

DOCKET NUMBER

PETITION RULE PRM 50-70

(65 FR 30550)

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September 15, 2000

The Hon. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20005-0001
Attn: Rulemakings and Adjudications Staff

Re: Petition for Rulemaking - Docket No. PRM 50-70
65 Fed. Reg. 30550; May 12, 2000

Dear Ms. Vietti-Cook:

This letter supplements the comments submitted by New England Power Company ("NEP") and Oglethorpe Power Corporation ("OPC") on the above-referenced petition for rulemaking ("PRM") concerning decommissioning funding assurance requirements for "proportional owners" of nuclear power reactors. These supplemental comments briefly respond to certain comments (in the form of "motions") submitted by the petitioner.¹ For the reasons discussed below, nothing in the petitioner's "motions" should cause the NRC to take any action other than the orderly completion of the NRC's consideration of the PRM.

¹ Although the petitioner has submitted four separate "motions," nothing in the NRC's rulemaking procedures or the Administrative Procedure Act ("APA") permits participation in a rulemaking proceeding by any means other than the submission of written comments. Under 10 C.F.R. 2.802(e), if the NRC publishes a notice docketing a PRM in the Federal Register, the only recognized form of public participation on that PRM is in accordance with the NRC's request for comments contained in the published notice. The NRC's notice published in the Federal Register on May 12, 2000 (65 Fed. Reg. 30550) provided only for the submission of comments and not some other form of pleading.

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Petitioner's Comments on the Dates of Filing of Comments

NEP and OPC submitted timely comments electronically on July 26, 2000 in accordance with the instructions in the notice published by the Nuclear Regulatory Commission ("NRC") and also provided a signed courtesy copy by first-class mail. Apparently other commenters did the same. Nevertheless, the petitioner claims that the comments submitted by several parties, including those of NEP and OPC, were "delinquent." Petitioner is simply in error.

The NRC's regulations governing a PRM are contained in 10 C.F.R. 2.802 and 2.803. Neither provision establishes a time limit on the submittal of comments on a PRM. Rather, 10 C.F.R. 2.802 provides that the notice published by the NRC in the Federal Register will establish the conditions under which comments will be considered. In this case, the notice stated that comments could be submitted electronically via the NRC's interactive rulemaking website or by hard copy, and that comments were to be received by the NRC by July 26, 2000 but, if received later, would be considered if practical to do so.

The comments of NEP and OPC were duly filed in a timely manner on July 26, 2000 via the NRC's rulemaking website, as were the comments of several other parties. Where signed versions of comments were received later by the NRC, the petitioner claims that the comments should be considered untimely. However, comments filed electronically by July 26 were clearly timely under the terms of the NRC's notice. In any event, there was no prejudice to petitioner with respect to the timely submission of the substance of the comments even if signed hard copies were not received until later.² The electronic filing of comments via the NRC's interactive rulemaking website allows all interested parties, including the petitioner, prompt access to the substance of comments and fosters an efficient and interactive process to address the merits of rulemaking proposals.

Accordingly, no error or prejudice has been demonstrated in this informal proceeding, and thus the Commission should not take any action on the petitioner's request.

² In some cases, it appears that comments were timely filed but copies were received one day after July 26 by the NRC. In one case, the comments were received four days after they were submitted. Petitioner also inexplicably states in his motions that the hard copy version of the NEP/OPC comments lacked a signature. Our records indicate, however, that the courtesy hard copy version provided to the NRC was in fact signed. Most likely, the petitioner was provided a copy of our comments that was printed from the electronic version.

Petitioner's Comments on the Need for Counsel's Signature

We also note that petitioner's complaint about the lack of signature by counsel on some of the comments submitted by parties in this proceeding is without merit. The Commission's regulations in 10 C.F.R. 2.802 and 2.803 do not specify who may sign a comment in response to a notice docketing a PRM. Moreover, even where the Commission conducts a rulemaking proceeding, there are no requirements specified in the regulations on who may sign a submittal in such a proceeding. 10 C.F.R. 2.805. Under these circumstances, there is no basis for the petitioner's claim that comments by corporations must be signed by counsel. Petitioner's reference to the administrative law in Pennsylvania is clearly inapposite.

Petitioner suggests that the Commission should require that comments be signed by counsel as a matter of policy so as to enable the Commission to determine whether the signer was authorized to bind the corporation on whose behalf the comments were submitted. The authority of the signer of comments *vis-a-vis* the corporation on whose behalf the comments were submitted is a private matter between the parties. For the purposes of this type of informal proceeding, the Commission is concerned about the substance of the comments and not the corporate roles of the signers. Moreover, because the comments are publicly available, unauthorized comments submitted on behalf of a corporation would surely be noticed and be called to the Commission's attention by the affected corporation. Therefore, the petitioner's concerns are wholly unfounded.

Conclusion

For the reasons stated above, the NRC should not take any of the actions requested by the petitioner's "motions" but should complete the orderly consideration of the petition for rulemaking.

Very truly yours,


Daniel F. Stenger

Counsel to New England Power
Company and Oglethorpe
Power Corporation

cc: Eric Joseph Epstein