

D930715

The Honorable Ivan Selin  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Selin:

SUBJECT: REGULATORY REVIEW GROUP REPORT

During the 399th meeting of the Advisory Committee on Reactor Safeguards, July 8-9, 1993, we discussed the report prepared by the Regulatory Review Group (RRG) for public comment, and the proposed rulemaking to implement its recommendations on 10 CFR 50.54. Our Subcommittee on Regulatory Policies and Practices considered these matters during a meeting on July 7, 1993. During these meetings, we had the benefit of discussions with representatives of the NRC staff. We also had the benefit of the documents referenced.

Though the report was not entirely responsive to the charter of the RRG, we find that understandable, in view of both the grand scope of the project, and the limited time allotted for the job. We think the RRG has done well.

It is important to maintain some perspective, lest the central issues get lost in a sea of minutiae. We therefore will concentrate here on the broader policy issues.

It is almost axiomatic that regulation without a defined objective tends to be uncontrollable. This presumably led the Commission to promulgate its safety goals and quantitative health objectives in 1986. Unfortunately, in part because that Policy Statement paid no attention to the inevitable uncertainties that arise in the implementation of any quantitative policy, the goals provide little guidance to the staff in discharging its everyday responsibilities. We have indeed urged that their principal use be in judging the effectiveness of the set of deterministic regulations that serve as enforceable surrogates for the goals themselves. Confusing the issue is the question of "adequate protection," words that appear in a minor clause in the Atomic Energy Act, but which play a legal role in the implementation of the Backfit Rule. Continuing along the line from the fundamental (the safety goals), through the regulations (the measures intended to achieve the objective), one finds at the next level of regulation a potpourri of commitments, understandings, and declarations intended to supplement the rules and regulations in assuring nuclear safety. It is to this level of regulation that the most important recommendation in the report is addressed. (There is of course another level, occasional informal direction of licensees by NRC staff, which is the subject of neither this letter nor the report it reviews.)

Over the years, there has developed, rightly or wrongly, the sense that simple enforcement of the rules and regulations is inadequate to assure satisfactory protection of the health and safety of the public, and there has accumulated a long list of both plant-

specific and generic commitments, to which the licensees are bound. Indeed, in the debates about license renewal, one of the stumbling blocks has been the lack of a suitable definition of the current licensing basis on which renewal decisions will be based. Further, and this is the point addressed by the RRG, a licensee seeking relief from a commitment that goes beyond the rules and regulations must prepare a case for the action, and secure NRC permission for the change. The RRG proposes to change this procedure in two related ways, one declaratory, and one procedural, but each with such substantial implications that the changes can not be expected to go down easily.

The RRG proposes that the Commission declare that adherence to the rules and regulations that have evolved constitutes the fundamental condition laid upon a licensee under 10 CFR 50.54, and that the body of further commitments should be viewed as means to that end. This would then have the consequence that a licensee would have the right, while still fulfilling its fundamental obligation, to alter or change commitments that it deems unnecessary to meet the rules and regulations, without seeking prior NRC approval. NRC would of course have to be notified, and the rationale available. NRC could then object on the basis that the action may have brought the licensee into conflict with a rule or regulation, but only on that basis. Then the burden of proof would lie with the NRC to make its case. In this way, conformance to the rules and regulations would be the governing obligation of the licensee.

This would constitute a fundamental change, and is likely to receive a rather thorough set of reviews and analyses before it takes effect, so we think it premature to comment about the more detailed implementation recommendations contained in the report. They will surely change under scrutiny.

We think that the RRG recommendation is a substantial positive step, worth serious consideration by the Commission. We do not recommend that the RRG be continued past its scheduled dissolution, but are concerned that natural resistance to change will bury one of the few recent proposals for substantial change, without due process. We therefore recommend that you take the steps necessary to move the recommendations to the next phase, which is more detailed consideration about how such a fundamental change might be implemented. In view of our earlier discussion of the relationships among the formal and informal elements of the regulatory structure, this would be a step toward coherence.

Sincerely,

J. Ernest Wilkins, Jr.  
Chairman

References:

1. U.S. Nuclear Regulatory Commission, Regulatory Review Group Report, Volumes 1-4, issued for public comment on May 28, 1993
2. Memorandum dated June 25, 1993, from Frank P. Gillespie,

Regulatory Review Group, for John T. Larkins, Executive  
Director, ACRS, Subject: Proposed Rulemaking to Implement the  
Regulatory Review Group Recommendations on 10 CFR 50.54 (Draft  
Predecisional)