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

February 28, 1992

MEMORANDUM FOR: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque

FROM: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

SUBJECT: RESPONSE TO JANUARY 28, 1992 SRM ON SECY-91-262 - RESOLUTION OF SELECTED ISSUES FOR EVOLUTIONARY LIGHT WATER REACTOR (LWR) DESIGNS

In the above-captioned SRM, the Commission requested that OGC address three questions with respect to the observation in SECY-91-262 that the process of early involvement by the Commission in safety questions for evolutionary LWRs could be improved if the public were provided with earlier opportunities for public comment. This memorandum responds to this request.

ANALYSIS

Question 1. What kind of procedural mechanism is envisioned for obtaining informal public comments?

There are a number of reasonable approaches for obtaining informal public comment on severe accident (or any other) issues with respect to advanced plants. These include: (a) advanced notice of proposed rulemaking (ANPR) on the design certification requesting comment on specific topics, including special review criteria such as those discussed in SECY 90-016, (b) public workshop conducted by the Staff, (c) presentations by the public to the Commission at a Commission meeting, and (d) provision for an early round of comments on review criteria such as those in SECY 90-016 in the notice of proposed rulemaking or notice of hearing for the design certification, similar to what was used in the LES and Envirocare proceedings.

Common to all approaches, the Commission would set forth proposed special review criteria that it intends to use in judging the design certification for a specified design, with the intention of requesting public comments on the applicability and appropriateness of those review criteria. The approaches differ in the nature and timing of this process. Using the ANPR approach, public comment could be obtained even before the Staff has issued

a final design approval (FDA) for a design (although the Commission is not required to seek input at such an early point); early public involvement could be useful to both the Staff in its FDA review as well as the Commission's design certification rulemaking. Early public input could also be obtained through the public workshop approach or in presentations before the Commission at a Commission meeting. Again, the Commission would have flexibility to determine the timing of such a workshop or meeting. With respect to the final alternative of having a two-phase design certification rulemaking, where the first round of comments would be devoted solely to the issue of review criteria, the Commission probably would not be able to obtain as early public input as that offered by the other alternatives, since a design certification rulemaking probably would not be initiated until the FDA is completed. Also, under this alternative the Commission is legally obligated to provide a response to issues raised by commenters; such an obligation may not be required under the other approaches. Of course, all issues raised by commenters in the rulemaking on the certified design, including issues related to review criteria, must eventually be addressed.

Question 2. Would this process be limited to severe accident issues, or would it logically need to be applied to all issues where the agency proposes going beyond existing regulatory requirements?

An early opportunity for public comment on issues other than severe accidents would be desirable for the same reasons that such early comment is desirable in the case of severe accidents. However, the Commission is not legally obligated to provide an early opportunity for public comment apart from the notice and comment required by Section 553 of the Administrative Procedure Act (APA). Neither the APA nor the Atomic Energy Act (AEA) require an early opportunity for comment. Therefore, the Commission has the discretion to determine whether it wishes to provide such an opportunity.

Question 3. How would this recommended approach, if adopted, affect the schedules for certification of the GE ABWR and ABB/CE System 80+ designs?

The approach could not be used in the approval process for either the GE ABWR or the ABB/CE System 80+ designs without adversely affecting the FDA and design certification schedules for those designs. The Staff's review of the GE design is nearly complete, with the draft SER having been issued and development of the final SER in progress. The Staff's review of the System 80+ design, while not as advanced, is still well along with many Staff positions already provided to the

applicant. The time for early public comment for these designs, therefore, has essentially passed; to open the process now for public comment would result in significant delay for both design certifications since Staff experts currently working on the review would need to be diverted to working on the comments provided on the criteria.

CONCLUSION

Options are limited with regard to the GE ABWR and ABB/CE applications because of the advanced state of review; all options could be considered for other certification applications. OGC is preparing a paper for the Commission which discusses the procedures, and procedural options, for the conduct of certification rulemakings. The options discussed above will be revisited in that paper. Consequently we recommend no action at the time in response to this memorandum.

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for Operations

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cc: SECY