civil penalties are imposed, in part, to deter future violations by not only the involved licensee, but other licensees conducting similar activities. *See* Enforcement Policy, Section VI.B.

Contrary to the Licensee's statements, the civil penalties proposed in this case are within the authority of the NRC. The Licensee's comparison of the civil penalties in this case with civil penalties in other cases does not bring the NRC's exercise of its lawful authority into question. Of decisive importance is the NRC's clear authority to exercise discretion in the choice of enforcement sanctions and the ordering of enforcement priorities. Advanced Medical Systems, Inc., (CLI-94-6), 39 NRC 285, 320 (1994). A sanction is not rendered invalid because it is more severe than that issued in other cases. Id. As explained above, the NRC acted within its statutory authority and the bounds of the Enforcement Policy when NRC exercised its discretion to escalate the civil penalties in this case. A rigid uniformity is not required in enforcement decisions, which inherently involve the exercise of informed judgment on a case-by-case basis. Id. See also, Radiation Technology, Inc., (ALAB-567), 10 NRC 533, 541 (1979).

NRC Conclusion

The NRC has concluded that the violations occurred as stated in the Notice and an adequate basis for mitigation of the civil penalties was not provided by the Licensee. Consequently, the proposed civil penalties in the amount of \$280,000 should be imposed.

[FR Doc. 95–10731 Filed 5–1–95; 8:45 am] BILLING CODE 7590–01–M

[Docket No. 50-278]

PECO Energy Company; Public Service Electric and Gas Company; Delmarva Power and Light Company; Atlantic City Electric Company (Peach Bottom Atomic Power Station, Unit 3); Exemption

I

PECO Energy Company, et al. (PECo., the licensee), is the holder of Operating License No. DPR–56, which authorizes operation of the Peach Bottom Atomic Power Station, Unit 3, at steady state reactor core power levels not in excess of 3293 megawatts thermal. The license provides, among other things, that the licensee is subject to the rules, regulations and order of the Commission now or hereafter in effect.

The plant is a boiling water reactor located at the licensee's site in York County, Pennsylvania.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section III.D.2(a) of Appendix J to 10 CFR Part 50 requires that Type B leak rate tests, except for air locks, be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

Section III.D.3 of Appendix J to 10 CFR Part 50 requires that Type C leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

Ш

By letter dated February 22, 1995, the licensee requested a one-time exemption from the requirements of Appendix J, Sections III.D.2(a) and III.D.3 for a period of 60 days for the isolation valves or leakage boundaries for 80 penetrations. In its request, the licensee provided a list of the affected penetrations and associated plant-specific leak test procedures, the date when the leak tests had last been performed and the date when the current leak test will expire.

The licensee has implemented a 24month operating cycle schedule at the Peach Bottom facility. The last refueling outage for Unit 3, 3R09, commenced in September 1993 and ended in November 1993 and the next refueling outage, 3R10 is scheduled to commence no later than September 30, 1995. The leak tests for which the licensee has requested schedular exemption were last conducted during the refueling outage 3R09, based on the information provided in the licensee's application. The licensee has stated that the affected leak test require either that safety systems be isolated or require access to

the drywell, either of which would require the reactor to be shutdown.

The licensee has divided the affected leak tests into two categories: (1) Those that require shutdown reactor conditions but come due prior to the latest scheduled commencement of 3R10 on September 30, 1995, and (2) those that require reactor shutdown conditions and come due after the scheduled commencement of 3R10. There are 52 leak test surveillance procedures affecting 47 penetrations or penetration groups in the first category. These tests and penetrations are listed in Table 1 of the licensee's February 22, 1995 request. The earliest of these tests falls due on August 12, 1995, up to 49 days prior to the scheduled shutdown. The licensee has requested an exemption for 60 days which will allow the unit to operate until the beginning of the planned outage without shutting down to perform leak tests and which will allow for flexibility in planning the leak tests during the outage.

There are 28 leak test surveillance procedures affecting 29 penetrations in the second category described previously. These tests are listed in Table 2 of the licensee's February 22, 1995 submittal. The licensee has requested an exemption of 60 days to allow for flexibility in planning these leak tests during the outage. The licensee stated that all of the affected penetrations will be leak tested prior to restart from 3R10.

IV

The licensee presented information in support of its request for a 60-day extension of the Type B and C test intervals. The maximum allowable leakage rate for maintaining primary containment ($L_{\rm a-}$ minimum pathway leakage) is 125,417 cc/min. The asfound total Type B and C minimum pathway leakage rate observed during Unit 3 refueling outage 3R09 during the fall of 1993 was 33,434 cc/min. The asleft leak rate for that same outage was 27,188 cc/min.

PECo stated that an extension of the leak test interval to allow for 49 days of operation in not likely to significantly decrease the margin between as-found leak rates and L_a.

PECo also stated that the remainder of the total 60-day extension, requested for outage planning flexibility, will have minimal safety significance since the unit will be in cold shutdown. Primary containment integrity is not required during cold shutdown.

The licensee provided information regarding the requirements of 10 CFR 50.12, "Specific Exemptions." With respect to the requirements of 10 CFR