



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

December 26, 2001

REQUEST REPLY BY 1/3/02

Approve in part and
disapprove in part. See
attached comments.

Richard A. Meserve 1/16/02

COMEXM-01-0001

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner Merrifield

FROM: Edward McGaffigan, Jr.

SUBJECT: D.C. COOK POTENTIAL RED FINDING, AND THE
IMPLEMENTATION OF THE SIGNIFICANCE DETERMINATION
PROCESS WITHIN THE REACTOR OVERSIGHT PROGRAM

The staff proposes to issue a preliminary Red finding to D.C. Cook, without having conducted a Phase 3 significance determination process (SDP) analysis, based on a flawed Phase 2 SDP analysis following an August 2001 event. I strongly oppose this action and urge instead that Region III follow the example of other Regions, which carry out Phase 3 analyses before issuing preliminary above Green findings.

The Commission approved the April 1, 2000, implementation of the Reactor Oversight Program (ROP) in the Staff Requirements Memorandum (SRM) for SECY-99-007 and -007A. The ROP replaced the previous SALP program, and was intended to be a more objective and risk-informed process. As we stated at several public meetings, the ROP was, and still is, a "work in progress," and additional changes and clarifications would almost certainly need to be made as the Agency gained experience with the process. Commission oversight of ROP implementation is an integral part of the overall process, and I feel strongly that such oversight is now necessary.

The sequence of Agency actions to assess inspection findings in the ROP was depicted in the two attached figures within SECY-99-007A. These figures are ambiguous and unfortunately lend themselves to multiple interpretations. My reading of those figures, then and now, was that the ROP would use the SDP as a multi-level screen to review inspection findings. The last "box" on the first figure ("Assessment and Enforcement Process") was, then, the issuance of a public letter and the conduct of a public meeting. The "box" before that one was labeled, "Engage Licensee and NRC Risk Analysts for Refinement." On the other attached figure, the lowest "box" has the identical title ("Engage Licensee and NRC Risk Analysts to Refine Results") and it is explained as "Phase 3 Risk Refinement (as required)." Putting those two figures together (they are one page apart in SECY-99-007A), I expected that the staff would thus be conducting Phase 3 analyses prior to public issuance of preliminary significant (above Green) findings and holding any public meetings on them. Such has indeed been the case in three of the four Regions.

Let me compare the effects of conducting the Phase 3 SDP analyses with not conducting them.

Comments of Chairman Meserve on COMEXM-01-001

I join Commissioner McGaffigan in his concern for ensuring the consistent implementation of the Reactor Oversight Process (ROP). The ROP is of enormous importance to our licensees and other stakeholders and thus its close scrutiny by the Commission is warranted. The significance that the Commission attaches to the ROP is reflected not only by Commissioner McGaffigan's memorandum, but also the thoughtful responses of my colleagues.

It is apparent from the data provided by both Commissioner McGaffigan and the staff that adjustments in the staff's preliminary assessments are frequently warranted as a result of the collection of further information and the conduct of more detailed analyses. The issue is thus presented as to whether, as a general matter or at least in instances of preliminary "red" findings, to delay the issuance of preliminary findings to await the completion of more refined work. It is my view that, in the absence of specific justification, lengthy delays in the release the information to the public serves to erode the progress that has been made by the staff to improve public confidence. I understand that adjustment of the significance of findings is, in most instances, a result of consideration of additional specific risk analyses and engineering evaluations performed by licensees. Since these additional analyses vary significantly among licensees, are often completed months after a preliminary finding is determined, and commonly require additional inspection to validate, I believe that it is not generally advisable for NRC to delay the release of a preliminary finding to await additional information. However, this does not diminish the staff's responsibility for providing the most accurate assessment of the significance of findings that is available at the time of the release of the preliminary findings.

Moreover, the staff should be mindful that public announcements concerning potential safety issues, in particular "red" findings, can have significant ramifications for NRC licensees. As a result, any statements concerning such preliminary findings should be consistent with the staff's knowledge at the time. Thus, rather than assigning a particular color to a finding when there remains a substantial likelihood of the adjustment of significance upon more detailed review, the staff should consider describing such findings as "greater than green." To claim that a finding is "red" under circumstances in which the staff is not in the position to assert this conclusion with confidence is ultimately misleading. I thus urge the staff to examine how preliminary findings are characterized to the public.

In response to COMEXM-01-001, the staff provided information to the Commission indicating that NRR program office expectations concerning the performance of the Phase 2 and Phase 3 SDPs are not being consistently implemented. This issue should be addressed during the staff review and revision of the guidance for performing Phase 2 and 3 SDPs. Indeed, if at any time the staff feels that the ROP requires immediate revision, the staff should inform the Commission of the issue and pursue the proposed changes.

The root cause of the need for adjustment of preliminary findings is that the tools that are used by the staff to assess significance are imperfect. Commissioner McGaffigan has

recommended the programming of funds to accelerate the benchmarking of the Phase 2 SDP notebooks to address this problem. I join the recommendation of Commissioner Diaz that the staff provide additional information to the Commission concerning its plans to improve the assessments and the time frame for their accomplishment. In addition, the staff should inform the Commission of any benefits and/or limitations (e.g., staff or contractor limitations) associated with accelerating the benchmarking of the notebooks or of the SPAR models.



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Disapprove. See attached comments.

COMMISSIONER

Greta Joy Dicus
Greta Joy Dicus 1/11/01

MEMORANDUM TO

Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner Merrifield

COMEXM-01-0001

FROM

Edward McGaffigan, Jr. *E. McGaffigan Jr.*

SUBJECT:

D.C. COOK POTENTIAL RED FINDING, AND THE IMPLEMENTATION OF THE SIGNIFICANCE DETERMINATION PROCESS WITHIN THE REACTOR OVERSIGHT PROGRAM

The staff proposes to issue a preliminary Red finding to D.C. Cook, without having conducted a Phase 3 significance determination process (SDP) analysis, based on a flawed Phase 2 SDP analysis following an August 2001 event. I strongly oppose this action and urge instead that Region III follow the example of other Regions, which carry out Phase 3 analyses before issuing preliminary above Green findings.

The Commission approved the April 1, 2000, implementation of the Reactor Oversight Program (ROP) in the Staff Requirements Memorandum (SRM) for SECY-99-007 and -007A. The ROP replaced the previous SALP program, and was intended to be a more objective and risk-informed process. As we stated at several public meetings, the ROP was, and still is, a "work in progress," and additional changes and clarifications would almost certainly need to be made as the Agency gained experience with the process. Commission oversight of ROP implementation is an integral part of the overall process, and I feel strongly that such oversight is now necessary.

The sequence of Agency actions to assess inspection findings in the ROP was depicted in the two attached figures within SECY-99-007A. These figures are ambiguous and unfortunately lend themselves to multiple interpretations. My reading of those figures, then and now, was that the ROP would use the SDP as a multi-level screen to review inspection findings. The last "box" on the first figure ("Assessment and Enforcement Process") was, then, the issuance of a public letter and the conduct of a public meeting. The "box" before that one was labeled, "Engage Licensee and NRC Risk Analysts for Refinement." On the other attached figure, the lowest "box" has the identical title ("Engage Licensee and NRC Risk Analysts to Refine Results") and it is explained as "Phase 3 Risk Refinement (as required)." Putting those two figures together (they are one page apart in SECY-99-007A), I expected that the staff would thus be conducting Phase 3 analyses **prior** to public issuance of preliminary significant (above Green) findings and holding any public meetings on them. Such has indeed been the case in three of the four Regions.

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Commissioner Dicus's Comments on COMEXM-01-0001

Although I disapprove specific actions proposed by Commissioner McGaffigan, his memorandum brings out several important points. I agree with the Commissioner McGaffigan that the Reactor Oversight Process (ROP) is a "work in progress" and Commission oversight is still needed. For example, in future enhancements to the Significant Determination Process (SDP), I envision the need to clarify the nature of the analysis performed under Phase 2 versus Phase 3. Specifically, Phase 2, as it is currently defined in SECY-007a does not clarify whether the licensee's input is considered.

I also agree with Commissioner McGaffigan that there may be some situations where taking some additional time to refine the analysis, prior to issuing a preliminary "above-Green" finding is appropriate. However, we should continue to promote timely decision making as an important element of the oversight process. It is of principal importance that this decision making use best available information including those provided by the licensee, and best available tools to derive the most realistic result, prior to issuance of preliminary colors or holding public meetings. This can be accomplished under Phase 2 or Phase 3.

Commissioner McGaffigan proposes that the staff reprogram the funds necessary so that the Phase 2 SDP notebooks can be bench marked and corrected by the end of FY 2003. I agree that the tools for SDP are significant. However, I believe that programming of funds is best accomplished using the integrated PBPM process. The staff should inform the Commission of its prioritization approach for ROP enhancements during the next periodic briefing on the ROP.

Finally, I do not object to staff's intent to issue a preliminary RED finding on D.C. Cook because the staff has used tools, methods, and information available to them to determine that the Cook finding is "RED." Furthermore, staff has also considered the preliminary information provided by the licensee.

gjed
1-11-02



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My comments are attached.

Nils J. Diaz 01/15/02

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CONFIDENTIAL

Commissioner Diaz' Comments on COMEXM-01-0001

I strongly concur with Commissioner McGaffigan's statement that "Commission oversight of ROP implementation is an integral part of the overall process." In fact, Commission oversight of licensing and regulatory processes is an essential part of the Commission's responsibility. Therefore, I applaud Commissioner McGaffigan's foresight in identifying potential deficiencies in one of the agency's more important and more publicly visible regulatory processes. Of course, I concur with Commissioner Merrifield's statement that the ROP needs to be carried out in an objective, predictable and publicly scrutable manner, and that this is the common goal of everyone in the agency. Therefore, I am going to address only the principles that I believe are involved for the resolution of this issue, as follows.

- 1 The staff should not assign a color to any SDP finding until all pertinent information is evaluated in the appropriate manner, including any necessary Phase 3 analyses
- 2 In the case of a finding that is greater-than-green, and especially for a potential safety significant "red" finding, the Regional Administrator should have the discretion to require the resources and licensee attention to promptly obtain the information necessary to evaluate and resolve, the issue whether a Phase 3 analysis is conducted or not
- 3 The staff should propose to the Commission a realistic plan to expedite the completion of the requisite tools for this key regulatory process



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*I approve in part
and disapprove in
part. See attached comments*

~~COMEX 01-0001~~

1/10/02

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Commissioner Merrifield's Comments on COMEXM-01-0001

I appreciate Commissioner McGaffigan's insights associated with the significance determination process (SDP) within the Reactor Oversight Program (ROP). I also appreciate the significant effort the staff has undertaken on the ROP. It is clear from my review of this matter that the staff and Commissioner McGaffigan share a consistent goal of ensuring that the NRC's ROP is carried out in an objective, predictable, and publicly scrutable manner. While there are clearly differences in opinion about how best to achieve this goal, I am certain that these differences are constructive in nature and indicative of a healthy program.

I appreciate Commissioner McGaffigan's view that getting and keeping the number of "false positives" or "color over-calls" low is an important element in maintaining public confidence. In its presentation on January 7th, the staff indicated that they accept a higher tolerance in Phase 2 for preliminarily overestimating risk than for preliminarily underestimating risk. I understand and respect the principles that underlie this position, and believe that this position has merit. However, if this position is not applied in a disciplined, consistent, and predictable manner, or if the degree of this higher tolerance is unreasonable, I believe the staff's position would be in conflict with the NRC's Principles of Good Regulation and with the agency's performance goals of: 1) reducing unnecessary regulatory burden, 2) increasing public confidence, and 3) making NRC activities and decisions more effective, efficient, and realistic. I have no reason to believe that such a situation exists. However, it is essential that the EDO, the Director of NRR, and the Regional Administrators continue to closely manage the application of this "higher tolerance".

I share Commissioner McGaffigan's view that clear communication with licensees about the facts surrounding potential findings is essential to the integrity of the SDP. During the January 7th meeting, the staff indicated that the downgrading of SDP results (preliminary to final) is "primarily driven by receipt of additional information". NRR should continue to strive to ensure that our regional inspectors, senior reactor analysts, and regional managers maintain consistently robust communication links with licensees so that significance determinations are soundly based on the information that is available and so information made available to the public is as accurate and complete as reasonably possible. I do not have a statistical basis to conclude that the staff's level of communication with our licensees is either insufficient or inconsistent among regions. However, this is another critical aspect of the ROP that warrants continued EDO, Director of NRR, and Regional Administrator oversight.

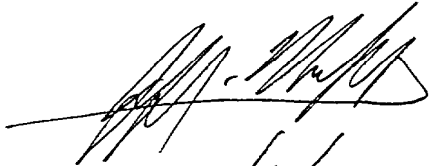
In COMEXM-01-0001, Commissioner McGaffigan states that, "Of the four Regions, Region III has been the only one which has implemented the SDP in such a way that highly conservative, deeply flawed Phase 2 SDP results were considered sufficient to issue public letters and hold public meetings." Commissioner McGaffigan goes on to state that Region III has essentially piloted an alternative SDP strategy of not conducting early Phase 3 analyses for significant findings. Finally, Commissioner McGaffigan presents data to support his view that Region III appears to be an outlier relative to the number of preliminary findings that were subsequently downgraded, and concludes that Region III is an outlier because of its "alternative SDP strategy". During the January 7th meeting, the staff provided information which disputes the accuracy of the data provided in COMEXM-01-0001. Specifically, the staff provided information which indicates that for 3 of the 4 referenced cases (Region III) that were ultimately downgraded, Phase 3 analyses were indeed conducted prior to the issuance of public letters and to the public meetings. I am in no position to determine whether Commissioner

McGaffigan's or the staff's data is more accurate. Frankly, if we focus all of our efforts on determining whose data is more accurate, we may miss an opportunity to enhance the ROP. My bottom line is that I lack the basis necessary to support Commissioner McGaffigan in his recommendation that the Commission **direct** the staff to conduct Phase 3 SDP analyses on significant (above Green) reactor safety findings prior to issuing any public communication. However, I believe it is essential that the staff carefully consider, as part of the established ROP evaluation process, Commissioner McGaffigan's views on the level of engagement that is appropriate with licensees during both Phase 2 and Phase 3 SDP analyses. In addition, given their regulatory significance and the significance they have with many of our stakeholders, I believe that the staff should **consider**, as part of the established ROP evaluation process, the merits of conducting Phase 3 analyses on preliminary Red reactor safety findings prior to issuing any public communication.

Commissioner McGaffigan also recommended that the Commission direct the staff to reprogram the funds necessary to benchmark and "fix" the Phase 2 SDP notebooks by the end of FY 2003. Frankly, I do not have sufficient information to support this specific recommendation at this time. Nonetheless, I believe that there is great value to the premise that underlies this recommendation. Specifically, we have a responsibility to our staff, to our licensees, and to our stakeholders to ensure that the tools we use to make regulatory decisions are sound. During the January 7th meeting, the staff acknowledged that inspectors have concerns over the differences between these notebooks and our licensees' detailed risk models and that staff confidence in the Phase 2 reactor safety SDP is low. From my perspective, these insights must be taken very seriously and addressed by NRC management in an effective and timely manner. I believe that the Phase 2 SDP notebooks are critical elements of the ROP and should be benchmarked on a schedule commensurate with their importance. While I lack the basis and information to support directing the staff to reprogram funds as specifically proposed by Commissioner McGaffigan, I strongly believe that the staff should, within the context of the PBPM process, consider accelerating the schedule for benchmarking the notebooks. The staff should report back to the Commission on the outcome of their deliberations.

With respect to the specific D.C. Cook case before us, I am not prepared to direct the staff to not issue a finding on this case until completion of a Phase 3 SDP analysis. Rather, I encourage the staff to carefully consider its own conclusion that the downgrading of SDP results (preliminary to final) is "primarily driven by receipt of additional information" as it decides how best to proceed with the Cook case. Specifically, the licensee has informed the staff that later this week they intend to provide the NRC with engineering analyses that could significantly change the SDP preliminary results. I encourage the EDO, the Director of NRR, and the Regional Administrator to consider this fact as they decide the most prudent course for this case. The agency's senior management team deserves a tremendous amount of credit for instilling discipline in our regulatory processes and for holding staff accountable for timeliness goals. I am extremely confident that this team will make a sound decision on how to proceed with this case and I am equally confident that this team shares the Commission's view that timeliness goals should never undermine regulatory consistency, predictability, and accuracy.

As the staff indicated during the January 7th meeting as well as during the most recent Commission meeting on the ROP, the SDP has shortcomings that make it less than fully effective and efficient. I encourage the staff to continue to proceed expeditiously and prudently on the SDP Improvement Plan so that this critically important process can achieve the high standards set for it by the Commission and the staff. I also encourage NRC management to continue to provide the resources and oversight necessary to ensure that the ROP remains an objective, predictable, and publicly scrutable program.



1/10/02