

### NON-CONCURRENCE PROCESS

**SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL**

TITLE OF DOCUMENT <b>Rulemaking Commission Paper on 50.46a, ECCS Requirements</b>	ADAMS ACCESSION NO. <b>ML070180692</b>
DOCUMENT SPONSOR <b>NRR</b>	SPONSOR PHONE NO. <b>415 1116</b>
NAME OF NON-CONCURRING INDIVIDUAL <b>Gary M Holahan</b>	PHONE NO. <b>415 1897</b>

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  ON CONCURRENCE

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REASONS FOR NON-CONCURRENCE

Summary:

I can not support the proposed approach in the Commission paper since I conclude that it recommends delaying in a safety-beneficial, risk-informed, burden-reducing, safety-focused activity which is consistent with Commission direction and policy. In addition, by presenting only options to delay or terminate the rulemaking, the paper does not present the full range of the Commission's options. For example, the paper does not address the obvious option of proceeding to a final rule consistent with the Commission's proposed rule, ACRS views notwithstanding.

In my view, what needs to be done is very simple and it does not require a Commission options paper. I believe that the staff should proceed with a final rule package informing the Commission that none of the ACRS recommendations are sufficiently important to delay the rulemaking. The staff should also inform the Commission of how it would proceed to resolve the ACRS recommendations in a expeditious manner, if that is what the Commission desires.

Discussion:

The proposed Commission paper on 50.46(a) states that its purpose is "to inform the Commission of the impact of the Advisor Committee for Reactor Safeguards (ACRS) recommendations on the draft final rule ...". This statement is misleading at best. The proposed paper includes options for delaying or terminating the rulemaking bases in large part on a change in the staff's perception of the safety benefits of the rule. Let us be clear and straightforward. The ACRS letter contains not one single word on reduced expectations for safety benefits and nowhere does it even suggests terminating the rulemaking. Those ideas stem from staff members opposed to risk-informing ECCS requirements. They were opposed before the Commission directed the rulemaking to be done and they remain opposed to it now. Attributing those issue to ACRS is incorrect.

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SIGNATURE

*G M Holahan*

DATE

*4/29/07*

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I support expedited resolution of the ACRS recommendations as part of the rulemaking comment resolution process and I continue to support expedited staff action to provide the Commission with a draft final rule as soon as possible. I support these actions for two simple reasons. First, the Commission directed the staff to do so, more than once, and I take those directions seriously. The paper repeatedly refers to Commission directions in SRMs as "Commission guidance". I do not consider "Commission direction" and "Commission guidance" to be interchangeable concepts.

Second, I continue to believe that this rulemaking will result in: safety enhancements, some large and some small; reductions in unnecessary and undesirable regulatory burdens; re-focused staff and licensee attention to more risk significant issues. In addition, I believe that the rule change would enable safe and secure power uprates. I see all of these as fully consistent with the Commission's mission, strategic plans, policies and directions.

In its November 16, 2006 letter to the Commission, the ACRS presented its three recommendations on the proposed ECCS rule. That letter also discussed several other topics and included two additional ACRS member comments. Although I do not agree with many of the ACRS recommendations, I do respect the fact that the Committee evaluated the technical issues objectively and presented thoughtful bases for their recommendations, and that they did so in a timely manner. Five months later and the staff appears to have made little progress in addressing those technical recommendations. In addition, the staff appears to have lost sight of the remaining steps in the rulemaking process. Rather than focusing on the resolution of the ACRS recommendations, as part of the comment resolution stage of rulemaking, the staff began a reassessment of the purpose of the rule, its potential benefits, its priority and its schedule. In my view those are all settled issues, having been covered in one or more of the Commission's Staff Requirements Memoranda. So why are they being raised now?

It is clear that some in the staff do not support risk-informing the ECCS or other regulatory requirements. I understand those views and I support the staff's right to hold and express them; but I can not support those staff member who are substituting their views for the Commission's directions. I see the staff efforts to revisit the safety benefits of the rulemaking and to establish a "staff's revised scheduling priority" in place of the Commission's schedule, as diversions from simply resolving comments during the comment resolution stage. In addition, the discussion of a lack of resources is simply unconvincing. The staff regularly find resources for activities it values. That is what the PBPM process is for. The staff doesn't appear to value completing the 50.46(a) rulemaking.

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Although, it is not really relevant to completing the comment resolution process, I must react to the discussion in the Commission paper on safety benefits . That discussion is, at best, an incomplete presentation of the facts. It is true that the industry did a particularly poor job of identifying safety benefits. And it is true that most of the safety benefits are probably intangible or unquantifiable. The value of having regulatory requirements which are consistent with the risk-informed elements of the Reactor Oversight Process is one such example. Focusing staff and licensee attention on more safety significant issues is another. Unquantifiable does not mean valueless. In addition, the quantitative example that is presented in the Commission paper (showing a 9% reduction in core damage frequency for some PWR designs) addresses only one issue, that is, relaxed requirements for containment sprays, and the 9% is presented as relatively small improvement for only a few plants. In fact, the same report that presents the 9% reduction in core damage frequency shows that the total core damage frequency for all LOCAs is less than 14%. The "9% reduction" really means that the 14% contribution would be reduced to less than 5% ... a 60% reduction in all LOCA-related risk, and that from just one change. In other areas the benefit is generally small because the risks are already so low. In my view, these are hardly a basis for reduced priority.

I would be glad to meet and further discuss these views and recommendations with any interested parties.

Gary Holahan

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TITLE OF DOCUMENT *Rulemaking Commission Paper on 50.46 a* ADAMS ACCESSION NO. *ML070180692*

**SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR**

NAME *Richard W Borchardt*

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ORGANIZATION *Office of New Reactors*

COMMENTS FOR THE DOCUMENT SPONSOR TO CONSIDER

- I HAVE NO COMMENTS \*
- I HAVE THE FOLLOWING COMMENTS

*\* Based on earlier discussion of issues with Mr. Borchardt.*

*R.W. Borchardt 5.7.07*

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SIGNATURE *[Signature] for RWS* DATE *5/24/07*

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TITLE OF DOCUMENT

*Rulemaking Commission Paper on 50.46a*

ADAMS ACCESSION NO.

*ML070180692*

**SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR**

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ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE

Response to non-concurrence by document sponsor

As previously discussed, the consensus view of the staff is that several of the ACRS recommendations warrant technical evaluation and resolution prior to finalizing the rule. With regard to potential safety benefits, the staff believes that additional information has been developed through the rulemaking process that was not available when the Commission previously provided direction regarding this rule. Industry estimates have shown only limited potential for safety benefits.

The staff consensus is aligned with Mr. Holahan that the draft final rule would allow licensees to pursue NRC review and approval of safe and secure power uprates. The staff also agrees with Mr. Holahan that "Commission guidance" and "Commission direction" are not interchangeable concepts. In response to this comment, the staff has modified the SECY paper to utilize the more accurate term "direction" in several instances.

To determine the priority for additional staff effort necessary to appropriately address the ACRS concerns, the staff utilized the Common Prioritization Methodology for NRC Program Offices<sup>1</sup>. This process was established to ensure that the relative merit of various staff activities was judged on a common basis and has been used for several years to ensure that funding for rulemaking activities is properly prioritized. The staff determined under the prioritization process that this rulemaking activity is "medium" priority.

The Commission has the opportunity to evaluate the staff's recommendation and provide appropriate direction.

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<sup>1</sup> See August 29, 2005, memorandum from Cynthia A. Carpenter, Office of Nuclear Reactor Regulation, to William M. Dean, Office of the Executive Director for Operations and to Leslie W. Barnett, Office of the Chief Financial Officer (ML052370186).

**NON-CONCURRING INDIVIDUAL (To be completed by document sponsor):**

- CONCURS
- NON-CONCURS
- WITHDRAWS NON-CONCURRENCE