

Before the United States Nuclear Regulatory Commission

Commission Briefing on National Fire Protection Association 805

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Public Stakeholder Perspectives on Industry Transition to NFPA 805

INTRODUCTION

The Fukushima catastrophe raises the stakes for effectively resolving now decades old fire protection violations at operating reactors.

However, NRC and the nuclear industry are now straddled between two fire protection compliance strategies without sure footing in either.

The NRC policy of non-enforcement, otherwise known as “enforcement discretion” and the industry’s excessive use of exemptions for long standing fire safety violations as a substitute for frontline fire protection from the reactor control room diminishes the agency’s own defense-in-depth philosophy. These substitutes serve to obfuscate and shield the nuclear industry from violations of long standing NRC Orders issued to protect reliable control room powered operations. Furthermore, we believe that reactor operators’ have misrepresented material fact to the federal agency on compliance with fire protection Orders, specifically Thermo-Lag Confirmatory Action Orders issued in 1998. A de facto agency policy of “forget and forgive” and an inability to effectively take enforcement action to move industry beyond its own financial interests leaves public safety unduly and dangerously in the lurch.

In the aftermath of Fukushima, this is not acceptable.

NFPA-805 IS STALLED ON COST, TERMINOLOGY AND DEFINITIONS

In 2008, the Advisory Committee on Reactor Safeguards first identified that achieving fire safety compliance could be cheaper under NFPA-805 than trying to break a stalemate over the prescriptive standard.¹

As of November 18, 2011, industry now appears to be balking on what it terms the “frighteningly high” cost associated with risk analysis and the license amendment process.

After more than 12 years of NFPA-805 development and the wrangling with industry by five different agency chairmanships, it is more frightening that the process is stalled on terminology and definitions. Moreover, the Commission’s own 4 to 1 majority vote² this year for a protracted “enforcement discretion” policy effectively shields industry’s stonewalling for a cost-cutting agenda in an apparent effort to wear down the agency staff’s safety agenda.

EXEMPTIONS FROM PRESCRIPTIVE LAW TRUMP AGENCY ORDERS

Fifty-four (54) reactor units have opted to remain under a long troubled prescriptive fire code through large numbers of exemptions from law protecting control room electrical circuits for the preferred front line powered control for shutdown.³

Exelon’s Oyster Creek nuclear power station serves to illustrate our concern for significantly diminished defense-in-depth, oversight and enforcement. It further serves to illuminate what we believe to be industry’s misrepresentation of material fact for compliance with NRC fire protection Orders issued in 1998.

¹ Transcript, Advisory Committee on Reactor Safeguards, 557th Meeting, US NRC, November 7, 2008, NRC staffer Harry Barrett, p.73, lines 10-15

² SECY 2011-61, June 10, 2011, <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2011/2011-0061vtr.pdf>

³ NRC 10 CFR Appendix R to Part 50 <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-appr.html>

In part, current law requires that when control room primary and back-up electrical circuits appear in the same fire zone operators must physically protect one electrical circuit so that no single fire knocks out the preferred control room powered operation for safe shutdown.

In 1992, NRC acknowledged that a majority of US reactors were in violation of this law. In 1998, NRC had to issue Orders to 26 reactor units, including Oyster Creek, to physically protect control room electric circuits from fire damage. General Public Utility Nuclear, then owner, consented to bring Oyster Creek into compliance by December 31, 2000 for seven fire zones by removing and replacing faulty fire barrier materials and/or rerouting backup electrical circuits through a different fire zone. On January 30, 2001, Exelon, now new owner, represented by document to NRC that it had completed the corrective actions as per Order.

On January 24, 2003, NRC inspectors discovered an unprotected fire zone designated in the Order. Without notifying NRC, Exelon had abandoned corrective actions per Order and substituted unapproved manual actions that assume the safe shutdown circuitry to be destroyed by a fire and instead send workers into the plant (discounting smoke, fire and radiation) to manually pull circuit breakers, turn valves, etc. to shutdown reactor. Exelon, as much of a still non-compliant nuclear industry, was provided with protracted blanket enforcement discretion. NRC made no mention of the violation of the Order or the apparent misrepresentation of corrective safety actions to the federal government.

NRC and industry wrangled seven more years before on March 3rd, 2009, Exelon requested exemptions for dozens of fire zones from fire code and approve the use of manual actions. On March 30, 2011, following the Fukushima nuclear catastrophe, NRC approved the fire protection exemptions including six of the seven fire zones identified in the 1998 Order and confirmed by Exelon as protected.

The Fukushima disaster calls for the examination of protracted non-enforcement policy and the abandonment of front line control room powered operations.

We request an investigation and public accounting of how many reactor operators did not complete corrective actions per Order and willfully misrepresented compliance with Orders which would be a felony violation⁴ of NRC law⁵.

Moreover, we are sounding an alarm for the broader implication of industry compliance with future NRC Orders.

This concludes my remarks.

SUPPORTING DOCUMENTS

10/01/1997 Oyster Creek commits to corrective actions (page 32 of 48) to preserve electrical circuits for control room powered shutdown in the event of fire. Oyster Creek identifies in fire zones where the faulty Thermo-Lag 330-1 barriers are to be replaced (page 33 of 48)

05/11/1998 General Public Utility Nuclear consents to abide by NRC Order to protect and preserve control room electrical circuits for safe shutdown and cooling of the Oyster Creek reactor in event of fire including fire zones identified in 10/01/1997 document

05/22/1998 NRC issues Order to for Oyster Creek to preserve control room powered shutdown of reactor in event of fire for fire zones identified in 10/01/1997 Oyster Creek document

01/30/2001 Exelon, now the new owner of Oyster Creek, notifies NRC per Order that all corrective actions for fire zones identified in 10/01/1997 document are complete

⁴ USC Title 18, Part 1, Chapter 47§ 1001 Statements or Entries Generally, http://www.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001001---000-.html

⁵ 10 CFR 50.9, Accuracy and Completeness of Information <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-0009.html>

[01/24/2003](#) NRC triennial fire protection inspection report identifies fire zone in Order that is not repaired or replaced per NRC Order which Exelon also claimed to have completed corrective action for

[04/24/2004](#) NRC letter to Paul Gunter “Completion Status for the 1998 Thermo-Lag 330-1 Confirmatory Orders” identifying all US reactors under Orders to preserve control room powered safe reactor shutdown. Table 1 names 26 US reactor units that were issued Orders including Oyster Creek. Beyond Nuclear believes the majority of these units have now similarly requested exemptions for NRC from protecting the same fire zones covered in these Orders.

[06/30/2006](#) NRC Regulatory Information Summary 2006-10 “Regulatory Expectations with Appendix R Paragraph II.G.2 Operator Manual Actions” identifies that NRC is exercising “enforcement discretion” for violations but states NRC Orders still in place for violations for failure to request exemptions to fire code on control room operated safe shutdown equipment

[03/03/2009](#) Exelon requests first of two exemption requests (also on 03/04/2009) for dozens of fire zones from the requirement to protect control room operated safe shutdown and cooling during and after a fire including the seven fire zones identified in 10/01/1997 commitment to NRC, subsequently Order to protect by NRC and later confirmed by Exelon as completing the corrective actions per Order

[03/30/2011](#) NRC grants Phase 1 exemption requests from fire code requirements for the protection and preservation of preferred control room powered shutdown and cooling of Oyster Creek and instead provides for abandonment of control room powered shutdown through substitution with operator manual actions