continued from page three

nine plants still don't meet the safety standard the NRC itself once described as of "fundamental importance."

It may be even worse: the rule allowed the utilities themselves to determine whether their equipment met EQ regulations and the NRC has done little investigation to learn whether the equipment is, in fact, environmentally qualified. Some believe that no plant yet meets the required standards.

Financial Qualification

The NRC has created unnecessary rules designed to hamper its own ability to regulate (backfitting) and failed to enforce its own safety rules (EQ). In recent years, the NRC has added a third approach toward achieving deregulation: the issuance of rules with the intent to eliminate regulatory requirements. A clear example of this is the NRC's four-and-a-half year effort to eliminate its requirement that utilities be "financially qualified" to build and operate nuclear power plants. The rule originally had been written to address the logical assumption that a bankrupt, or even financially troubled, utility might not be in the best position to safely build or operate a nuclear reactor. Nor would a troubled utility be likely to put safety first: if a plant were ordered shut down, and was then removed from the rate base, the financial problems would be compounded.

In early 1981, the NRC became concerned about the financial problems facing many nuclear utilities. Record-high interest rates, shoddy construction, management incompetence, Wall Street wariness and a newly-rebellious attitude among some state regulators to question utility rate requests, were all threatening what was left of the nation's nuclear program. The spectre of utility bankruptcies, which hasn't occurred since the Depression, had become a distinct possibility.

The NRC's solution to the utilities' financial crisis was to eliminate the financial qualifications rule. A proposed rule was issued in late 1981, which asserted that in the construction stage, utilities would either cancel or defer plants if they ran into financial trouble, and once the plant was operating, state regulators would make sure that the utilities would receive enough money to operate the plants safely. Therefore, no regulation was necessary in either case. Public comment was generally incredulous, and by the time the rule was made final in 1982, the second portion had been dropped.

A group of intervenors took the rule to court and won. So the NRC, which had forbidden its licensing boards to listen to financial arguments while the matter was in court, went back to the drawing boards, and in September, 1984 came back with a new rule that returned to the discredited notion that state regulators would ensure utilities adequate funds to provide safe operation.

Again, intervenors took the NRC to court. Oral arguments were heard in the U.S. Circuit Court in October, 1985, but no decision has yet been issued. In the meantime, recent events reportedly have caused some NRC staffers to begin questioning the rationale for rescinding the rule. For example, the NRC admitted that financial pressures, brought on by Toledo Edison's involvement in the construction of the Perry and Beaver Valley-2 facilities, contributed to the poor maintenance practices that helped cause last June's accident at Davis-Besse.

Material False Statements

Another area in which the NRC is attempting to ease its rules to accommodate the nuclear industry, with no obvious benefit to the Commission, is in its treatment of "material false statements," more commonly known as lies.

Currently, utilities can be fined for false statements in both written and spoken communications, as well as for omissions—not telling the NRC something the agency should know. But the Commissioners are poised to vote on a proposed rule that would apply the material false statement label only to written statements and sworn oral testimony. Even *deliberate*, but unsworn, oral statements would not be punishable under the proposed rule. Further blurring the line between regulated and regulator, the rule would let the utility, not the NRC, decide if the utility had withheld important safety information, by allowing the utility to define whether omitted information was "significant."

According to Commissioner Asselstine, "what this says is we will have instances where it is a lie, but we won't call it a lie." Why a U.S. government agency would deliberately amend its rules to allow those it regulates to lie with impunity is unclear, but at least three Commissioners appear ready to vote in favor of the proposed rule. Commissioner Zech, for example, termed the rule "excellent," "practical" and the "fair way to do it."

Self-Regulation and the Zech Era

If it sometimes seems as if the NRC would be happiest merely licensing new plants and promoting nuclear energy, and letting the industry for the most part regulate itself, that may, in fact, be exactly what the future holds in store.

Most NRC energy recently has been expended on such industry-sponsored measures as reactor design standardization and one-step licensing "reform," as well as continuing efforts to limit or end public participation in the licensing process and NRC deliberations generally. A clear example is the Commission's attempt to circumvent the requirements of the Government in the Sunshine Act by defining closed meetings as exempt "gatherings."

Beyond that, the industry's goal, in which the NRC seems to acquiesce, is self-regulation. Zech, the NRC, and the industry all place great faith in the Institute of Nuclear Power Operations (INPO), which is the industry's self-regulatory arm. With 400 employees and a $44 million annual budget, INPO acts much like a mini-NRC. It conducts plant inspections, performs nuclear research, sets training standards, and distributes information. However, it has no official enforcement powers: its strongest weapon, which it has never used, is the ability to kick a utility out of INPO and tell the utility's insurance company. But despite its self-stated single-minded mission, it is apparently no better than the NRC at spotting problem utilities such as Toledo Edison and TVA.

But INPO does have one power that the industry holds dear: unlike the NRC, INPO, as a private organization, can keep secret any document it pleases. And INPO releases very few documents to the public, claiming that to do so would cause it to lose its clout with the industry, ignoring the fact that public pressure is usually the only sure weapon against utilities. While the NRC holds many INPO documents in its files, it signed an agreement with INPO to not subject INPO documents to the Freedom of Information Act. Critical Mass, represented by the Public Citizen Litigation Group, has filed suit to force the release of INPO papers.

Regardless of the outcome of the suit, the concept of self-regulation and the role of INPO seem destined to flourish during the reign of Chairman Zech. Surprises will happen, but it seems assured that anyone hoping for a new approach from the Zech era, one that takes into account the difference between regulator and regulated, is bound to be disappointed. The circle has been completed: the NRC has become indistinguishable from the agency it was created to replace.