

LAW OFFICES OF
DEBEVOISE & LIBERMAN
1200 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 657-9800

26 BROADWAY
NEW YORK, NEW YORK 10004
(212) 248-6900

15 ELM STREET
WOODSTOCK, VERMONT 05091
(802) 457-3000

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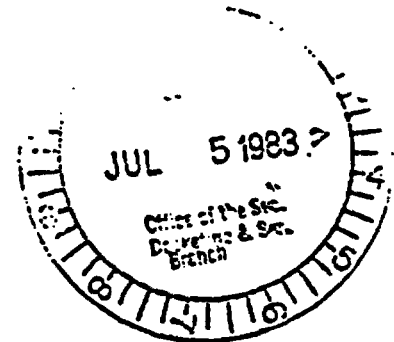
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July 5, 1983

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subj: Proposed Rule Concerning Requirements
for Licensee Actions Regarding the
Disposition of Spent Fuel Upon Expira-
tion of Reactors' Operating Licenses:
48 Fed. Reg. 22730 (May 20, 1983)



Dear Mr. Chilk:

On May 20, 1983, the Nuclear Regulatory Commission ("Commission") published in the Federal Register a proposed rule which would establish certain requirements concerning licensees' plans for storage onsite or other intended disposition of spent fuel following expiration of operating licenses for power reactors or licenses for independent spent fuel storage installations ("ISFI"). 48 Fed. Reg. 22730. This proposed rule is an outgrowth of the Waste Confidence rulemaking proceeding wherein the Commission determined that there is a probability that spent fuel may remain at some reactor or ISFI sites after expiration of the license pending availability of suitable off-site storage facilities or permanent repositories. The Commission has requested that comments on its proposed rule be submitted no later than July 5, 1983. Accordingly, on behalf of the Atomic Industrial Forum, Inc., we submit the following comments.

The Commission's proposed rule has three principal features. First, and excluded from the invitation for public comment, the Commission, in a new 10 C.F.R. 51.5(e)(1), would restate its Waste Confidence determinations regarding the lack of significant environmental impacts associated with post-operational spent fuel storage for up to 30 years and regarding the sufficiency of geologic repository capacity within 30 years following the years 2007-09.

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Second, on the basis of its generic determinations in the Waste Confidence rulemaking regarding the safety and environmental implications of storage of spent fuel, the Commission, in a new 10 C.F.R. 51.5(e)(2), would exclude from consideration in licensing proceedings the environmental consequences of such storage on site beyond the expiration of the license or amendment applied for. Those implications for the term of the license or amendment would still be considered, however. According to the supplementary information published with the proposed rule, certain implications of post-operational storage or other spent fuel management strategies which would require extension of a license or other NRC licensing action at some future date would be considered at that time in connection with such licensing action.

Third, the Commission in a new 10 C.F.R. 50.54(x) would require reactor licensees to submit, at least five years prior to expiration of their operating licenses, plans for the management of spent fuel following such expiration.

We suggest below that the Commission reference additional information supporting its conclusions regarding the environmental implications of post-operational storage. Further, we urge the Commission to clarify its intent regarding site access implications of post-OL spent fuel storage. Finally, we urge the Commission to coordinate and/or consolidate portions of the proposed rule with the ongoing decommissioning rulemaking by clarifying and modifying certain aspects of this rule before its promulgation in final form. Our detailed comments on the proposed rule are set forth below.

I. CONSIDERATION OF SAFETY AND ENVIRONMENTAL IMPLICATIONS OF SPENT FUEL STORAGE

In Minnesota v. NRC, which involved the review of NRC authorizations for expansion of spent fuel pools at two operating power reactors, the United States Court of Appeals for the D.C. Circuit directed the Commission to determine

whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plant's operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates. [Minnesota v. NRC, 602 F.2d 412, 418 (D.C. Cir. 1979).]

In response to this directive, the Commission initiated the Waste Confidence rulemaking in order to reassess generically

its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of. [44 Fed. Reg. 61372, 61372-73 (October 25, 1979).]

The Commission went on to state that if it found that storage of spent fuel at reactor sites following expiration of the operating licenses may be necessary, it would issue a proposed rule addressing how the impacts of such storage would be considered in Commission licensing proceedings. 44 Fed. Reg. 61373. Since the Commission found that there is a probability that, by necessity or choice, spent fuel will remain at reactor sites for up to 30 years following cessation of operations,¹ the instant proposed rule is presumably intended to carry out this aspect of the Advance Notice of Proposed Rulemaking in the Waste Confidence matter.

A. Consideration of Safety and Environmental Implications In Licensing Proceedings

1. The Commission should supplement the bases for its findings

For the reasons set forth below, we urge the Commission to supplement the bases for its finding that there are no significant environmental consequences from continued on-site storage of spent fuel beyond the expiration of facility operating licenses that could adversely effect the environment. 48 Fed. Reg. 22731. As to environmental consequences involving radiological considerations, we believe the Commission correctly relies on the record in the Waste Confidence proceeding, and can also rely on its experience in individual evaluations conducted in storage licensing proceedings (though a fuller description of in what respects and to what ends it relies on that experience would be helpful) to conclude that it is "highly unlikely" for any significant release of radioactivity from spent fuel to occur under licensed storage conditions. However, we suggest some additional explanation and clarification and that reference be made to additional information as providing additional support for the Commission's conclusions regarding the radiological implications of extended storage. We discuss each of these matters below.

a. Non-Radiological Impacts; Reference to Related Commission Actions

In the supplementary information which accompanies the proposed rule, the Commission refers to the decommissioning rulemaking and indicates that post-operational storage would

¹ "Rulemaking on the Storage and Disposal of Nuclear Waste" (Waste Conference Rulemaking), "Decision of the Commission NRC _____, slip op. at 5-6, Appendix at 54. (May 16, 1983)).

require restricted access to the site for a somewhat longer period than some decommissioning strategies under consideration. We recommend that in the statement of considerations accompanying the final rule the Commission refer to certain information in the draft Generic Environmental Impact Statement for Decommissioning² wherein restricted access and other matters were considered in conjunction with various decommissioning alternatives. In particular, because the implications of the extended storage of spent fuel on site beyond the expiration of an operating license are similar to the maintenance aspects of decommissioning using the "SAFSTOR" mode, the Commission should refer to those aspects of the DGEIS as consistent with its conclusions here regarding the non-radiological consequences of extended storage such as the extension of the period of restricted use as well as compensatory advantages. This could be accomplished by adding a paragraph to the present discussion under the "Related Commission Actions" heading in the proposed rule (48 Fed. Reg. 22732) explaining that the non-radiological impacts associated with the extended storage of spent fuel were also considered in the DGEIS and found to be insignificant. For completeness, the Commission might also refer to the Addenda to its generic decommissioning studies wherein the monetary costs of storage of spent fuel on site beyond the expiration of operating licenses are scheduled to be addressed by the time the final rule herein is adopted.³ We submit that reference to these matters would clarify the reference to the decommissioning rulemaking.

b. Radiological Impacts

With respect to the radiological impacts of extended storage, we suggest that the Commission make reference in this proceeding to applicable portions of the record in the Table S-3 proceeding concerning the environmental impacts of pool storage. Specifically, the Commission's consideration of the environmental impacts associated with at reactor or interim away-from-reactor storage of spent fuel in that proceeding⁴ may be referred to in

² "Draft Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," NUREG-0586 (January 1981).

³ "Technology, Safety and Costs of Decommissioning a Reference BWR Power Station," NUREG/CR-0130, Addendum 2; "Technology, Safety and Costs of Decommissioning a Reference PWR Power Station," NUREG/CR-0672, Addendum 1 (to be published July, 1983).

⁴ See e.g., "Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," NUREG-0116, Supp. 1 to WASH-1248 (October 1976), at pp. 4-107 to 4-110.

this proceeding also as typifying pool storage, whether on or off-site.⁵ This additional information confirms that the environmental impacts of pool storage are indeed insignificant.

c. Other Storage Mechanisms

Finally, we believe that a final decision in the Waste Confidence proceeding will provide the necessary basis for a determination that extended storage in pools or in dry storage will not give rise to significant environmental impacts. Accordingly, we urge the Commission to incorporate within its findings in this proposed rule a determination that there would be no significant impacts associated with dry storage of spent fuel, which could include mobile or modular dry storage.⁶

B. Coordination of Spent Fuel Management Plans With Decommissioning Planning

We do not object to the proposed requirement that licensees submit a plan prior to the expiration of the operating license for a power reactor or ISFI which sets forth the licensee's plans for storage on-site or other disposition of spent fuel. However, if a similar requirement should emerge from the ongoing decommissioning rulemaking, then the Commission should coordinate or combine the post-OL fuel management rule with the decommissioning planning regulations upon their promulgation. In addition, we recommend below several modifications to the fuel management plan requirement of the instant proposed rule, which modifications would facilitate coordination of post operational spent fuel management and decommissioning requirements.

Many considerations associated with the development of decommissioning plans also would need to be addressed in a plan for extended storage of spent fuel on site beyond the expiration of the operating license. In fact, the post-OL activities associated with post-OL spent fuel management and decommissioning are so closely intertwined that a coordinated or integrated requirement is called for. For example, extended storage of spent fuel is entirely consistent with the SAFSTOR⁷ decommiss-

⁵ Indeed, the Commission noted its intent to draw upon applicable portions of the Table S-3 record in the Waste Confidence proceeding. 44 Fed. Reg. 61373. Use of portions of that record in this proposed rule is appropriate, therefore, in that this proposed rule is an outgrowth of the Waste Confidence rulemaking.

⁶ See also: "Proposed 10 C.F.R. Part 53; Adequacy of Spent Fuel Storage Capacity," 48 Fed. Reg. 19832 (April 29, 1983); Proposed 10 C.F.R. §§53.13(c) and 50.27(a)(2)(iii).

⁷ SAFSTOR is defined as those activities required to place and
(footnote continued)

sioning option. Extended storage for as long as 30 years would have the same effect on land use as SAFSTOR with decommissioning after a comparable period, as noted earlier.

An aspect of 10 C.F.R. §50.54(x) which is suitable for consolidation now with the decommissioning rulemaking is the provision requiring the licensee to specify how it proposes to fund extended storage or other techniques for management of irradiated fuel on hand upon cessation of operations. We do not believe that the Commission's brief description of how it proposes to proceed on this question in its Waste Confidence Decision (slip op., Appendix at 53) justifies separate financial review of spent fuel management, separate, that is, from funding this step in the decommissioning process. The issues surrounding decommissioning financing have been extensively addressed in the decommissioning rulemaking. In particular, questions concerning the extent of prefunding and the degree of assurance of funding needed and the matter of special situations which may require special treatment have been addressed in the decommissioning rulemaking. The Commission's treatment of licensee funding of post-OL spent fuel management should be consistent with, and a part of, any financial requirements applicable to decommissioning.

Accordingly, we urge the Commission to conform the proposed amendment to 10 C.F.R. §50.54(x) to the foregoing comments. Further, the Commission should consolidate with the decommissioning rulemaking that portion of 10 C.F.R. §50.54(x) concerning funding of post-OL spent fuel management.

C. Modification of Spent Fuel Management Plan Provisions

In addition to our suggestions regarding coordination of spent fuel management planning with decommissioning planning, we urge the Commission to amend the content of Proposed 10 C.F.R. §50.54(x) in several respects. Our suggested revisions are set forth below.

1. Commission "Approval"

The Commission proposes to require operating power reactor licensees to submit no later than five years prior to the expiration of the reactor operating license a written notification setting forth their plans for management of spent fuel at the reactor upon expiration of the operating license. Proposed 10 C.F.R. §50.54(x). In addition, the Commission provides for

(footnote continued from previous page)

maintain a radioactive facility in such condition that the risk to safety is within acceptable bounds and that the facility can be safely stored and subsequently decontaminated to levels which permit release of the facility for unrestricted use. DGEIS, NUREG 0586 at 0-5.

"approval" of such program prior to the expiration of the operating license, though there is no indication that this would take the form of a formal order or a separate license amendment. Id. We urge the Commission to clarify that it does not intend to require explicit approval of the program.⁸ Rather, we suggest that the concept of "approval" be eliminated from the requirement to file a plan in §50.54(x), and that the supplemental information indicate that the Commission will review the program, and alert the licensee to any problems or deficiencies or need for additional information. Any approval required would then take the form of the separate licensing or regulatory action to implement the plan, such as extension of the operating license, or conversion of that license into a possession-only license, allowing for extended storage of fuel on site. Of course, licensees are also authorized to transfer spent fuel under existing licenses to another licensed facility authorized to receive it. Thus, the filing would serve to inform the Commission as to the identity of the already authorized recipient or as to the future filing of an amendment to a license for another facility to authorize receipt of the spent fuel.

2. Additional NRC authorizations

Proposed 10 C.F.R. §50.54(x) would require that licensees submitting a plan for the management of spent fuel include within that plan a verification that submittals for all necessary NRC authorizations have been made. We believe the Commission has unrealistically assumed that all such authorizations will need to be applied for more than five years prior to the expiration of the operating license. Indeed, there may be particular authorizations which need not be sought until some later time. Accordingly, we recommend that the Commission amend this proposed rule to provide for the submission of a schedule for seeking such authorizations, including any known authorizations needed for other licensed facilities and the schedule, if known.

3. Funding for spent fuel management program

As noted above, the question of funding post-operational activities has been addressed in detail in the decommissioning rulemaking. In the event the Commission does not consolidate the

⁸ We note that elimination of approval as a regulatory action separate from license amendment or appropriate orders would be consistent with the Commission's practice in other areas for consideration of changes in discrete plans associated with activities to be conducted at licensed facilities. For example, the Commission reviews and requires implementation of discrete physical security, safeguards contingency and emergency plans (see 10 C.F.R. §§50.34(c), (d) and 50.33(g)), but does not require prior Commission approval for changes to such plans which do not decrease their effectiveness (10 C.F.R. §50.54(p), (q)).

proposed requirement for identifying the method the licensee intends to use to fund the management of all irradiated fuel following expiration of the reactor operating license, we urge the Commission to provide in the final rule an exclusion from any funding requirement for those power reactor licensees or IFSI licensees which are electric utilities because, as a class, they are likely to have continuing sources of funds following license expiration. As has been extensively addressed in the decommissioning rulemaking, the licensees who are vertically integrated electric utilities with multiple generating stations and a continuing business generally possess the ability to recover costs (through rates) for the cost of system operation even after the expiration of the operating license of a particular facility.⁹ Further, to the extent that electric utilities will need to satisfactorily demonstrate to the Commission their ability to finance decommissioning a power reactor, the relatively small costs of maintenance and monitoring of spent fuel storage activities compared to decommissioning a reactor should pose no obstacle.

We appreciate the opportunity to submit the foregoing comments.

Sincerely,



Joseph B. Knotts, Jr.

⁹ The question of single asset utilities is one which has been addressed in the decommissioning rulemaking. The special nature of such circumstances illustrates the importance of consolidating this aspect of the proposed rule with the decommissioning rulemaking.

LAW OFFICES

LOWENSTEIN, NEWMAN, REIS & AXELRAD, P. C.

1025 CONNECTICUT AVENUE, N. W.

WASHINGTON, D. C. 20036

202-862-8400

July 5, 1983

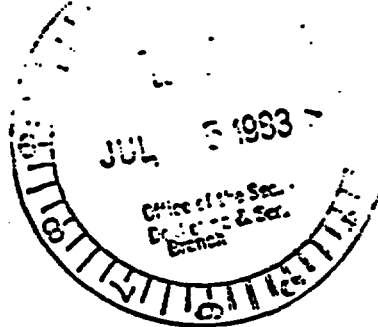
NEWMAN
MAURICE F. REIS
MAURICE AXELRAD
KATHLEEN H. SHEA
J. A. BOURNIGHT, JR.
MICHAEL A. BAUSER
DOUGLAS G. GREEN
DAVID G. POWELL

E. GREGORY BARNES
JANET E. S. ECKER
STEVEN P. FRANTZ
JILL E. GRANT
FREDERIC S. GRAY
ALVIN H. GUTTERMAN
MOLLY N. UNDEMAN
DAVID S. RASKIN
DONALD J. SILVERMAN

ROBERT LOWENSTEIN
OF COUNSEL

7

DUCKET NUMBER
PROPOSED RULE PR-50,51
(48 FR 22730)



Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attn: Docketing and Service Branch

Re: Requirements for Licensee Actions
Regarding the Disposition of Spent
Fuel Upon Expiration of the Reactors'
Operating Licenses (48 Fed. Reg. 22,730)

Dear Sir:

The following comments are submitted on behalf of the Utility Nuclear Waste Management Group (UNWGM) and the Edison Electric Institute (EEI) concerning the Commission's proposed rule establishing requirements for licensee actions regarding the disposition of spent fuel upon expiration of reactor operating licenses (48 Fed. Reg. 22,730 (1983)). The proposed rule is intended to implement the Commission's recent "Waste Confidence" decision. It would provide that the environmental and safety implications of spent fuel storage after the termination of reactor operating licenses need not be considered in individual licensing proceedings.

The UNWGM and EEI generally concur with the substance of the proposed rule, believe that it appropriately implements the Commission's "Waste Confidence" decision, and urge that the Commission issue a final rule promptly. Several comments concerning specifics of the proposed rule, however, are warranted.

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(1) The proposed rule contains the Commission's generic determination that "no significant" environmental impacts will result from spent fuel storage for up to 30 years after license termination, and specifies that, accordingly, the environmental consequences of such storage "need not be addressed" in individual proceedings involving the licensing of reactors or independent spent fuel storage installations. 48 Fed. Reg. 22,733. We agree with the Commission's determination that the effects (both radiological and non-radiological) of post-operation spent fuel storage do not constitute a significant increment to the already fully considered consequences of storage during the period of licensed reactor operation.*/ We suggest, however, that -- in the statement of considerations accompanying the final rule -- the Commission note more explicitly that in making a determination of insignificance it has reviewed the impacts associated with (1) reactor licensing (including, e.g., the impacts of spent fuel storage as presented in Table S-3), spent fuel storage expansions, and independent storage facilities, and (2) any required post-operation spent fuel storage and found the latter impacts to be insignificant in the context of the licensing actions.

Further, we believe that the final rule, itself, should explicitly state that the Commission has evaluated and found insignificant the impacts of post-operation spent fuel storage. Any rule which states that such impacts "need not be addressed" might be misinterpreted to mean that such impacts have not and are not to be addressed. Accordingly, we recommend that the first sentence in § 51.5(e)(1) be modified to read:

*/ For example, in the licensing of a new reactor, the environmental effects of spent fuel storage associated with the period of licensed operation are accounted for in Table S-3 of 10 CFR Part 51. Further, the last sentence of proposed § 51.5(e)(2) specifically provides that the present licensing practice in this area will continue:

This rule does not alter any pre-existing regulatory requirements for consideration in licensing proceedings of safety or environmental consequences of spent fuel storage for the term of the license or amendment applied for.

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Accordingly, the environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or storage installation license applied for have been evaluated and found to be insignificant and shall be indicated as such in any environmental report, impact statement, impact assessment, safety analysis report, or other analysis prepared in connection with a reactor operating license or initial license for an independent spent fuel storage installation, or amendment thereto.

(2) The proposed rule provides that a reactor licensee shall, no later than five years before the expiration of its operating license, submit written notification to the Commission "for its review and approval" regarding the licensee's intended program for management of its spent fuel after operating license expiration and until ultimate disposal in a repository. 48 Fed. Reg. 22,732. The purpose of this requirement is to provide "adequate lead time" for any actions that may be required at the particular reactor site to assure safe management of the spent fuel. 48 Fed. Reg. 22,731. The UNWGM and EEI have no objections to the advance five year notification, but believe that the explicit requirement for Commission "review and approval" establishes an unnecessary and burdensome procedural step which should be deleted.

It is apparent that the "approval" contemplated by the proposed rule is not intended to be in the form of a formal licensing action. If the licensee plans to take steps which would require an additional license (e.g., an independent spent fuel storage installation) or an amendment to an existing license (e.g., continued storage at a licensed facility), it will have to file for and obtain such authorizations separately. In such cases, the proposed rule would merely add a superfluous second layer of NRC approval. Moreover, if the licensee plans to take steps within its existing authorizations (e.g., ship the fuel to an authorized recipient), the proposed rule would impose a new and unnecessary layer of NRC approval.

We can appreciate that the proposed rule is intended to reflect the Commission's desire to demonstrate that it will carefully monitor each licensee's plans to assure that

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proper actions regarding spent fuel are taken in a timely fashion. However, the simple requirement that licensees notify the NRC regarding their intended program five years prior to license expiration is sufficient for such purpose. Obviously, the NRC Staff will review such notification even without a specific requirement in the regulation. If, in the course of review, the Staff perceives a problem with the licensee's intended program, it has ample authority to request additional information, or, if necessary, to require the licensee to modify its plans or to take other steps. All such actions by the Staff are standard components of the existing regulatory program. They do not depend upon any new regulatory requirement that the Commission "approve" the licensee's intended program.

We are therefore concerned that the imposition of an unnecessary "approval" requirement will lead to procedural complications without any compensatory benefit. Unless clarification is provided by the Commission, we can visualize questions being raised in the future as to whether the informal "approval" process is being properly implemented. For example, at what level will "approval" authority be delegated? What notices (if any) will be provided? What appeal processes will be available in the event of an approval or disapproval? These needless complications are potentially burdensome to both the licensee and the NRC Staff, and can readily be avoided by eliminating the unnecessary reference to Commission "approval."

The inclusion of an "approval" requirement is also unwarranted in light of past Commission practices. Under 10 CFR § 50.59, no prior Commission approval is required even for changes in the facility or procedures described in the Safety Analysis Report, as long as the modification does not involve a change in the technical specifications or an unreviewed safety question. Similarly, licensees need not obtain prior Commission approval for changes to safeguards contingency plans (10 CFR § 50.54(p)) or emergency plans (10 CFR § 50.54(q)) which do not decrease the effectiveness of those plans, nor for changes to quality assurance programs, so long as they do not reduce the commitments previously made to the NRC (10 CFR §§ 50.54(a)(3) and 50.55(f)(3), as amended, 48 Fed. Reg. 1026 (1983)). Since a licensee's submittal of a five-year advance notification under the proposed rule will not enable it to take any previously unauthorized action and will not reduce any previous commitment to the NRC, the requirement of Commission approval

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seems singularly inappropriate. As noted above, the NRC Staff can always take regulatory action if it somehow were to perceive a problem with the licensee's intended program.

(3) The proposed rule also requires that the licensee's advance notification address its plans for the funding of its spent fuel management program. 48 Fed. Reg. 22,732. UNWGM and EEI suggest that this requirement be deleted from the proposed rule and that, instead, the question of whether licensees need describe their plans for funding of post-operation spent fuel management be considered in the Commission's on-going rulemaking on decommissioning (43 Fed. Reg. 10,370 (1978)). Such treatment of this question would be consistent with a similar decision reached by the Commission in its March 1982 amendments to the financial qualifications regulations (47 Fed. Reg. 13,750 (1982)). There the Commission, in eliminating the requirements for financial qualification review of electric utilities, specifically considered whether to continue to require review, at the operating license stage, of the utilities' financial ability to safely decommission their facilities. The Commission ultimately elected to eliminate consideration of decommissioning costs, recognizing that "any action on decommissioning is more appropriate in the context of the generic rulemaking now being conducted." 47 Fed. Reg. 13,751. Since funding for post-operation spent fuel management is closely related to the question of overall decommissioning costs, it should also be considered in that context.

(4) The proposed rule also provides that, where implementation of the intended spent fuel management program requires NRC authorizations, the licensee's notification must verify that submittals for such authorizations have been made to the NRC. UNWGM and EEI believe that many such submittals (e.g., requests for authorization for actions that would not require modifications of facilities) could appropriately be made at a date significantly later than five years prior to license termination, without jeopardizing timely implementation of the spent fuel management plan. In these instances, requiring licensees to submit license applications prematurely would be burdensome and might force licensees to file unnecessary applications which are later withdrawn or substantially modified. Thus, UNWGM and EEI

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suggest that the proposed rule be amended to require only that the advance notification include a schedule for the timely filing of applications. Such a schedule would enable the NRC to satisfy itself concerning the reasonableness of the licensee's timetable for submitting necessary licensing applications consistent with the need for timely implementation of the spent fuel management program.

(5) Finally, UNWGM and EEI believe that in adopting the final rule the Commission should include, in the accompanying statement of considerations, a more explicit discussion of the unique foundation upon which the rule is based. The instant rule is the product of an extensive record compiled in the "Waste Confidence" proceeding which has been conducted by the Commission over a period of more than three years. The specific grounds upon which the Commission's determinations are based received considerable attention during the proceeding and are thoroughly addressed in the Commission's decision and the Appendix thereto. The Commission should assure that the ample bases which exist in the decision and Appendix for the determinations underlying the rule are clearly noted.

As indicated above, UNWGM and EEI are in substantial agreement with the Commission's proposed rule, but believe that incorporation of the suggested modifications will more effectively implement the Commission's "Waste Confidence" decision.

Respectfully submitted,

UTILITY NUCLEAR WASTE MANAGEMENT
GROUP
EDISON ELECTRIC INSTITUTE

By


Michael A. Bauser

Lowenstein, Newman, Reis &
Axelrad, P.C.
Suite 1214
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036