ATTACHMENT TO AEP:NRC:0508AU

COMMENTS ON PROPOSED REGULATORY GUIDANCE
RELATED TO IMPLEMENTATION OF 10 CFR 50.59
(CHANGES, TESTS, OR EXPERIMENTS) NUREG-1606

The following comments are provided to highlight aspects of NUREG-1606 that are believed to be particularly onerous; that expand the applicability of 10 CFR 50.59 beyond the limits intended by the existing rule; and that are not justified by expected reductions in risk to the health and safety of the public.

Comment No. 1

III.A. Definition of Change

The staff contends in the first paragraph of Section III.A.4 that a "change" to the plant as described in the UFSAR includes "... any modification or replacement of something ... with something that is not identical to the original in requirements ...". It is our position that replacement of components with "equivalent" components that have the same "Form, Fit, & Function" does not generally constitute a "change" to the facility as described in the UFSAR because technical and quality requirements will continue to be satisfied. The only exception would be where the UFSAR must be modified to accommodate installation of the equivalent component because changed aspects of the existing components are noted in the UFSAR. We believe there is no safety benefit to unnecessarily subjecting such functionally equivalent replacements to an unreviewed safety question (USQ) determination. Instead, we support the use of a "component evaluation process" to determine if the replacement constitutes a functionally equivalent system, structure or component, and a 10 CFR 50.59(a)(1) screening to determine if the UFSAR is affected as indicated above.

Comment No. 2

III.A. Definition of Change

In the second paragraph of section III.A.4, subsection (c), the staff indicates a "change" would exist if a "system, structure or component (SSC) is removed from service for maintenance that is part of the licensing basis but that is not addressed by TS Limiting Conditions for Operation (unless the effects were previously considered in the SAR or Safety Evaluation Report (SER))." We disagree with the proposed position because it would unnecessarily result in the need to perform 10 CFR 50.59 reviews for most maintenance activities involving non-technical specification equipment. It is obvious that plant systems, whether safety related or not, have been designed to accommodate certain maintenance activities, many of which can and are performed on-line. Current scheduling practices account for safety issues related to such maintenance and the maintenance rule provides further constraints on the removal of systems that are considered important to safety. It is inappropriate to place a 10 CFR 50.59 evaluation process on normal maintenance activities. Furthermore, given the staff's suggested guidance in NUREG-1606 on increases in probability and consequences and reductions in the margin of safety, it is likely any review of normal maintenance activities would result in unnecessary findings that USQs exist. This would occur due to changes in the probability, consequences, or margin of safety that would exist when some part of a system, structure or component is taken out of service for maintenance as this could result in a reduction in the full compliment of systems, structures, and components described in the UFSAR.

Comment No. 3

III.D. Definition of Test or Experiment

In Section III.D.4 of NUREG-1606, the Staff notes that "... Staff considers a test or experiment to be a special procedure for a particular purpose or an evolution performed to gather data." Earlier in this paragraph, the staff refers to existing NRC inspection manual, part 9900, "10 CFR 50.59 Interim Guidance on the Requirements Related to Changes to Facilities, Procedures and Test (or Experiments)", inspection guidance that says tests or experiments refer "... to the performance of an operation not described in the SAR which could have an adverse effect on safety-related systems." We concur with 9900 inspection guidance wording, but are concerned that the first quote above is expanding the 9900 guidance to data gathering exercises for which there is no reasonable threat to a safety-related system, e.g., non-intrusive, non-destructive examination techniques. It is suggested NUREG-1606 be clarified to note that the "tests or experiments" at issue here must at least pose a reasonable threat to the functionality of a safety-related system.

Comment No. 4

III.H. Definition of Accident Previously Evaluated

It is unclear if the staff's current position, as noted in the first paragraph of section III.H.4, is that severe accidents are or should be considered to be within the envelope of an "accident previously evaluated", and that future changes related to the severe accident management guidelines should be evaluated under 10 CFR 50.59. It is our position that severe accidents and their related procedures are outside the bounds of 10 CFR 50.59. The NRC should clarify their position in this regard and provide justification for any position that 10 CFR 50.59 applies to severe accident issues.

Comment No. 5

III.I. Malfunction of Equipment Important to Safety of a Different Type

The position stated in NUREG-1606 is that a malfunction of equipment of a different type exists if the cause of the postulated failure of a component is changed. An example is offered where a pressure transmitter is changed from a mechanical linkage type to an oil-filled type. The staff contends that, since a loss of oil is a new failure mechanism, a malfunction of equipment of a different type exists and staff review would be required before the transmitter could be changed. Two comments are noted here. First, we believe 10 CFR 50.59 is not specifically concerned with the way component fails. Rather, it is concerned with the effects of the failure. In most cases, the UFSAR will not even specify in a failure mode and effects analysis the actual cause of a failure, but will only postulate a failure mode, then evaluate the resulting consequences. Secondly, the staff interpretation of 10 CFR 50.59 in this area will have a significant and adverse chilling effect on equipment refurbishment and upgrade activities, because most upgrades will likely result in some new postulated failure mechanism that did not previously exist. Clearly, with few exceptions such as the analog to digital replacements, the staff

has not interpreted 10 CFR 50.59 heretofore in this fashion. If this new position is to be maintained in the guidance document and to the extent it is applied retroactively, it would require a full 10 CFR 50.109 backfit evaluation.

Comment No. 6

III.0. Applicability of 10 CFR 50.59 to the Resolution of Degraded and Non-Conforming Conditions

As a basic premise, we disagree with the staff's position that 10 CFR 50.59 evaluations should be the evaluation tool to address degraded and non-conforming equipment. Rather, the proper regulatory control is 10 CFR 50.59, appendix B, criterion XVI. This latter mechanism will ensure that prompt corrective action is taken, including the performance of operability determinations where appropriate, commensurate with the importance of the affected equipment. We believe 10 CFR 50.59 is being force-fit to apply to these degraded and non-conforming conditions, and, given the staff's proposed positions relative to "increases in probability" and "reductions in the margin of safety," it is clear that 10 CFR 50.59s performed on virtually any piece of degraded equipment will result in the determination of a USQ. This conclusion, in and of itself, demonstrates the inappropriateness of using 10 CFR 50.59 to evaluate such conditions.

Furthermore, the NUREG position that a licensee cannot restart a plant with an operable, yet degraded, piece of equipment is without regulatory basis. The key question that should be asked in such situations is whether the affected equipment is capable of performing its function in a way that supports the protection of the public health and safety, i.e., is it operable. If that question is answered in the affirmative, then no restriction on restart is warranted. Finally, if the staff is not satisfied with the speed at which a licensee is returning a component to its undegraded state, then action relative to appendix B, criterion XVI, and not 10 CFR 50.59, is available.