Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408-0420

(1)

DOCKET NUMBER
FPL PROPOSED RULE PR 220+50
(66FR 46230)

L-2001- 263
November 16, 2001

DOCKETED
USNRC

November 20, 2001 (11:36AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

Subject: Florida Power & Light Company Comments
Releasing Part of a Power Reactor Site or Facility for Unrestricted Use
Before the NRC Approves the License Termination Plan
66 Fed. Reg. 46230 (Sept. 4, 2001)

Dear Ms. Vietti-Cook:

Florida Power & Light Company (FPL), the owner and operator of the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4, hereby submits the following comments in support of the above-referenced notice of proposed rulemaking.

In principle, FPL supports the proposed rulemaking because it would allow licensees the option to request the release of portions of the licensed site for unrestricted use, prior to the decommissioning process. The rule will benefit licensees that may be considering more productive or efficient utilization of their currently licensed property, even if they plan to decommission an adjacent nuclear power reactor facility several years into the future. This rule can also benefit facilities where the licensee owns, leases or controls very large tracts of contiguous property some of which is not connected to receiving, possessing or using licensed material, but is currently included within the facility's current site boundary as defined in their license. FPL supports the provisions of the proposed rule that are intended to allow the release of non-impacted areas without requiring a license amendment. However, FPL does not believe there is a reason for the Commission to limit to the size or number of partial site releases and FPL does not agree with the assumption that once a License Termination Plan (LTP) has been approved there is no longer any need for a separate regulatory mechanism for partial site releases. A significant length of time may pass between approval of the LTP and license termination. Licensees should retain the opportunity to pursue a partial site release even after the LTP has been approved without the need to reopen the entire LTP to a potential hearing process.

Proposed 10CFR50.75(g) in conjunction with 10CFR50.83, utilizes site boundary to define the property that is subject to the rule and references 10CFR20 Subpart E as the radiological release criteria for a partial site release. The intent of the proposed rule would be to allow licensees to release portions of their site for unrestricted use, including the sale of such property. However, there is a conflict between the current definition of "site boundary" in 10CFR20.1003 and the intent of this proposed rule that could preclude its implementation. Since site boundary is defined based on ownership, lease or control of the property, a licensee may be required to seek a regulatory exemption to redefine the site boundary before the property could be sold.

Template=SECY-067

SECY-02

DOCKET NUMBER
PROPOSED RULE PR 2,20+50
(66FR46230)

(2)

YANKEE ATOMIC ELECTRIC COMPANY
19 Midstate Drive, Auburn, Massachusetts 01501

CONNECTICUT YANKEE ATOMIC POWER COMPANY
362 Injun Hollow Road, East Hampton, Connecticut 06424-3099

DOCKETED
USNRC

November 20, 2001 (11:36AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 16, 2001
BYR 01-074
CY 01-192

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Subject: Comments on the Proposed Rule – Releasing Part of Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan (66 FR 46,230 – September 4, 2001)

Dear Sir:

Yankee Atomic Electric Company (YAEC) and Connecticut Yankee Atomic Power Company (CYAPCO) appreciate the opportunity to provide comments to the U.S. Nuclear Regulatory Commission (NRC) in response to the subject notice. This proposed rule will provide a real value to both the reactor licensee and the host community by allowing power reactors to release portions of their sites prior to the approval of a license termination plan. As such, we support this needed regulatory action.

The following discussion provides our comments:

In the proposed rulemaking, the NRC has departed from the process described in SECY-00-0023, dated February 2, 2000. We believe, however, that the proposed regulation should preserve, as an alternative, the ability to release an impacted area if it can be demonstrated that there is no residual radioactivity distinguishable from the background present. The release process should follow the same process as that for a non-impacted area – approved via letter as opposed to an amendment. The burden in this alternative is to develop and present strong reference background radiation data to support and defend the validity of its use. We feel that the appropriate criteria for indistinguishability from background does exist. Potential criteria corresponding to the current free release criteria could be used by licensees. The added benefit in the use of this alternative would be to eliminate the burdensome nature of the proposed regulation relative to releasing areas that contain no measurable radioactivity.

Template = SECY-067

SECY-02

The regulation should also recognize licensee use of a NRC approved process prior to the rulemaking, such as the processes described in SECY-00-0023 and RIS 2000-19. If final status survey information has been submitted for NRC review for partial release of an area prior to the rulemaking becoming effective, the licensee should be allowed to proceed in accordance with the NRC approved process.

Should you have any questions regarding our comments, please do not hesitate to contact either Mr. Gerry vanNoordennen, CYAPCO Regulatory Affairs Manager at (860) 267-3938 or myself at (978) 568-2302.

Sincerely,

YANKEE ATOMIC ELECTRIC COMPANY

J. A. Kay

James A. Kay
Manager of Regulatory Affairs

DOCKETED
USNRC

November 20, 2001 (2:29PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

DOCKET NUMBER
PROPOSED RULE PR 2,20+50
(66 FR 46230)

(3)

James W. Davis
DIRECTOR, OPERATIONS
NUCLEAR GENERATION DIVISION

November 19, 2000

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Rulemakings and Adjudication's Staff

SUBJECT: Industry Comments in Support of Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

The Nuclear Energy Institute (NEI)[1] appreciates the opportunity to provide comments on behalf of the nuclear industry on the proposed rule for partial site release. As proposed, the rulemaking would allow power reactors to release portions of their sites prior to the submittal of a license termination plan. Recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to effectively use property, which does not directly support plant operations. Industry supports this needed regulatory action.

The intent of the proposed rule is clear. It appropriately establishes the radiological release criteria for unrestricted use found in 10 CFR 20 Subpart E as the criteria for a partial site release. The proposed rule also makes it clear that the entire site as defined in the original (or amended) license is subject to the License Termination Rule (LTR).

However, a conflict between the definition of "site boundary" in 10 CFR 20.1003 and the stated intent of the proposed rule could be interpreted in a way that would preclude the implementation of the rule. A literal interpretation of the 10 CFR 20.1003 definition of "site boundary" is in conflict with existing decommissioning guidance[2] NUREG-1221, Decommissioning Criteria for Nuclear Facilities, G.22, "Definition of Site" (1988); NRC Regulatory Issue Summary 2000-19, October 24, 2000; and 66 FR 46230 (2001)

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

2 NUREG-1221, Decommissioning Criteria for Nuclear Facilities, G.22, "Definition of Site" (1988); NRC Regulatory Issue Summary 2000-19, October 24, 2000; and 66 FR 46230 (2001)

Template - SECY-067 SECY-02

2, and the NRC guidance[3] historically used by most reactor licensees when they applied for their construction permits or operating licenses. This guidance defined the "site" as the contiguous real estate where licenses have the legal right to control access **for the purposes of limiting public dose** (emphasis added). Finally, the definition of "site boundary" in 10 CFR 20.1003 is a conflict for those Part 50 licensees who have their site defined in their license and who own, lease, or otherwise control land beyond that defined line.

It is clear that the NRC always intended to regulate the "licensed activities" associated with site. The fact that a licensee may own or acquire extensive contiguous land for purposes completely unrelated to the licensed activity should not subject those properties to NRC regulatory requirements. In practical terms the LTR should apply to all properties directly associated with the use of licensed materials. Included are those properties used for the purpose of receiving, possessing, or using licensed materials

NEI recommends that the NRC resolve this conflict in the site boundary definition. Several alternatives are available and two are identified below: A direct approach is to amend the 10 CFR 20.1003 definition of "site boundary" to read:

> Site boundary means that land or property contiguous with the facility and identified by the licensee, within which the licensee has the legal right to control access.

As an alternative, 10 CFR 20 Subpart E could be revised to apply to the restricted area as defined in 10 CFR 20.1003, as opposed to the site boundary. Unlike the site boundary definition, the restricted area contains all site properties associated with receiving, possessing, or using licensed materials. In addition, the restricted area definition includes lands legally controlled for the purposes of limiting public dose.

Language in the section-by section analysis of the proposed rule attempt to clarify the relationship between radiation exposure limits associated with 10 CFR 20 Subpart D, Subpart E, and the EPA 40 CFR 190 requirements referenced in 10 CFR 20.1301(d). However, it inappropriately establishes a new policy position as written. Exposures due to residual radioactivity associated with a terminated 10 CFR Part 50 license are outside the scope of EPA 40 CFR 190. If necessary, this material would be regulated by EPA under Superfund authority. It is therefore not necessary to reduce the 10 CFR 20 Subpart E standard to account for additional exposures that originate from the operation of nearby uranium fuel cycle facilities. NEI requests that this regulatory relationship be clarified in the final rule.

The proposed rule suggests that specific guidance is under development and will be available prior to the final rule. This guidance is designed to assist the licensees in identifying and accounting for any potential dose contribution from a partial site release

[3] See NUREG-75/094, § 2.1.12 (fn.) (1975); NUREG-0099,§ 2.1.12 (fn.) (1976)

of impacted lands on the final license termination. This guidance is needed before the rule is issued to ensure that the partial site release process and the ultimate license termination can be accomplished practically as envisioned. NEI is interested in reviewing and commenting on this guidance as it develops.

General comments and specific answers to the seven questions posed in the proposed rule are provided on the enclosure to this letter.

Once again, NEI appreciates the opportunity to provide these comments in support of the proposed rule. If you have questions concerning the enclosed comments, please contact me at (202) 739-8105 or Paul Genoa at (202) 739-8034.

Sincerely,

James W. Davis

Enclosure

Industry Comments in Support of Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan"

General Comments:

NEI agrees with your assessment that: "...many material sites are more complex from a decommissioning perspective than reactor sites."

NEI agrees with your assessment that: "...a partial site release leaving residual radioactivity at a site that meets the release criteria for unrestricted use of 10 CFR 20.1402 is not considered a disposal."

NEI disagrees with the assumption that once an LTP is approved: "...there is no longer any need for a separate regulatory mechanism for partial site releases." Many years may pass between the LTP approval and license termination. A licensee should have the opportunity to pursue a partial site release post LTP approval without opening the entire LTP content to a hearing process.

NEI agrees with your assessment that: "...licensees are already maintaining property records in order to comply with the LTR at time of license termination..." however, the NRC should clarify the rule to acknowledge that reactor licensees maintain these records, along with those required under 10 CFR 50.75(g) in a distributed fashion. They do not reside in a specific file folder, but are maintained within the overall record management system.

Specific Comments:

The following comments or recommendations pertain to specific provisions within the proposed rule change to 10CFR50.

- Section 50.2: It is recommended that the definitions for "Historical site assessment" and for "Impacted areas" and "Non-impacted areas" should refer to the radioactive material or radioactivity from licensed activities.

- Section 50.75(g)(4): The language contained in this section does not blend with existing Section 50.75(g) wording, which states "Information the Commission considers important to decommissioning consist of..."and "Licensees shall maintain property records containing the following information:" NEI recommends the words "Licensees shall maintain" be removed from Section 50.75(g)(4).

- Section 50.75(g)(4)(iv): Recommend changing "disposition" the first time it appears to "release and final disposition" and change "disposition" to "release" the second time it appears.

- Section 50.82(a)(9)(ii)(H): Recommend adding the word unrestricted as indicated "...release for unrestricted use ...,"

- 50.82(11)(ii): Recommended change, "The final radiation survey and associated documentation demonstrate that the facility and site, including any parts released for unrestricted use before approval of the license termination plan, ~~are suitable for release in accordance with the~~ have met the applicable criteria for release for decommissioning in 10 CFR part 20, subpart E."

- Section 50.83 (a)(1)(i): Recommended change, "The dose to individual members of the public from the portion of the facility or site ~~remaining under the license~~ that has not been released for unrestricted use does not ..."

- Sections 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements similar to those specified in 50.83(f).

- Regarding release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply, since a license amendment would be required. Therefore, the wording in proposed section 10 CFR 50.83 (d)(1) should be modified to delete the reference to complete a 10 CFR 50.59 evaluation.

Answers to NRC Questions

The following section pertains to the questions raised by NRC under Issues for Public Comment.

1. Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

   Yes. Some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners. This option is should be included in the proposed rule.

2. Are the proposed definitions in 50.2 clear?

   No. NEI believes that further clarification is needed and recommends that the definitions in proposed Section 50.2 be changed to reflect that the radioactive material or radioactivity be from licensed activities.

3. Is public involvement adequately considered?

   Yes.

4. Should the license amendment process be required for all partial site release approvals, regardless of whether the site has been classified as non-impacted?

   No. Adding this as a requirement is not justified for non-impacted partial site releases. However, some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands. NEI recommends that this approach be offered option. .

5. Does the proposed rule make it adequately clear that when performing partial site releases and when releasing the entire site at license termination, licensees must consider potential dose contributions from previous partial releases in demonstrating compliance with the radiological release criteria?

   Yes. However the promised guidance will help identify how this can best be accomplished.

6. Is there reason to limit the size or number of partial site releases?

   No. As long as the final license termination addresses the entire site, the intent of the license termination rule is met.

7. Are there other potential impacts on continued operation or decommissioning activities as a result of partial site releases that should specifically be considered in the rule?

Yes. NEI does not agree with the assumption that once a License Termination Plan (LTP) has been approved there is no longer any need for a separate regulatory

mechanism for partial site releases. A significant length of time may pass between approval of the LTP and license termination. As stated in the general comments, NEI believes that licensees should retain the opportunity to pursue a partial site release even after the LTP has been approved without the need to reopen the entire LTP to a potential hearing process.

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DOCKET NUMBER
PROPOSED RULE PR 2, 20+50
(66FR 46230)

2001 NOV 20 PM 2:32

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 19, 2001

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemaking and Adjudications Staff

RE: 10CFR Parts 2, 20, and 50; Ref. 66FR46230, September 4, 2001, Proposed Rule

The Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup has found an inconsistency with MARSSIM in the definitions of impacted and non-impacted areas in the proposed rule entitled "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

In section 10CFR50.2 "*Definitions*," the definitions state:

> "Impacted areas mean the areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels."
>
> "Non-impacted areas mean the areas with no reasonable potential for residual radioactivity in excess of natural background or fallout levels."

These definitions are inconsistent with MARSSIM. The MARSSIM Workgroup is concerned these proposed inconsistencies diverge from the multi-agency consensus of MARSSIM. Promulgation of divergence from MARSSIM in a rule could lead to the return to the multiple requirements for site release by the different agencies.

The MARSSIM Workgroup offers the following multi-agency consensus replacement text for the definitions of impacted and non-impacted areas:

Impacted Area: (Refer to MARSSIM page GL-11) - "Any *area* this is not *classified* as *non-impacted*. Areas with a possibility of containing *residual radioactivity* in excess of natural background or fallout levels."

Non-Impacted Area: (Refer to MARSSIM page GL-14) - "Areas where there is no reasonable possibility (extremely low probability) of residual contamination. Non-impacted areas are typically located off-site and may be used as background

Template- SECY-067 SECY-02

reference areas."

The MARSSIM Workgroup does not view the modifications to the definitions of impacted and non-impacted areas in the proposed rule as necessary or appropriate and recommends the definitions be consistent with the MARSSIM text as provided above.

Sincerely,

The MARSSIM Workgroup

Commander Colleen F. Petullo*
MARSSIM Workgroup Chairperson

Ramachandra K. Bhat
U.S. Air Force

David P. Alberth
U.S. Army

Commander Steven W. Doremus
U.S. Navy

Harold T. Peterson, Jr.
U.S. Department of Energy

Kathryn A. Klawiter
U.S. Environmental Protection Agency

Robert A. Meck
U.S. Nuclear Regulatory Commission

* U.S. Public Health Service *detailed* to U.S. Environmental Protection Agencyã

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November 20, 2001 (3:14PM)
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ADJUDICATIONS STAFF

DOCKET NUMBER
PROPOSED RULE PR 2,20+50
(66FR 46230)

ATTACHMENT TO MN-01-045

Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

November 19, 2001
MN-01-045 RA-01-172

**FILED ELECTRONICALLY
TO NRC RULEMAKINGS**

SECRETARY
UNITED STATES NUCLEAR REGULATORY COMMISSION
Attention: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

Reference: (a) License No. DPR-36 (Docket No. 50-309)
(b) NRC Proposed Rule "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan," 66FR 46230 - 46239, dated September 4, 2001

Subject: Maine Yankee Comments on NRC Proposed Rule "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan"

Maine Yankee (MY) joins with the Nuclear Energy Institute (NEI) in encouraging the development of this rulemaking in that 10 CFR 50 does not currently address the possibility of the partial release of licensed site lands. It is clearly MY's experience that the decommissioning strategy may well call for an appropriate, sequenced program for the survey, evaluation, and release of some portion of the site to meet numerous objectives in the decommissioning project, including the potential for pursuing beneficial alternate or re-use of certain site lands to address potential public use or commercial interests prior to the approval of the license termination plan and completion of site decommissioning. The proposed rulemaking offers that flexibility to the licensee and provides a regulatory process and framework in which the licensee, state and local regulatory agencies, community organizations, and public interest groups can participate.

Attached are some specific comments on the proposed rule. We appreciate the opportunity to provide comments. If you have any questions with regard to our comments, please contact me.

Sincerely,

Original Signed by Thomas L. Williamson

Thomas L. Williamson, Director
Nuclear Safety and Regulatory Affairs

c: Mr. M. K. Webb, NRR Project Manager
Mr. C. L. Pittiglio, NRC NMSS Project Manager, Decommissioning

Template = SECY-067 SECY-02

ATTACHMENT TO MN-01-045
Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

Mr. R. Ragland, NRC Region I
Mr. H. J. Miller, NRC Regional Administrator, Region I
Mr. P. J. Dostie, State of Maine, Division of Health Engineering

Maine Yankee offers the following comments on the subject proposed rule.

1. **Partial Release of Areas Classified as Non-Impacted.** MY agrees that the licensee should have the option for submitting a non-license amendment request for partial release of the licensed site for those areas that have been classified as non-impacted. However, some licensees based on any number of considerations, including stakeholder interests, require that a license amendment process be applied. The proposed rulemaking should be amended to provide for this option.

2. **Clarification of Regulations in the Matter of the "Site" Subject to 10 CFR 50.82 and 10 CFR 20 Subpart E**

   a. The rulemaking's "Supplementary Information" discusses a possible misinterpretation and unintended use of the definition of site boundary in 10 CFR 20.1003 in which a "site" subject to 10 CFR 50.82 and 10 CFR Subpart E could be "changed by selling the property."[1] The NRC should consider and clarify as necessary an additional, possible misinterpretation and misapplication of this site boundary definition, as described below.

   b. While it is clear that the NRC intends and states that the entire site subject to the license termination rule is that defined in the original license,[2] the definition of 10 CFR 20.1003 could be interpreted in a way that not fully consistent with this intention. In this definition the site boundary is described in terms of the limit of ownership, lease, or control. Without consideration of context and application, this definition could be used to argue that the site boundary extends, therefore, to that property that is owned by the licensee but not included in the site as defined in the original (or amended license). Since many licensees own property that would not and should not be considered as part of the licensed site, this definition could lead to an inappropriate conclusion regarding the application of license termination requirements and the requirements associated with the partial release of "site" lands from the facility license.

   c. From a historical standpoint, it is pointed out that when most licensees were applying for construction permits or operating licenses, NRC guidance defined the

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[1] 66 FR 46230 (2001).

[2] NUREG-1221, Decommissioning Criteria for Nuclear Facilities, G.22, "Definition of Site" (1988); NRC Regulatory Issue Summary 2000-19, October 24, 2000; and 66 FR 46230 (2001).

ATTACHMENT TO MN-01-045
Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

"site" as the contiguous real estate where licenses have the legal right to control access for the purposes of limiting public dose.[3] In 1991, the current definition of site boundary in 10 CFR 20.1003 was promulgated. It appears that the primary intent (and context) of this definition was to support the concept of controlled area since its sole use is in the Part 20 definition for "controlled area." This appears to be consistent with the historical use of "site" since the licensee must have the ability to limit and control access at any time "for any reason."[4] However, as stated above, the 10 CFR 20.1003 definition of site boundary could be inappropriately expanded to any property owned by the licensee which is not part of the site as defined in the facility license.

d. The proposed rulemaking's "Section-by-Section" Analysis regarding the consideration of effluents or direct radiation should be clarified regarding the "area" that is subject to the demonstration of compliance with the radiological release criteria. The "Section-by-Section" analysis related to 10 CFR 20 Subpart E properly discusses that the standard for unrestricted release "does not include dose from effluents or direct radiation from continuing operations."[5] It should be recognized that there may be areas that are not part of the licensed site as defined in the original license which have been subject to licensed effluent releases, for which all monitoring and reporting regulations have been met, even though those areas may, in fact, be owned by the licensee. The rulemaking should be clarified to indicate that it is not the intent of this rulemaking (or the license termination rule) to require additional dose assessments for areas that may be owned but are not part of the licensed site. To require such additional consideration of compliance with release criteria would erode public confidence in the already established regulations which govern off-site effluent release dose for both operating facilities and those undergoing decommissioning.

e. It is recommended that the NRC review the use of the term "site" in 10 CFR 50.82 and 10 CFR 20 Subpart E and determine what appropriate clarifications are needed to insure that Commission intent, namely that the license termination rule criteria apply to the entire site as defined in the original license. As note above there exists the potential for a misinterpretation of the current framework of definitions. In summary: (1) 10 CFR 50 uses the term "site" but does not define "site." In that 10 CFR 50.82 refers to 10 CFR 20 Subpart E release,[6] it would be logical to use 10 CFR 20 as the source of the definition of site. (2) 10 CFR Subpart E uses the term "site" as it applies to decommissioning but does not

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[3] See NUREG-75/094, § 2.1.12 (fn.) (1975); NUREG-0099, § 2.1.12 (fn.) (1976).
[4] 10 CFR 20.1003, "Controlled Area."
[5] 66 FR 46233.
[6] 10 CFR 50.82 (a)(11)(ii)

ATTACHMENT TO MN-01-045
Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

define or further describe "site." (3) 10 CFR 20.1003 offers the definition of "site boundary" in terms of the limits of ownership, lease, or control but could be subject to the misinterpretation of defining the site as any area that is owned. This is clearly not the intent of the proposed rulemaking or more broadly, the license termination rule. The proposed rulemaking should make it clear that the site and area subject to the license termination release criteria is that area which is included in the entire site as defined in the original license.

3. **Finality in the Determination of Compliance with Release Criteria**

a. When releasing a portion of the site for unrestricted use, the licensees and subsequent parties which may come to use or own the land must have substantial confidence that the land has been properly released and will not come under future jeopardy of cost or defamation for unjustifiable reasons. The proposed rulemaking at 10 CFR 20.1401 includes the opportunity for the Commission to require additional cleanup only if a determination has been made "the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat public health and safety."[7] MY considers this criteria to be an important addition providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to insure that only clear and substantiated conditions exists that would warrant such actions.

b. In view of the importance of "finality" discussed above, the NRC should consider rewording the language proposed for 50.82(a)(11). The current language "including any parts released for use before approval of the license termination plan" might force, a licensee to perform remediation or conduct surveys on land which has been previously released for use when the criteria of 10 CFR 20.1401(c) would not otherwise apply. It is clear from the statements of consideration that the NRC does not anticipate further surveys of previously released area,[8] but rather is seeking to account for, in the LTP, any possible dose contributions associated with previously released areas. It is suggested that the NRC rephrase the language proposed for 50.82(a)(11) as follows:

> "(ii) The final radiation survey and associated documentation demonstrate that the facility and site, including any <u>dose contributions associated with</u>

[7] 66 FR 46237, Proposed Rulemaking at § 20.1402 (c)
[8] 66 FR 46230, Background

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Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

parts released for use before approval of the license termination plan..."

ATTACHMENT TO MN-01-045
Maine Yankee: Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

4. **Combining 10 CFR Part 20 Subpart E with Subpart D**

The proposed rule includes a discussion in the Statement of Consideration with respect to the combined application of 10 CFR Part 20 Subpart E and Subpart D when releasing part of a site for unrestricted use.[9] The statements are made without any corresponding proposed rule change. These statements constitute new positions by the NRC which would pose significant impacts and costs to licensees. The statements appear to treat land containing residual radioactivity as an effluent which also needs to be constrained by Subpart D. In earlier statements, the NRC affirmed that residual radioactivity left on land meeting release criterion does not constitute disposal. Similarly, it does not constitute an effluent. Subpart D and E were promulgated with different purposes and methods and should be kept separate.

NRC states "If residual radioactivity exists in the area to be released for unrestricted use, the dose caused by the release must be considered along with that from the licensee's facility, as well as, for the case of the EPA's standard incorporated in 20.1301(d), that from any other uranium fuel cycle operation in the area, for example a facility licensed under 10 CFR part 72, to determine compliance with the above standards." The NRC goes on to say that such land may have to meet a standard lower than the radiological criteria of Subpart E because the combined dose must meet the public dose limits and standards. If this interpretation were to hold it would have significant impact not only to licensees considering partial site release but also to licensees currently proceeding to terminate their Part 50 licenses with an onsite Part 72 ISFSI. This "new position" is clearly not expressed in licensing actions already issued by the NRC.

Once a portion of the site is released it is no longer meets the definitions of "uranium fuel cycle operation." Furthermore, the existence of other sources of exposure to the critical group is already accounted for in the construction of the 25 mrem radiological criteria for license termination. The NRC should reconsider this new position or perform a backfit analysis pursuant to 10 CFR 50.109.

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[9] 66 FR 46233 Section by Section Analysis for 10 CFR Part 20, Subpart D...

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ADJUDICATIONS STAFF

From: "McBaugh, Debra" <Debra.McBaugh@DOH.WA.GOV>
To: "'wmr@nrc.gov'" <wmr@nrc.gov>
Date: 11/13/01 8:24PM
Subject: Comments on Releasing Part of a Reactor for Unrestricted Use.....

Dear Mr. Ripley:

Comments on Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan:

Washington State only has one reactor located on federal DOE property so this proposal does not apply to us. Nonetheless, we took the time to review it. We have no subtantive comments but wish to send our support for the concept. We recognize the lack of regulation covering this issue and agree regulation would assure that when a site is fully released, all of the site, both past and present, would meet the current License Termination criteria. This would make if much easier for states since they then would be responsible for the use of this land.

DOCKET NUMBER
PROPOSED RULE PR 2, 20+50
(66FR46230)

We appreciate the opportunity to comment on this.

Sincerely,

Debra McBaugh, Head, Environmental Radiation
Susan May, Head, Nuclear Safety

Division of Radiation Protection, Washington State Department of Health

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Van,
Email received
re: 66FR 46230
Proposed Rule
— Ripley X-1112

Template=SECY-067

SECY-02

DOCKET NUMBER
PROPOSED RULE PR 2,20+50
(66FR 46230)

DOCKETED
USNRC
7

November 26, 2001 (12:03PM)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

From: "Edward Wilds" <edward.wilds@po.state.ct.us>
To: <wmr@nrc.gov>
Date: 11/23/01 1:31PM
Subject: Partial Site Release Comments

The Connecticut Department of Environmental Protection Division of Radiation wishes to submit the following comments regarding the Proposed Rule on Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan.

Issues for Public Comment

#3 - Is public involvement adequately considered?

No. There is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the "non-impacted designation" by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to tell stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

#5 - Does the proposed rule make it adeuqately clear that when performing partial site releases and when releasing the entire site at license termination, licensees must consider potential dose contributions from previous partial releases in demonstrating compliance with the radiological release criteria?

No. How will the situation be address if contamination is found in the future that can be shown to be a result the licensee's activities in areas that were designated non-impacted at the time of partial site release, is above the release criteria set by the LTP, or the property transferred to another entity? What rights would a potential purchaser have against the licensee, if after the purchase contamination if found? The rule seems to address only the situation where a licensee maintains ownership and control of the property.

The proposal states that an amendment to 10 CFR 50.82(a)(9)(ii) would require that the final radiation survey and associated LTP documentation, demonstrating that the site is suitable for release in accordance with the criteria in 10 CFR Part 20, Subpart E, include any parts released for use before approval of the LTP. How would the NRC require cleanup of areas released under partial site release if this area is what causes non-compliance with the dose criteria? How is this situation handled if it has been transferred to another entity? What rights would a potential purchaser have against the licensee, if after the purchase contamination if found?

#7 - Are there other potential impacts on continued operations or decommissioning activities as a result of partial site releases that should specifically be considered in the rule?

Yes. The impact of future operation/use of the area released under partial site release must consider potential threats to the storage of spent nuclear fuel or operation of the NPP prior to allowing control of the PSR area being transferred to a non-licensee. A situation exists in Connecticut where an area is proposed for partial site release with the intent to sell the property for development of a gas fired electrical generating plant in close proximity to spent fuel storage. No safety analysis of this proposal has been performed and how future threats to the nuclear fuel will be handled has not been addressed. The assumption that placing requirements on the existing licensee after threats are identified as a result of activities on PSR area is not an acceptable mechanism of protecting public health and safety.

Thank you for considering the Division of Radiation's comments regarding the Partial Site Release Proposed Rule.

Dr. Edward L. Wilds, Jr.

Template = SECY-067

SECY-02

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Edward L. Wilds, Jr., Ph.D.
Director, Division of Radiation
Bureau of Air Management
Department of Environmental Protection
79 Elm Street
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Ph: 860-424-3029
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SOUTHERN CALIFORNIA
EDISON
An EDISON INTERNATIONAL℠ Company

DOCKET NUMBER
PROPOSED RULE PR 2,20-50
(66FR 46230)

(8)

A Edward Scherer
Manager of Nuclear
Oversight and Regulatory Affairs

DOCKETED
USNRC

November 20, 2001

November 26, 2001 (11:47AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

The Secretary of Commission
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Subject: **Comments on Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan" (66 FR 46230)**

Attention: Rulemakings and Adjudications Staff

Southern California Edison offers the following comments on the subject rulemaking. We fully concur with the comments tendered by the Nuclear Energy Institute on behalf of the industry regarding this rulemaking. In addition, we offer the following comments.

We note that in both cases (partial site release without a license termination plan, or license termination for the entire site under existing rules) residual radioactivity may remain as long as the exposure criterion of 10 CFR 20 Subpart E is satisfied. Prior to license termination, this same residual radioactivity is treated as licensed material – regardless of how little the amount, concentration, or dose significance – and can only be disposed of by transport to a licensed radwaste disposal facility. This double standard poses an incentive to retain radioactive material onsite to be later abandoned in order to avoid potentially excessive costs for radwaste disposal, while creating a longer term risk for additional site cleanup required by other regulatory authority or court of law.

We note that the US Nuclear Regulatory Commission (NRC) is seeking to resolve this discrepancy through study by the National Academy of Sciences and further agency deliberation, a process that may take several years. Prolonged delay contributes to the erosion in public understanding and confidence in government policy as well as the lack of finality mentioned above for licensees. Public policy is needed to define the quantitative dose and radionuclide characteristics that have no discernible public health consequences.

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Template= SECY-067

SECY-02

As the situation now stands, the NRC should recognize that post-license termination requirements imposed by other federal, state or local agencies can prevent the actual release of a site for unrestricted use – in contravention to the purposes of the license termination rules. NRC should, therefore, act to assert its authority in matters of radiation protection and management of radioactive materials. This will require definitive clearance standards for materials that establish allowable quantities and concentrations of radionuclides that are less than regulatory concern. Such standards can be created which are fully protective of public health and safety and are in the public interest.

Sincerely,

William T. O'Connor, Jr.
Vice President, Nuclear Generation

(9)

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USNRC

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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Detroit Edison

A DTE Energy Company

DOCKET NUMBER
PROPOSED RULE PR 20 & 50
(66FR 46230)

November 05, 2001
NRC-01-0078

Secretary, U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

Reference:

1.) Enrico Fermi Atomic Power Plant, Unit 1
NRC Docket No. 50-16
NRC License No. DPR-9

2.) Fermi 2
NRC Docket No. 50-341
NRC License No. NPF-43

3.) Federal Register Notice RIN 3150-AG56, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan", Vol. 66, No. 171, dated September 4, 2001

4.) Detroit Edison letter, NRC-00-0087, "License Termination Survey Question", dated July 12, 2000

5.) NRC Letter, "U.S. Nuclear Regulatory Commission Staff's Response to Detroit Edison's Letter dated July 12, 2000", dated September 20, 2000

Subject: Comments on Proposed Rule on Partial Site Release

Detroit Edison appreciates the opportunity to provide comments on the proposed rule on partial site release presented in Reference 3. Detroit Edison is the licensee for Fermi 2, an operating Boiling Water Reactor, and Fermi 1, a Fast Breeder Reactor currently being decommissioned. Comments are also included on the regulatory analysis the NRC prepared for the proposed rule.

Template = SECY-067

SECY-02

Summary of Comments

In general, Detroit Edison agrees the proposed requirements for releasing part of a site prior to license termination for unrestricted use are stringent, but reasonable. The company's main concerns deal with record keeping and how the proposed rule and accompanying Federal Register discussion impact the ability to terminate a facility's license when that facility is located on a multi-unit site. The latter is not a partial release issue, but arises due to language used to support the partial release option. Additionally, the final rule needs to allow implementation time, since the record keeping additions may be time consuming, depending on the site's history and the wording in the final rule.

Comments on Ability to Terminate a License on Multi-Unit Site

The language in the proposed rule and discussion clarify that the intent of the license termination rule is that the entire site as defined in the original license needs to meet the license termination rule criteria at the time of license termination. While Detroit Edison agrees that this clarification describes the normal situation, it does not cover the situation of terminating the license of a facility on a multi-unit site. While the current rule uses the term "site" extensively, since it is not defined as the original site at time of licensing, some flexibility exists. Currently, the license termination plan would need to clearly address the site for which the license is being terminated and that would be subject to NRC review and public scrutiny.

For example, the Fermi 1 original licensee (Power Reactor Development Company – PRDC) leased a portion of a site owned by Detroit Edison for the Fermi 1 nuclear facility. Detroit Edison became the licensee for Fermi 1 in 1976 upon the completion of the original decommissioning. When Fermi 2 was constructed, the larger Fermi 2 site encompassed the Fermi 1 site originally leased by PRDC and the land Detroit Edison had owned when Fermi 1 was licensed. The entire owner controlled area is considered the Fermi 2 site, with Fermi 1 encompassing strictly the section of the site containing the Fermi 1 facility. Detroit Edison representatives met with NRC representatives at a public meeting on June 2, 2000 to discuss Fermi 1 status and potential issues if Detroit Edison were to pursue further decommissioning at Fermi 1. One issue discussed was whether the Fermi 1 license could be terminated since it is on a portion of the Fermi 2 site plot. The Fermi 1 site would be considered as the footprint of the buildings within the road surrounding Fermi 1. There was agreement that the Fermi 1 license could be terminated if regulations and criteria for license termination are met. The land and any remaining buildings after Fermi 1 license termination would still be considered part of the Fermi 2 site. This topic was documented in Reference 4. In Reference 5, the NRC specified that the Fermi 1 site, when its license is terminated, instantly becomes part of the Fermi 2 site as it lies within the owner controlled area due to the co-location of Fermi 1 and 2. Detroit Edison is concerned that if the partial site release rule is approved as written coupled with other standing regulatory guidance, then the Fermi 1 license could no longer be

terminated in accordance with regulations until the Fermi 2 license is also terminated. Detroit Edison made the decision to perform Fermi 1 final nuclear decommissioning in part due to the outcome of the June 2, 2000 meeting and subsequent correspondence.

It would not be in the licensee, NRC, or public interest to discourage cleanup and license termination activities as a side effect of instituting a consistent method of partial site releases. Nor should a new rule knowingly create the need for an exemption request. If this proposed rule is adopted, language should be added to allow termination of a license if license termination criteria are met for that facility, even if the remainder of the original site is part of the site for another license.

Comments on Record Keeping

Regarding record keeping, gathering and adding records to provide information defining the site boundary as originally licensed and any additions or disposition of property would take time, dependent on the history of the site. Placing this information in the decommissioning record system will also take time. For property added over time, it would make sense to place the current site boundary in the decommissioning records at the time of rule implementation, rather than research and separately locate each record of acquisition in the past. Since the goal is to ensure the site boundary is known, and that any dispositions/release of property are known, there is no real benefit in locating and placing records of past individual acquisitions into the decommissioning records.

Additionally, records of licensed activities on property acquired since original licensing should not need to be maintained as separate decommissioning records if the acquired property is assimilated into the licensed site. Acquired property should be treated no differently than originally owned property from a decommissioning record perspective. The existing requirements for decommissioning records should apply to the site equally, regardless of whether the portion of the site was purchased after original licensing or before.

Additional Comments

Detroit Edison has three additional minor comments.

- Regarding release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply, since a license amendment would be required. Therefore, the wording in proposed section 10 CFR 50.83 (d)(1) should be modified.

- The regulatory analysis addresses costs of final surveys. While the $260K estimate for partial site release survey and remediation may be valid, the actual costs for final surveys have significantly exceeded the $200K value in the 1997 NRC sponsored decommissioning cost estimate.

- The cost portion of the regulatory analysis should also include costs of researching site history and property additions, and use of the portion of the property that was added, if the requirement for this data to be maintained as decommissioning records is retained in the final rule.

If there are any questions on these comments, please contact Ms. Lynne Goodman at 734-586-1205.

Sincerely,

W. T. O'Connor, Jr.
Vice President, Nuclear Generation

WTO/LSG/ljd

cc: S. W. Brown
T. J. Kim, Fermi 2 NRC Project Manager
D. Minaar (State of Michigan)
NRC Resident Inspector
NRC Region III Administrator
Supervisor, Electric Operators,
Michigan Public Service Commission

DOCKET NUMBER
PROPOSED RULE PR 2, 20 + 50
(66FR 46230)

STATE OF ILLINOIS

DEPARTMENT OF NUCLEAR SAFETY

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(10)

George H. Ryan
Governor

Thomas W. Ortciger
Director

DOCKETED
USNRC

December 17, 2001 (12:02PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 21, 2001

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

Re: Proposed Rule RIN 3150-AG56, amending 10 CFR Parts 2, 20, and 50
"Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan"

Dear Secretary and Staff Members:

The Illinois Department of Nuclear Safety (Department) has reviewed the above referenced proposed rule. The Department's comments follow.

1. State Participation

The proposed rule is silent with regard to participation by state regulatory agencies. While there are general provisions for stakeholder input and public participation, notification, meetings and hearings, there is no explicit provision for "hands-on" involvement by state regulators. The Department would like the rule amended to include explicit provisions for state participation.

In Illinois, the role of the state in federally regulated site clearance processes has historically been that of "independent verification." This role assures that the site release process is in compliance with applicable state regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the state is also important in the event that portions of the property to be released would be transferred to state ownership and/or control. For these reasons, amending the proposed rule to provide for independent verification by state regulators makes good sense.

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Template= SECY-067

SECY-02

2. Non-Impacted Sites

The proposed rule defers to the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) for guidance in determining whether an area under consideration for partial release is impacted or non-impacted. Areas classified as non-impacted would in all likelihood be subject to release for unrestricted use without benefit of a radiological survey and the empirical data derived therefrom. NRC supports its "non-survey" position by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. NRC further supports its position, at FR notice page 46231, by stating that since it has not established a minimum value above mean background to compare survey results, surveying such areas is not feasible.

The Department disagrees with NRC's reasoning because for an unrestricted release, the ALARA requirements of 10 CFR 20.1402 may dictate clean up to levels indistinguishable from natural background. ALARA notwithstanding, background must necessarily be defined to demonstrate compliance with any level of dose allowed by Part 20.1402 whether it is background or 25 mrem/yr.

The Department recognizes that proper definition of background is problematic because it is not a single value but rather a statistical distribution of values that varies widely with geographic location and other factors. Nevertheless, it is a statistical entity [mean +/- (sd x n)] that can be empirically determined on a case-by-case basis. The "minimum value above mean background against which to compare survey results" can be established by setting a reasonable value for "n" in the foregoing expression. Alternatively, the proposed rule could incorporate MARSSIM's approach wherein a comparison of statistical distributions (survey vs. background) is used to determine whether radiation levels in the area surveyed are "indistinguishable" from background. In any event, background is a reality that must be dealt with in any scenario involving release for unrestricted use.

In the case of commercial power reactor sites, background is a well-defined entity because extensive amounts of environmental radiation data have been empirically measured over several decades. Since the preponderance of these measurements reflect natural background radiation, a considerable data base statistically defining background at reactor sites is readily available.

MARSSIM's alternative to a radiological survey is a "Historical Site Investigation" wherein "existing data and professional judgment" are used to

determine whether or not an area is impacted. Except for cases where the "existing data" are from up-to-date radiation surveys, this approach is susceptible to uncertainties leading to results that are less reliable and, therefore, more difficult to defend. This is contrary to the proposed rule's stated purpose:

> "...provide adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources."

A methodology producing less reliable and defensible results provides neither "adequate assurance" nor "increase[d] public confidence." Without contemporary and overwhelming empirical data indicating the absence of contamination, any action classifying a site as "non-impacted" supplicates challenge. In many, and possibly most cases, it might be easier and less expensive simply to survey the site. However, we recognize that this is contrary to NRC's general aversion of collecting and analyzing empirical information. Over time, this straightforward approach would likely "make more efficient use of NRC and licensee resources."

The Department appreciates the opportunity to submit these comments and looks forward to their inclusion in the final rule.

Sincerely,

Thomas W. Ortciger
Director

TWO:tlk

Exelon Nuclear
200 Exelon Way
Kennett Square, PA 19348

www.exeloncorp.com

DOCKETED
USNRC

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RULEMAKINGS AND
ADJUDICATIONS STAFF

Exelon Nuclear

(11)

November 19, 2001

DOCKET NUMBER
PROPOSED RULE PR 2, 20, 50
(66 FR 46230)

U. S. Nuclear Regulatory Commission
ATTN: Rulemaking and Adjudications Staff
Washington, D.C. 20555-0001

Subject: Response to Request for Comments on Proposed Rule Regarding Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan

Reference: Volume 66, Federal Register, Page 46230 (66 FR 46230), dated September 4, 2001

This letter is being submitted in response to the Nuclear Regulatory Commission's (NRC) proposed rule to amend 10CFR Parts 2, 20, and 50. The NRC is proposing to amend its regulations to standardize the process for allowing a power reactor licensee to release part of its facility or site for unrestricted use before the NRC approves the license termination plan (LTP). This type of release is termed a "partial site release." The proposed rule would identify the criteria and regulatory framework that a licensee would use to request NRC approval for a partial site release and provide additional assurance that residual radioactivity would meet the radiological criteria for license termination, even if parts of the site were released before a licensee submits its LTP to the NRC.

Exelon Generation Company, LLC appreciates the opportunity to comment on the proposed rule and supports the comments submitted on behalf of the nuclear energy industry, by the Nuclear Energy Institute.

Respectfully,

D. G. Helker /for

Michael P. Gallagher
Director, Licensing and Regulatory Affairs
Mid-Atlantic Regional Operating Group

Template = SECY-067

SECY-02