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Statement of Policy; Further Commission Guidance for Power Reactor Operating Licenses

Memorandum and Order

Recently the Commission, by a vote of 3-2, issued a Statement of Policy entitled "Further Commission Guidance for Power Reactor Operating Licenses." 45 FR 41736 (June 28, 1980). In essence, the Statement of Policy announced the intent of the Commission that in future actions on nuclear power reactor operating license applications, it would look to the list of "Requirements for New Operating Licenses" found in NUREG-0694 (June 1980) as setting forth requirements for new operating licenses which should be "necessary and sufficient for responding" to the accident at Three Mile Island ("TMI"). Consequently, current operating license applications were to be judged against present NRC regulations, as supplemented by these TMI-related requirements. Insofar as certain of the provisions of NUREG-0694 sought to impose operating license requirements beyond those necessary to show compliance with the regulations:

Although the [licensing and appeal] boards may entertain contentions asserting that the supplementation is unnecessary (in full or in part) and they may entertain contentions that one or more of the supplementary requirements are not being complied with, they may not entertain contentions asserting that additional supplementation is required.
Id.

On November 3, 1980, by a vote of 2-2, the Commission denied a request for a stay of the Statement of Policy filed by the Union of Concerned Scientists and the Shoreham Opponents Coalition.

On October 28, 1980, by a vote of 4-0, the Commission approved NUREG-0737, "Clarification of TMI Action Plan Requirements," which is a letter from D. G. Eisenhut, Director of the Division of Licensing, NRR, to licensees of operating power reactors and applicants for operating licenses forwarding post-TMI requirements. NUREG-0737 now supersedes NUREG-0694, the latter being the document which forms the core of the substantive requirements in the aforementioned Statement of Policy. NUREG-0737 makes numerous significant changes in NUREG-0694. In some instances, the requirements in NUREG-0694 are made more flexible, especially as to implementation schedules. In some instances, the requirements in NUREG-0694 are made more strict. In addition, NUREG-0737

adds new requirements, taken from previously issued Bulletins and Orders, which were not part of NUREG-0694.

The Commission's approval of NUREG-0737 requires that some changes be made in the previously adopted Statement of Policy. Moreover, the Commission has now had more time to reflect upon the distinction between interpretive and supplementary requirements, as originally set forth in NUREG-0694 and as modified in NUREG-0737, and believes that the number of supplementary requirements may be quite small. For these reasons, the Commission has decided that the Statement of Policy should be amended as set forth in the Appendix to this Memorandum and Order.²

It is so ordered.

Dated at Washington, D.C. this 18th day of December 1980.

For the Commission,

Samuel J. Chalk,

Secretary of the Commission.

**U.S. Nuclear Regulatory Commission—
Further Commission Guidance For
Power Reactor Operating Licenses—
Revised Statement of Policy***

I. Background

After the March-1979 accident at Three Mile Island, Unit 2, the Commission directed its technical review resources to assuring the safety of operating power reactors rather than to the issuance of new licenses. Furthermore, the Commission decided that power reactor licensing should not continue until the assessment of the TMI accident had been substantially completed and comprehensive improvements in both the operation and regulation of nuclear power plants had been set in motion.

At a meeting on May 30, 1979, the Nuclear Regulatory Commission decided to issue policy guidance addressing general principles for reaching licensing decisions and to provide specific guidance for near-term operating license cases.¹ In November 1979, the Nuclear Regulatory Commission issued the policy guidance in the form of and amendment to 10 CFR Part 2 of its regulations,² describing the approach to be taken by the Commission regarding licensing of power reactor. In particular, the Commission noted that it would "be providing case-by-case guidance on changes in regulatory policies." The Commission has now acted on four operating licenses, has given extensive consideration to issues arising as a

result of the Three Mile Island accident, and is able to provide general guidance.

Following the accident at Three Mile Island 2, the President established a Commission to make recommendations regarding changes necessary to improve nuclear safety. In May 1979, the Nuclear Regulatory Commission established a Lessons Learned Task Force,³ to determine what actions were required for new operating licenses and chartered a Special Inquiry Group to examine all facets of the accident and its causes. These groups have published their reports.⁴

The Lessons Learned Task Force led to NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations" and NUREG-0585, "TMI-2 Lessons Learned Task Force Final Report." The Commission addressed these reports in meetings on September 8, September 14, October 14, and October 16, 1979. Following release of the report of the Presidential Commission the Commission provided a preliminary set of responses to the recommendations in that report.⁵ This response provided broad policy directions for development of an NRC Action Plan, work on which was begun in November 1979. During the development of the Action Plan, the Special Inquiry Group Report was received, which had the benefit of review by panels of outside consultants representing a cross section of technical and public views. This report provided additional recommendations.

The Action Plan⁶ was developed to provide a comprehensive and integrated plan for the actions judged appropriate by the Nuclear Regulatory Commission to correct or improve the regulation and operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. In developing the Action Plan, the various recommendations and possible actions of all the principal investigations were assessed and either rejected, adopted or modified. A detailed summary of the development and review process for the Action Plan was initially provided in NUREG-0694,⁷ "TMI-Related Requirements For New Operating Licenses," and can now be found, as changed, in NUREG-0737, "Clarification of TMI Action Plan Requirements."⁸

Actions to improve the safety of nuclear power plants now operating were judged to be necessary immediately after the accident and could not be delayed until the Action Plan was developed, although they were subsequently included in the Action Plan. Such actions came from the Bulletins and Orders issued immediately after the accident, the first report of the Lessons-Learned Task Force issued in July 1979, the recommendations of the

Emergency Preparedness Task Force, and the NRC staff and Commission. Before these immediate actions were applied to operating plants, they were approved by the Commission. Many of the required immediate actions have already been taken by licensees and most are scheduled to be completed in the near future.

On February 7, 1980, based on its review of initial drafts of the Action Plan, the Commission approved a listing of near-term operating license (NTOL) requirements, as being necessary but not necessarily sufficient TMI-related requirements, for granting new operating licenses. Since then, the fuel load requirements on the NTOL list have been used by the Commission in granting operating licenses, with limited authorizations for fuel loading and low power testing, for Sequoyah, North Anna, Salem, and Farley. Full operating licenses were granted, based on the NTOL list, for Sequoyah and North Anna.

On May 15, 1980, after review of the last version of the Action Plan, the Commission approved a list of "Requirements For New Operating Licenses," contained in NUREG-0694, which the staff recommended for imposition on current operating license applicants. That list was recast from the previous NTOL list and sets forth four types of TMI-related requirements and actions for new operating licenses: (1) Those required to be completed by a license applicant prior to receiving a fuel-loading and low-power testing license, (2) those required to be completed by a license applicant to operate at appreciable power levels up to full power, (3) those the NRC will take prior to issuing a fuel-loading and low-power testing or full-power operating license, and (4) those required to be completed by a license prior to a specified date. The Commission also approved the staff's recommendation that the remaining items from the TMI reviews should be implemented or considered over time to further enhance safety.

On October 28, 1980, the Commission approved a "Clarification of TMI Action Plan Requirements," not contained in NUREG-0737, which supersedes NUREG-0694. More explicit requirements, revisions in previous requirements, different time schedules for implementation, and new requirements in NUREG-0694, but taken from previously issued Commission bulletins and orders, form the core of NUREG-0737.

In approving the schedules for developing and implementing changes in requirements, the Commission's primary considerations were the safety significance of the issues and the

¹ Chairman Abernethy concurs in amending the policy statement, but disagrees in how it should be amended. His dissenting views are attached to the Appendix.

*All footnotes for this Statement of policy appear at end of text.

immediacy of the need for corrective actions. As discussed above, many actions were taken to improve safety immediately or soon after the accident. These actions were generally considered to be interim improvements. In scheduling the remaining improvements, the availability of both NRC and industry resources was considered, as well as the safety significance of the actions. Thus, the Action Plan approved by the Commission presents a sequence of actions that will result in a gradually increasing improvement in safety as individual actions are completed and the initial immediate actions are replaced or supplemented by longer term improvements.

II. Commission Decision

Based upon its extensive review and consideration of the issues arising as a result of the Three Mile Island accident—a review that is still continuing—the Commission has concluded that the list of TMI-related requirements for new operating licenses found in NUREG-0737 can provide a basis for responding to the TMI-2 accident. The Commission has decided that current operating license applications should be measured by the NRC staff against the regulations, as augmented by these requirements.⁸ In general, the remaining items of the Action Plan should be addressed through the normal process for development and adoption of new requirements rather than through immediate imposition on pending applications.

III. Litigation of TMI-2 Issued in Operating License Proceedings

In the November 1979 policy statement, the Commission provided the following guidance for the conduct of adjudicatory proceedings:

In reaching their decision, the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island Accident. In this regard, it should be understood that as a result of analyses still underway, the Commission may change its present regulations and regulatory policies in important aspects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application.

The Commission is now able to give the Boards more guidance.

The Commission believes the TMI-related operating license requirements list as derived from the process described above should be the principal basis for consideration of TMI-related issues in the adjudicatory process. There are good reasons for this. First, this represents a major effort by the staff and Commissioners to address more than one hundred issues and

recommendations in a coherent and coordinated fashion. This entire process cannot be reproduced in individual proceedings. Second, the NRC does not have the resources to litigate the entire Action Plan in each proceeding. Third, many of the decisions involve policy more than factual or legal decisions. Most of these are more appropriately addressed by the Commission itself on a generic basis than by an individual licensing board in a particular case. Consequently, the Commission has chosen to adopt the following policy regarding litigation of TMI-related issues in operating license proceedings.

The "Clarification of Action Plan Requirements" in NUREG-0737, like the TMI-related "Requirements For New Operating Licenses" in NUREG-0604, can, in terms of their relationship to existing Commission regulations, be put in two categories: (1) those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein. Insofar as the first category—refinement of existing regulations—is concerned, the parties may challenge the new requirements as unnecessary on the one hand or insufficient on the other within the limits of the regulations.

Insofar as the second category—supplementation of existing regulations—is concerned, the parties may challenge either the necessity for or sufficiency of such requirements. It would be useful if the parties in taking a position on such requirements stated (a) the nexus of the issue to the TMI-2 accident, (b) the significance of the issue, and, (c) any differences between their positions and the rationale underlying the Commission's consideration of additional TMI-related requirements. It would be helpful if any certifications of questions regarding such positions to the Commission included the same information and such certifications are encouraged where Boards are in doubt as to the Commission's intentions in approving NUREG-0737. The Atomic Safety and Licensing and Appeal Boards' present authority to raise issues *vo sponte* under 10 CFR 2.760a extends to both categories.

In order to focus litigation of TMI-related issues, the staff and the Boards should use the Commission's existing summary disposition procedures, where applicable, in responding to TMI-related contentions.

The Commission believes that where the time for filing contentions has expired in a given case, no new TMI-related contentions should be accepted absent a showing of good cause and

balancing of the factors in 10 CFR 2.714(A)(1). The Commission expects adherence to its regulations in this regard.

Also, present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be adhered to. Thus, for example, where initial decisions have been issued, the record should not be reopened to take evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision.

Finally, the Commission will continue to monitor developments with regard to the litigation of our Action Plan requirements and will continue to offer guidance where appropriate.

Dated at Washington, D.C., the 76th day of December 1980.

Sammuel J. Chilk,

Secretary of the Commission.

Footnotes

¹"Staff Requirements—Discussion of Options Regarding Deferral of Licenses," memorandum from Samuel J. Chilk, Secretary to Lee V. Goswick, Executive Director for Operations, May 31, 1978.

²"Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings," 44 FR 65087 (November 6, 1979).

³"Lessons Learned From TMI-2 Accident," Regs Mattson to NRC staff, May 31, 1978.

⁴"Report of the President's Commission on The Accident at Three Mile Island, 'The Need for Change: The Legacy of TMI,'" October 1979.

⁵U.S. Nuclear Regulatory Commission, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," NUREG-0878, July 1979.

⁶U.S. Nuclear Regulatory Commission, "TMI-2 Lessons Learned Task Force Status Report," NUREG-0886, August 1979.

⁷U.S. Nuclear Regulatory Commission Special Inquiry Group, "Three Mile Island: A Report to the Commissioners and to the Public," January 1980.

⁸U.S. Nuclear Regulatory Commission, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at Three Mile Island," NUREG-0832, November 1979.

⁹U.S. Nuclear Regulatory Commission, "NRC Action Plans Developed as a Result of the TMI-2 Accident," NUREG-0880.

¹⁰U.S. Nuclear Regulatory Commission, "TMI-Related Requirements for New Operating Licenses," NUREG-0604, June 1980.

¹¹U.S. Nuclear Regulatory Commission, "Clarification of TMI Action Plan Requirements," NUREG-0737, November 1980.

¹²Consideration of applications for an operating license should include the entire list of requirements unless an applicant specifically requests an operating license with limited authorization (e.g., fuel loading and low-power testing).

Chairman Ahearn's Dissenting Views

I now support amending the guidance for litigating TMI-2 issues for the reasons mentioned in the Commission order and below. However, I do not support the Commission's revised statement of policy. Little guidance is provided to either the Board or the parties—they are simply told they can

litigate whatever they wish and it would be "useful" or "helpful" to address certain questions.

Throughout the development of the TMI Action Plan and the various policy statements, I have believed the Commissioners should play a central role in determining the appropriate response to the TMI-2 accident. Unfortunately the "Revised Statement of Policy" relinquishes Commission control and attention from a major portion of this process. Therefore I would have preferred the following approach:

Revised Statement of Policy

I. Background

In June 1980 the Commission issued a Statement of Policy dealing with TMI-related requirements for new operating licenses.¹ This statement outlined the process by which the Commission evaluated the TMI-2 accident and then agreed to a list of requirements to be adopted in response to the accident.² It then provided guidance for litigation of TMI-2 issues in operating license proceedings.

Subsequently substantial controversy developed over the statement—particularly over treatment of requirements and issues which go beyond existing regulations. Due in part to this controversy, in part to a change in the composition of the Commission, in part to the uncertain results of ongoing litigation, and in part to confusion created by subsequent Commission statements, the Commission has decided to modify this aspect of the policy statement. In the long run the Commission believes it will save time by modifying its guidance at this juncture.

II. Modified Commission Guidance of Litigation on TMI-2 Issues in Operating License Proceedings

In the June Statement of Policy the Commission described the TMI-related requirements as falling into two categories: "(1) Those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein." The Commission is modifying its guidance with respect to the second category. Rather than entirely precluding litigation of requirements that go beyond the regulations (other than those found in the Commission's list of requirements), the Commission will now provide parties an opportunity to certify such questions to the

Commission. To the extent that an issue addresses items within the current regulations, certification is unnecessary since litigation was permissible under the original policy statement. However issues which raise matters going beyond the existing regulations may now be certified directly to the Commission.³

A request for certification should clearly present (a) the nexus of the issue to the TMI-2 accident (i.e., in what way does the TMI accident provide a basis for the concerns presented), (b) the significance of the issue (i.e., what is the consequence of not addressing the issue), (c) to the extent possible, the differences in rationale underlying the certification from the rationale underlying the Commission consideration of additional TMI-related requirements (e.g., different reasoning, incorrect assumptions, incomplete information).

To the extent that a contention raises the need for a requirement already included in the Commission's list of requirements for new operating licenses, certification is unnecessary. As under the old policy statement, litigation of the need for those requirements is permitted without further action by the Commission. The Commission itself has already found sufficient basis for allowing consideration of those items.

It should be emphasized that this policy statement (as well as the previous policy statement) is intended to address issues arising from the TMI-2 accident. Other issues are to be treated according to normal Commission procedures.⁴

¹"Further Commission Guidance for Power Reactor Operating Licenses: Statement of Policy," 45 FR 41739 (June 22, 1980).

²"TMI-Related Requirements for New Operating Licenses," NUREG-0694 (June 1980) as modified by, "Clarification of TMI Action Plan Requirements," NUREG-0737 (Nov 1980).