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Joan Claybrook, President

Public Citizen's Comments
to
The U.S. Nuclear Regulatory Commission
on
The Pilot Program for the New Regulatory Oversight Program
December 31, 1999

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RULES & DR. BRANCH
US NRC

The new reactor oversight program is still in its pilot phase. At the last meeting of the Pilot Plant Evaluation Panel the regions had not even finished verifying the data submitted by the pilot plant licensees. As of December 28th, 1999, the NRC had still not supplied the public with the verified data. While the NRC has already extended the comment period to December 31, 1999, the absence of verified data and the extensive amount of information and feed back that will be garnered from the workshops to be held in January make the closure of this comment period premature. Public Citizen therefore requests that any comments filed after December 31st be included in the current rulemaking and requests leave to amend our comments once verified data is made available.

Comments on Performance Indicators

In SECY-99-007 the NRC staff stated the trends in both NRC and industry performance indicators of the past 10 years have displayed the success of the safety performance of commercial nuclear power plants. Unfortunately, the Nuclear Energy Institute has testified before Congress that improvement in the nuclear industry's performance indicators allows for the current deregulatory scheme directed at the nuclear safety regulations contained in 10 CFR Part 50. Public Citizen does not believe that the nuclear industry has actually improved the safety of the reactors it operates, they and the NRC have merely become more adept at manipulating their performance indicators.

Under the new assessment regime, NRC has manipulated the only indicator that it and NEI couldn't get to trend downward under the previous program, safety system failures. The NRC has allowed the industry to split hairs over the difference between functionality and operability by adding a caveat to the performance indicator. Rather than track safety system failures, the new program will track safety system functional failures. The NRC should not attempt to excuse these safety system failures away by applying some ex-post facto justification based upon risk insights that may or may not be accurate.

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Even with the added caveat placed upon safety system failures, we are already seeing industry attempts to manipulate the new indicators. In discussions before the Pilot Plant Evaluation Panel, NRC staff stated that inspections had found 10 Safety System Functional Failures that were not reported and that most of them had to do with whether it was a “functional” failure or not. While NEI and the licensees have already attempted to explain these problems away as a misunderstanding the new indicators, it is important to note that the NRC regional personnel also stated that:

“we also have some situations where determining that something constituted a functional failure would have effected a bonus being given to the site...At the implementation level we have found many ways in which performance indicators can be miscounted, misrepresented or influenced, some of which, based on my discussions with the plant over this period, I’m not sure that plant and utility management were even aware of interpretations that some of their staff were making”

(U.S. Nuclear Regulatory Commission, Pilot Program Evaluation Panel Meeting Proceedings, November 17, 1999, p. 28.)

The NRC spent an exorbitant sum of money to hire Arthur Andersen to look at the assessment process and has since ignored their recommendations. Arthur Andersen recommended more objective performance indicators. The NRC has added more subjectivity by splitting hairs over functionality verses operability. Arthur Andersen recommended an economic indicator because, “the threat exists that nuclear utilities, in their desire to cut costs and increase competitiveness, will be forced to impair their operational safety and increase risk.” (Arthur Anderson, Study of NRC Senior Management Process, December 30, 1996, p. 23.) Three years after that recommendation was made NRC still has no such indicator and in fact no longer makes operation and maintenance (O&M) costs available to the public.

Comments on NRC “Discretion” and the Significance Determination Process

As indicated earlier, Public Citizen believes that NRC’s solicitation of comments on this process is at best premature. However, it is worthwhile reviewing why we even have a new oversight process, with an eye toward correcting past abuses. Since the tenure of former Chairman Ivan Selin, the NRC made an effort to make the reactor assessment process more transparent. Much to the chagrin of the industry and NRC senior management, the process became so transparent that the public and the media could determine that the senior managers were not doing their jobs.

The regulatory failure, which precipitated the Millstone debacle, was not caused by any blind spot in the oversight process. As the U.S. General Accounting Office has so ably pointed out, “NRC was slow in placing plants on the Watch List, which is used to trigger more regulatory attention at an early stage so that plant performance conditions can be improved.” The GAO also noted that “NRC has not taken aggressive enforcement action to force the licensees to fix their long-standing safety problems on a timely basis.

As a result, the plant's condition has worsened, making safety margins smaller." (U.S. General Accounting Office, Nuclear Regulation: Preventing Problem Plants Requires More Effective NRC Action, GAO/RCED-97-145, May 1997, pp. 2 & 3.)

The oversight process was not the problem! The NRC has had the information necessary to make the correct assessments of problem plants. The senior managers merely have refused to do so.

Using the NRC's own performance indicators, Public Citizen determined that Millstone was among the worst reactors in the nation. If Public Citizen's Critical Mass Energy Project can figure out the reactors that warrant increased regulatory attention, why can't NRC's senior managers? We were using the same data! Unfortunately, NRC senior managers either lacked the will or the integrity to act upon the data they had in hand. Fortunately those senior managers are no longer working at the NRC; they are now pulling paychecks from the industry they worked so hard to protect while supposedly protecting the public health and safety.

Unfortunately, the transparency of the oversight process, which took years to achieve, has been thoroughly lost in the new assessment process. There has been very little carry over between the old and new performance indicators. The public has not had any data it can trust since the third quarter of 1998 when NRC, in its inestimable wisdom, scattered AEOD to the winds. Since then we have had to rely upon the discretion of NRC's senior managers, discretion which in the past has been thoroughly abused. We have yet to see how the NRC will treat a reactor once a color barrier has been breached. Had Quad cities accurately reported their Safety System "Functional" Failures accurately we at least would have the benefit of that information.

With an absence of verified data placed in a new regulatory scheme, the public is basically being asked to trust an agency that has proven itself untrustworthy. We are asked to trust the same industry that told us we'd have "energy too cheap to meter" and instead provided U.S. electricity consumers with the greatest managerial disaster in the history of American business. This same industry said a meltdown was beyond the realm of possibility and then proceeded to meltdown 3 test reactors and 2 commercial nuclear power plants.

Public Citizen's comments on the NRC's specific questions follow.

Does the new oversight process provide adequate assurance that plants are being operated safely?

The pilot program does not provide sufficient data to determine whether adequate assurance exists.. We neither have the verified data nor any NRC action upon which to base a determination of adequacy. We need to see the system work. According to Mr. Brockman of NRC Region IV, the inspectors in Region IV were instructed to stop inspection effort when the targeted hour figure was reached even if the inspection effort

was not completed. According to Dave Lochbaum, the Union of Concerned Scientists has heard comparable statements from NRC inspectors from the other three regions.

Unfortunately, the manipulation of the data submitted to date, specifically the safety system functional failure data, robbed the public of the opportunity to witness the functioning of the new oversight process. If Quad cities had not misrepresented the number of safety system failures, we would at least have seen how the process is supposed to work.

The agency's use of Notices of Enforcement Discretion (NOEDs) further undermines reliability of the data used by the NRC. During the PPEP meetings in November 1999, Mr. Brockman of NRC Region IV asked if notices of enforcement discretion should be counted within the unplanned power changes performance indicator. When a NOED permits a plant to avoid a power reduction that would have otherwise triggered a 'hit' against this indicator, it should count as one.

Does the new oversight process enhance public confidence by increasing the predictability, consistency, clarity and objectivity of the NRC's oversight process?

No, it may actually undermine public confidence.

The NRC has failed to apply the lessons learned from the Millstone debacle. It allows for subjectivity at the data collection level that will actually serve to mask performance problems. It allows for the manipulation of data by licensees and then allows NRC senior managers to down play inspection findings through the significance determination process.

The NRC has failed to follow Arthur Anderson's recommendation on the need for an economic performance indicator. An indicator that was necessary because, "the threat exists that nuclear utilities, in their desire to cut costs and increase competitiveness, will be forced to impair their operational safety and increase risk." The NRC has ignored its own experience with Commonwealth Edison, which also displayed the need for an economic indicator.

The new process has been totally dominated by NEI and the nuclear industry to the point that it merely seems like an NEI public relations model that the NRC has signed off on. The fact that NRC was planning to use an NEI document 99-02 revision D as its explanation of the new process is an example of just how far the agency has fallen. The NRC has been so co-opted by the industry it purports to regulate that it doesn't even recognize that it should use its own documents to explain the new oversight program.

Does the new oversight process improve the efficiency and effectiveness of the regulatory process focusing agency resources on those issues with the most safety significance?

Indeterminate.

Does the new oversight process reduce unnecessary regulatory burden on licensees?

It is unfortunate that the so-called Senate oversight committee has so cowed this agency into regulatory complacency, that the NRC feels it must ask this question. Reactor assessment has never been an unnecessary burden. It is the price nuclear utilities must pay for placing communities and states at risk of annihilation. The NRC should not even be asking this question.

The new oversight process does not currently provide an overall assessment of performance of an individual safety cornerstone other than a determination that the cornerstone objectives have or have not been met. However, it does identify regulatory actions to be taken for degraded performance within the safety cornerstones. Is an overall safety cornerstone assessment warranted or appropriate?

No comment.

Licensee findings as well as NRC inspection findings are candidates for being evaluated by the significance determination process. Does this serve to discourage licensees from having an aggressive problem identification process?

No, because the NRC will not issue a notice of violation if the licensee self identifies the problem. While Public Citizen disagrees with NRC's new non-enforcement policy, that is, unfortunately, how the new game will be played. A violation is a violation regardless of who finds it. Unfortunately, this point seems to be lost upon the management at the NRC.

Does the available public information associated with the revised reactor oversight process, including the NRC's web page which includes information on performance indicators and inspection findings, provide an appropriately balanced view of licensee performance?

The NRC has not provided verified data upon which the public can make a determination.

If not, should positive inspection findings be captured and incorporated into a process to reach an overall inspection indicator for each cornerstone?

No, the NRC should not provide positive inspection findings. I fail to see how positive inspection findings could be justified under the new "burden reduction" scheme foisted upon the agency by NEI.

The NRC is supposed to be a regulator, not a cheerleader.

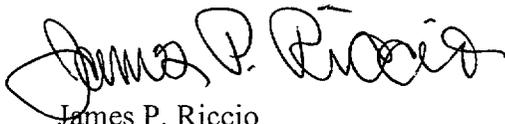
The staff has established several mechanisms such as public meetings held in the vicinity of the plants, this Federal Register Notice, and the NRC's website to solicit public feedback on the Pilot Program. Are there any other appropriate means by which the agency could solicit stakeholder feedback, in a structured and consistent manner, on the Pilot Program?

The NRC's public meetings are little more than window dressing for the new NEI assessment program. If the NRC honestly wants to regain public confidence they are going to have to provide accurate information in a timely manner. This, as yet, is not the case with new "new and improved" reactor assessment process.

Are there any additional issues that the agency needs to address prior to full implementation of the new oversight process at all sites?

See above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James P. Riccio". The signature is fluid and cursive, with a large initial "J" and "R".

James P. Riccio

Public Citizen's Critical Mass Energy Project