

DOCKET NUMBER

PETITION RULE

PRM 50-57
(57FR2059)

Attachment
#3.

LOCKETED
USNRC

92 MAR 17 P4:14

①



**EDISON ELECTRIC
INSTITUTE**

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

DAVID K. OWENS
Senior Vice President
Finance, Regulation, and
Power Supply Policy

March 17, 1992

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

Attention: Docketing and Service Branch

Re: Petition for Proposed Rulemaking - Docket Number PRM-50-57

Dear Mr. Secretary:

The Edison Electric Institute (EEI) is submitting these comments in response to the North Carolina Public Staff Utility Commission's proposed amendments to 10 CFR Parts 50.54 and 140.11 concerning the waiver of the insurance requirements for shut reactors which have had all fuel removed from the reactor station site. EEI is the association of electric utility companies. Its members serve ninety-eight percent of all customers served by the investor-owned segment of the industry. They generate approximately seventy-eight percent of all the electricity in the country and provide service to seventy-five percent of all ultimate customers in the nation. In addition, EEI's member companies own either fully or partially eighty-five percent of the nuclear power reactors in the U.S.

EEI disagrees with the position of the petitioner and feels that such amendments are unnecessary and would be inappropriate. The major reason that we believe this to be unnecessary is that the NRC has, in prior instances where the licensee has shut down and defueled a reactor, granted exemptions from both the Price-Anderson Act and nuclear property insurance coverage. A current example of an exemption from Price-Anderson would be the case of Indian Point Unit Number One. Current examples of partial exemptions with respect to nuclear property insurance coverage are the Fort St. Vrain, Rancho Seco, and Shoreham units. The NRC has the tacit authority to review the site specific data applicable to any such licensee's petition and can make final judgement as to what is prudent and appropriate with respect to maintaining on-site insurance coverage. Further, the examples of exemptions mentioned above indicate that the NRC has already recognized that the minimum funding property insurance limit of \$1.06 billion may

APR 15 1992

Acknowledged by card

The Honorable Samuel Chilk
March 17, 1992
Page Two

not be necessary when a reactor has been shut down. However, in order to protect the public, the NRC must be allowed to continue to do this on a site specific basis.

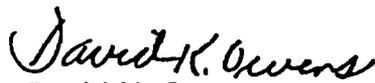
We believe that it would be inappropriate to allow licensees to automatically withdraw from the Price Anderson Act. The petitioner's request ignores the fact that a shut plant has an existing nuclear liability exposure and a continuing liability arising from past operations which could warrant continuation of an appropriate level of coverage under the Price-Anderson Act. The need for nuclear liability insurance continues well after shut down and fuel removal. If this protection is terminated when fuel is removed from the reactor, coverage will continue only for ten years from the policy cancellation date and there are potential latent injury claims which could manifest themselves well beyond that time period.

The petitioner also suggests that the utility which has defueled its reactor(s) be allowed to withdraw from the nuclear liability insurance programs, including both the \$200 million primary and the secondary protection layers of Price-Anderson, during a period of SAFSTOR. However, it should be noted that even though a nuclear unit is in SAFSTOR, there may be a continuing need for some amount of insurance coverage which should be assessed by the licensee. The licensee should have site specific studies performed prior to decommissioning a unit to determine a level of insurance coverage which is both necessary and prudent and then pursue the necessary NRC approval for maintaining that limit of coverage.

Conclusion

There are existing procedures that allow the NRC to give case-by-case site specific exemptions to insurance requirements for shut reactors which have removed fuel from the site. It is in the best interests of the public and the industry that these procedures be applied based on actual judgements made by the NRC and not on a blanket waiver basis. Therefore, EEI recommends that the Commission deny the petition and make the petitioner aware of the existing exemption process and further encourage all licensees to utilize that mechanism to reduce their insurance requirements where deemed appropriate.

Sincerely,


David K. Owens

DKO:lki

PETITION RULE PRM 50-57
(57FR2059)

WINSTON & STRAWN DOCKETED USNRC

FREDERICK H. WINSTON (1853-1886)
SILAS H. STRAWN (1891-1946)

1400 L STREET, N.W.
WASHINGTON, D.C. 20005-3502

'92 MAR 17 P4:05

CHICAGO OFFICE
35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601
(312) 558 5600

(202) 371-5700

OFFICE OF SECRETARY
DOCKETING & SERVICE

NEW YORK OFFICE
175 WATER STREET
NEW YORK, NY 10038-4981
(212) 269-2500

WRITER'S DIRECT DIAL NUMBER

FACSIMILE (202) 371-5950

March 17, 1992

2

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

Attention: Docketing and Service Branch

Subj: Notice of Receipt of Petition for Rulemaking
Insurance Requirements for Shutdown Reactors
(PRM-50-57)
57 Fed. Reg. 2,059 (Jan. 17, 1992)

Dear Mr. Chilk:

In accordance with the above-referenced Notice of Petition for Rulemaking, we hereby submit the following comments on behalf of the members of the Utility Decommissioning Group (Group) and three other utilities, all of which are NRC power reactor licensees.^{1/} The Petition requests the initiation of rulemaking that would reduce, or eliminate, property and liability insurance (both primary and secondary, or excess, coverages) requirements for facilities shut down for the purpose of decommissioning.

For the reasons set forth herein, we oppose the Petition. In short, current regulatory mechanisms (i.e., the exemption process) already permit licensees to seek relief from either of the above insurance requirements on a case-by-case basis. Further, the blanket elimination of insurance requirements for shutdown facilities could create difficulties for those utilities in justifying insurance for certain, albeit generally significantly

^{1/} The members of the Utility Decommissioning Group are: Duke Power Company, Entergy Operations, Inc. (formerly Arkansas Power & Light, Louisiana Power & Light, and System Energy Resources, Inc.), Florida Power & Light Co., Northeast Utilities, Pacific Gas & Electric, TU Electric, and Virginia Power. In addition, these comments are submitted on behalf of Public Service Electric & Gas Co., South Carolina Electric & Gas Co., and Washington Public Power Supply System.

Mr. Samuel J. Chilk
March 17, 1992
Page 2

reduced, risks that may nonetheless remain during shutdown. In our view, the expenditure of resources to develop generic regulatory standards for the stated purposes is not justified given the availability of existing procedures to achieve appropriate reductions in insurance requirements on a case-by-case basis.

Comments on Petition for Rulemaking

1. Summary of Petition for Rulemaking

The Petition for Rulemaking suggests changes to 10 C.F.R. § 50.54(w) and to 10 C.F.R. § 140.11 that (1) would waive the requirement to maintain \$1.06 billion in insurance for on-site property insurance, and (2) would waive the requirement to maintain \$200 million in primary liability insurance protection (and a potential \$63 million retrospective premium assessment in the event of an extraordinary nuclear occurrence (ENO)). Under the proposal, these requirements would be waived if "all nuclear reactors on a station site have been shut down and all nuclear fuel has been removed from the reactor station site except as may be stored in a licensed Independent Spent Fuel Storage Installation (ISFSI)."

As the basis for the proposal, the Petition asserts that there are no health and safety reasons that would require maintenance of the on-site property damage insurance at a reactor that has been shut down with no nuclear fuel on-site. Further, the petition asserts that in the case of public liability insurance, it would be unreasonable for the owner of a permanently shutdown reactor to continue to be liable for retrospective premium charges in the event of an accident at an operating reactor elsewhere when the occurrence of an accident is not considered possible at the reactor that has been shut down.

The Petition also asserts that the proposal is of immediate importance in that the insurance required during SAFSTOR decommissioning will result in significant collections from utility ratepayers during current operating years. In this regard, the Petition asserts that the cost of this insurance may discourage or preclude the SAFSTOR decommissioning option, and, accordingly, utilities will not be able to take advantage of (1) reduced occupational exposure during decommissioning and (2) reduced low-level radioactive waste storage requirements. The proposal assumes that, during SAFSTOR, the spent nuclear fuel will be stored in an ISFSI.

Mr. Samuel J. Chilk
March 17, 1992
Page 3

2. The Commission Has Recognized That Maximum "Property Insurance" Coverage for Nuclear Accidents May Be Unnecessary Where a Reactor Has Been Shut Down

The Commission's requirements for "property insurance" coverage (more properly, post-accident decontamination liability insurance -- hereinafter on-site insurance) are set out in 10 C.F.R. § 50.54(w), which requires that electric utility licensees take reasonable steps to obtain insurance, with a minimum coverage limit for each reactor site of \$1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. 10 C.F.R. § 50.54(w)(1). This insurance coverage is intended to be used to stabilize and decontaminate the reactor and reactor station site in the event of a nuclear accident. 10 C.F.R. § 50.54(w).

The Commission already has found in individual cases that where a licensee has shut down and defueled a large light water reactor^{2/} the possibility for an accident that would warrant full insurance coverage as required in 10 C.F.R. § 50.54(w) is substantially reduced. In these cases, the NRC has authorized partial exemptions^{3/} from Section 50.54(w).^{4/} Nevertheless,

^{2/} The \$1.06 billion amount was established to cover accidents at large light water reactors operating at full power. See NUREG/CR-2601, "Technology, Safety, and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents," Main Report (Oct. 1982) and Addendum 1 (Dec. 1990).

^{3/} The NRC may issue exemptions from its regulations in 10 C.F.R. Part 50 that are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and where special circumstances are present. 10 C.F.R. § 50.12(a).

^{4/} See, e.g., 56 Fed. Reg. 2,962 (Jan. 25, 1991) (partial exemption from 10 C.F.R. § 50.54(w) for Fort St. Vrain -- shut down and partially defueled); 56 Fed. Reg. 2,566 (Jan. 23, 1991) (partial exemption from 10 C.F.R. § 50.54(w) for Rancho Seco -- shut down and defueled); 55 Fed. Reg. 18,993 (May 7, 1990) (partial exemption from 10 C.F.R. § 50.54(w) for Shoreham -- shut down and defueled); 54 Fed. Reg. 35,738 (Aug. 29, 1989) (partial exemption from 10 C.F.R. § 50.54(w) for Humboldt Bay -- shut down and defueled); 53 Fed. Reg. 21,955 (June 10, 1988) (partial exemption from 10 C.F.R. § 50.54(w) for Shoreham -- holder of operating license authorizing (continued...))

Mr. Samuel J. Chilk
March 17, 1992
Page 4

inherent in these partial exemptions is a recognition that there is some residual risk that warrants maintenance of a reduced level of on-site insurance, based on plant-specific considerations, i.e., maximum credible accidents for the particular reactor site under circumstances of permanent shutdown. Further, since nuclear on-site insurance covers nonradiological risks, it may be the only source of fire insurance for a shutdown plant. Thus, contrary to the assertions by the Petitioner, there are risks, albeit reduced, following shutdown for which licensees may reasonably conclude that some appropriate level of on-site nuclear insurance should be maintained.

In contrast, the Petition seeks development of a regulatory standard that would generically eliminate any on-site insurance coverage requirements following shutdown. This approach could have the undesired effect of permitting state regulators to block inclusion of expenditures for reasonable and prudent insurance coverages within the reasonable and customary costs of service.

In our view, the Commission need not grant the Petition to reduce post shutdown insurance requirements; it should continue permitting reduction of the on-site insurance coverage limits on a case-by-case basis, where justified. A licensee will then be able to employ site-specific considerations to arrive at a level of on-site insurance coverage following shutdown deemed most appropriate, and pursue proper NRC approval.

3. Current Regulations Allow for Consideration of Reducing Liability Insurance for Shutdown Reactors

The Price-Anderson Act, as amended, 42 U.S.C. § 2210, and the NRC's implementing regulations, 10 C.F.R. § 140.11(a)(4), require each licensee having a nuclear plant that is "designed for producing substantial amounts of electricity," 42 U.S.C. § 2210(b)(1)(C), to maintain primary financial protection in the amount equal to the sum of \$200 million and the amount available as secondary financial protection (i.e., retrospective premiums not to exceed \$63 million per nuclear incident (including an ENO), and not to exceed \$10 million per year). The current amount available through insurance for compensation in the event of a catastrophic ENO is approximately \$7.1 billion. This scheme assures that the

^{4/} (...continued)

operations at not more than five percent power); 53 Fed. Reg. 19,631 (May 27, 1988) (partial exemption from 10 C.F.R. § 50.54(w) for Seabrook -- then holder of low-power license - until receipt of full-power operating license).

Mr. Samuel J. Chilk
March 17, 1992
Page 5

maximum amount of insurance will be available in the event of an accident covered under the statute without regard to fault.

As in the case of on-site insurance requirements, the current regulatory scheme already allows for consideration of reducing or eliminating primary and secondary insurance coverage in the case of a shutdown reactor (i.e., through the exemption process).^{5/} For example, the NRC has permitted withdrawal from the secondary insurance program for Indian Point Unit 1. In that case the licensee still possesses a provisional operating license for the plant, has spent fuel on-site, and intends to undertake actual decommissioning in the next century.^{6/} This situation is noteworthy, and highlights the benefit of case-by-case review, in that such relief would not be available under the conditions contemplated by the Petition because there are still reactors operating at the station site (Indian Point Units 2 and 3).

Further, those licensees will likely wish to retain some level of liability coverage even after shutdown, e.g., for latent injury claims beyond the ten-year period following policy cancellation that would otherwise apply. The Petition does not contemplate this consideration.

Therefore, in our view, it is unnecessary for the NRC to initiate rulemaking to enable licensees to pursue reduction of Price-Anderson coverage at shutdown reactor facilities. The expenditure of resources to develop generic guidance in this area at this time simply would not be justified.

In sum, the better regulatory scheme is for licensees to continue to pursue reduction of such coverage on a case-by-case basis, using the existing exemption process if necessary, so as to take into account considerations unique to each facility.

^{5/} The NRC may provide exemptions from the regulations in Part 140 that are authorized by law and are in the public interest. 10 C.F.R. § 140.8.

^{6/} See Amendment No. 23 to Indemnity Agreement B-19 for Indian Point Unit 1, dated Dec. 19, 1989 (providing that "no participation in the secondary financial protection program shall be required with respect to a reactor which has been permanently shut down, and where the licensee's authority to operate the unit as a power reactor has been revoked by the Commission."). Authority to operate the facility was revoked by NRC order dated June 19, 1980.

Mr. Samuel J. Chilk
March 17, 1992
Page 6

4. There Is No Urgent Need for Rulemaking In Any Event

The Petition asserts that the need for rulemaking in this area is of immediate importance, in that the cost of maintaining on-site and liability insurance over the period of SAFSTOR, will discourage licensees from using the SAFSTOR decommissioning option. We disagree with the Petitioner's rationale for urgency.

In the first instance, it is not the Commission's policy to encourage one form of decommissioning over another.^{7/} The Petitioner, however, seeks specific rulemaking on the premise that SAFSTOR should be encouraged. The Commission should not permit such arguments to enter the decisionmaking process.

Further, with respect to the concern regarding costs, the Commission's mandate is premised on the protection of the public health and safety, 42 U.S.C. § 2012(e), and not on the ratemaking process. 10 C.F.R. § 50.75(a); 53 Fed. Reg. at 24,030. Thus, reliance on the Petitioner's rate concerns would be inappropriate to support the initiation of rulemaking.

Finally, as noted, the Commission already has acknowledged its willingness to consider relief from its insurance requirements, through the issuance of exemptions. Accordingly, the relief sought is not essential to reducing insurance requirements following shutdown. Indeed, there is no apparent immediate need to revise the regulatory structure to provide licensees a means of relief which they already have available.^{8/} In denying the Petition,

^{7/} See 53 Fed. Reg. 24,018, 24,020, 24,021 (June 27, 1988); NUREG-1221, "Summary, Analysis, and Response to Public Comments on Proposed Amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72," June 1988, §§ B.3.3, B.4.1, at B-9-10. In the promulgation of the NRC's final decommissioning rule, the Commission indicated that the intent of the rule was to provide general guidelines with regard to the use of all three decommissioning alternatives (DECON, SAFSTOR, ENTOMB) in a manner which protects the public health and safety. Therein it is noted that the selection of a particular decommissioning alternative is to be evaluated on a case-by-case basis, and the Commission does not prefer any particular alternative over another alternative.

^{8/} Most nuclear plants will not reach the end of their license terms for several years, and many are likely to pursue license renewal for an additional 20-year term. Thus, the concern
(continued...)

Mr. Samuel J. Chilk
March 17, 1992
Page 7

therefore, the Commission should note that licensees may continue to avail themselves of this option, when appropriate.

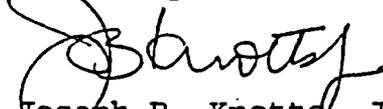
Conclusion and Recommendation

For the reasons set forth above, we urge the Commission not to undertake rulemaking. The resources that would be dedicated to the completion of such an effort would not be justified given the present existence of a mechanism to obtain the relief sought. Indeed, we oppose any rulemaking that could serve to transfer oversight of utilities' nuclear on-site or nuclear liability insurance decisions to state economic regulatory agencies who are not in a position to evaluate the risks for which coverage is needed.

We would urge the Commission, upon denial of the Petition, to reiterate the availability of the exemption process and encourage licensees to utilize that mechanism when appropriate for reducing insurance obligations. Such a statement of intent would serve to reconfirm the viability of the current regulatory scheme.

We appreciate the opportunity to comment on this Petition for Rulemaking.

Sincerely,



Joseph B. Knotts, Jr.
William A. Horin
Mitchell S. Ross

8/ (...continued)

sought to be addressed by the Petition, except as it involves the unsubstantiated assertion of significant current financial impacts, is not likely to arise for many years.



DOCKET NUMBER

PETITION RULE PERM

50-57

(57FR2059)

DOCKETED
USNRC

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2486
(202) 872-1280

92 MAR 17 P4:27

Thomas E. Tiplon
Vice President & Director
Operations, Management and
Support Services Division

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

March 17, 1992

4

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

ATTENTION: Docketing and Service Branch

RE: Notice of Receipt of Petition for Rulemaking
North Carolina Public Staff Utility Commission;
Filing of Petition for Rulemaking,
57 Fed. Reg. 2059 (January 17, 1992),
Request for Comments

Dear Mr. Chilk:

These comments are submitted by the Nuclear Management and Resources Council, Inc. (NUMARC)¹ in response to the request of the U.S. Nuclear Regulatory Commission (NRC) for comments (57 Federal Register 2059) on the North Carolina Public Staff Utility Commission's Petition for Rulemaking regarding insurance requirements for shutdown reactors.

In the situation where a commercial nuclear facility has been issued a possession only license (POL), the provisions of existing regulations permit the NRC to grant licensee requests for exemptions to reduce property and liability insurance coverage within regulations. Reduction of insurance coverage should be at the owner's discretion on a case-by-case basis. As described in Attachment A the existing regulations already provide opportunity for a licensee to request and for the NRC to grant appropriate insurance relief based on case-by-case conditions. Therefore, a proposed rule as requested by the petition is not required. We believe that a generic rulemaking may be appropriate, but only after sufficient research has been conducted to determine the proper scope of such a rulemaking (e.g., what level, if any, of property insurance should be required for a facility in the decommissioning process; whether a licensee undertaking decommissioning should

¹NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants and of other nuclear industry organizations in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

APR 15 1992

Televised at 01:00:00

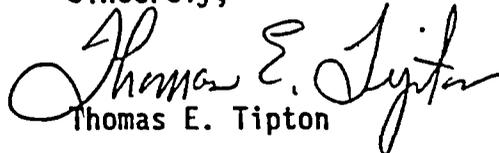
Mr. Samuel J. Chilk
March 17, 1992
Page 2

be liable for the retrospective assessments in the secondary layer of financial protection).

We recommend that the petition be denied but that a study be undertaken by the NRC to determine whether a generic rulemaking would be appropriate and, if so, the proper scope of that regulatory action. However, if the NRC decides to proceed with the petitioned rulemaking, we recommend that the proposed rule, when published for public comment, be expanded to allow reduction or termination of insurance requirements when the spent fuel is in any NRC approved fuel storage configurations, not solely a licensed Independent Spent Fuel Storage Installation. The wording of the proposed rule should reflect this by allowing the same insurance relief whether fuel is "stored in a licensed Independent Spent Fuel Storage Installation, or other approved storage configuration for which criticality is not a credible event." We further recommend the property insurance and secondary financial protection requirements be evaluated on a per unit basis rather than only being applicable when all units at a site have been permanently shutdown.

We appreciate the opportunity to comment on the proposed petition for rulemaking regarding insurance requirements for shutdown reactors. If there are any questions regarding the comments provided in this letter, please contact Alan Nelson or me. We are available to meet with the NRC and discuss the issue further if desired.

Sincerely,


Thomas E. Tipton

TET\APN:m1s

Existing Insurance Regulations

The following discussion describes the current regulatory requirements for the insurance under discussion, the process by which a licensee may request NRC approval of a case-by-case reduction in liability (Price-Anderson) and property damage (10 CFR § 50.54(w)) insurance, and potential areas which the NRC should study to determine whether a generic rulemaking would be appropriate.

Price-Anderson Liability Insurance

Regulatory Requirements

10 CFR Part 140 establishes the financial protection, indemnification, and liability coverage requirements for licensees authorized to operate a nuclear reactor. These regulations require primary financial liability protection of \$200 million and participation in the industry retrospective rating plan to provide additional public liability coverage. The secondary liability coverage requires each licensee to be liable for paying up to \$63 million per accident in annual installments of up to \$10 million per reactor.

The 10 CFR Part 140 primary and secondary liability insurance coverage limits are predicated on accidents that can occur at an operating nuclear power plant and specifically to cover public liability claims for extraordinary nuclear occurrences. Therefore, nuclear power plants no longer authorized to operate can justify obtaining relief from these regulations, based on the much smaller projected public liability associated with potential accidents credible for a reactor in a permanently shutdown condition.

Basis for Regulatory Relief

Part 10 CFR § 140.8 allows licensees to obtain specific exemptions from 10 CFR Part 140 requirements that are allowed by law and are otherwise in the public interest. Once a licensee receives a POL, compliance with the full provisions of 10 CFR Part 140 would constitute an undue financial hardship and is not necessary to meet the underlying purpose of the rule. In the past, licensees in this condition have been able to demonstrate why they are entitled to a reduction in the 10 CFR Part 140 financial protection requirements, and the NRC has granted exemption from 10 CFR Part 140. Even though it can reasonably be expected that the NRC would continue to do so in the future, it may be appropriate, and consistent with the goals of regulatory stability and the economical use of resources, to establish the criteria and appropriate results by rulemaking rather than address each application for exemption individually.

Property Damage Insurance

Regulatory Requirements

10 CFR § 50.54(w)(1) requires each nuclear plant licensee to maintain \$1.06 billion in property damage insurance. This insurance coverage provides

an assured source of funds for stabilizing and decontaminating a nuclear power reactor following an accident. The \$1.06 billion coverage is based on the estimated damage resulting from a severe accident.

Basis for Regulatory Relief

The basis for the full \$1.06 billion property damage insurance limit does not apply to a permanently shutdown nuclear power plant because it is physically impossible for the severe accident to occur which served as the basis for requiring \$1.06 billion of property damage insurance. A licensee may, pursuant to the provisions of 10 CFR § 50.12(a), obtain a partial exemption from 10 CFR 50.54(w)(1) based on a worst case shutdown condition radiological accident and associated site specific property damage estimate evaluation. Obtaining approval of significantly lower property damage insurance coverage will substantially, and appropriately, reduce the insurance premium costs associated with 10 CFR 50.54(w)(1) property damage insurance.

LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1875 CONNECTICUT AVENUE, N.W.

WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8102

EUROPEAN COMMUNITY: BRUSSELS, BELGIUM AND LONDON, ENGLAND

USSR: MOSCOW

DIRECT DIAL

March 17, 1992

WESTERN U.S.:

LOS ANGELES, CA

SALT LAKE CITY, UT

SAN FRANCISCO, CA

SOUTHERN U.S.:

JACKSONVILLE, FL

RALEIGH, NC

EASTERN U.S.:

NEW YORK, NY

WASHINGTON, DC

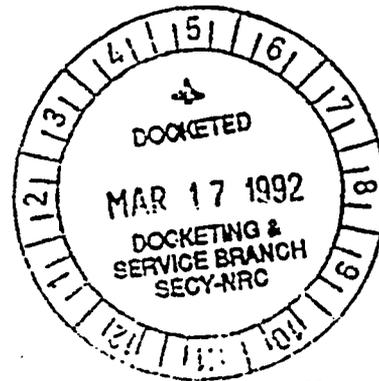
ALBANY, NY

BOSTON, MA

HARRISBURG, PA

HARTFORD, CT

NEWARK, NJ



5

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

Attention: Docketing and Service Branch

Re: Petition for Rulemaking,
Docket No. PRM-50-57

Dear Mr. Chilk:

On January 17, 1992, the Nuclear Regulatory Commission published for comment a petition for rulemaking filed by the Public Staff of the North Carolina Utility Commission on October 4, 1991. 57 Fed. Reg. 2,059 (1992). Omaha Public Power District ("the District"), the licensee for the Fort Calhoun Station nuclear power reactor, hereby files its comments in response to the Commission's notice.

The petition for rulemaking asks the Commission to amend its regulations to eliminate the requirements for property damage and public liability insurance where all nuclear reactors have been shut down and all nuclear fuel has been removed from the site, except for fuel that may be stored in an Independent Spent Fuel Storage Installation. The District supports the petition for rulemaking and urges the Commission to adopt the amendments suggested by petitioner and set forth in the Commission's notice.

As proposed by petitioner, elimination of the requirements for property damage and public liability insurance would not apply to a site where all reactors are shut down, but nuclear fuel remains on site in reactor spent fuel storage. The District submits that the proposed amendments should be expanded to eliminate, or at least greatly reduce, the insurance requirements for all reactors that have been permanently shut down, whether or not spent fuel has been removed from the site.

The Honorable Samuel J. Chilk
March 17, 1992
Page 2

The Commission has already had substantial experience in dealing with reduced insurance coverage requirements for defueled reactors. For example, partial exemptions from 10 C.F.R. § 50.54(w) have been granted in a number of instances. E.g., 56 Fed. Reg. 2,962 (1991) (Fort St. Vrain); 56 Fed. Reg. 2,566 (1991) (Rancho Seco); 55 Fed. Reg. 18,993 (1990) (Shoreham). With regard to the requirements for public liability insurance, the District understands that Indian Point 1 has been granted a waiver of participation in the secondary financial protection program under the Price-Anderson Act.

These exemptions or waivers have been granted even through spent fuel remains on the site in a spent fuel pool and even though, in the case of Indian Point, other reactors continue to operate on-site. Thus, the Commission has recognized that the risk to be evaluated is the risk (or lack thereof) posed by the defueled, shut-down reactor, not the risk associated with other licensed facilities on the same site. The District submits that the Commission's experience in processing waivers or exemptions on a case-by-case basis supports both the amendments requested by petitioner and the expansion thereof requested by the District.

Until recently, early decommissioning of commercial nuclear reactors has been in response to events beyond the control of individual licensees. Now, however, older reactors are being voluntarily shut down early for economic reasons, as is the case with San Onofre Unit 1 and Yankee Rowe. Amending the regulations to give notice, in advance, of any insurance requirements that will be eliminated or reduced will assist licensees in evaluating the option of early decommissioning for economic reasons. Continued insistence upon a case-by-case approach is unnecessary and simply complicates the planning process. Amending the regulations also would eliminate the need for repeated individual requests for exemptions, thereby reducing the administrative burden for both licensees and the Commission.

Accordingly, the District recommends that the Commission either (1) adopt the amendments proposed by petitioner and institute a rulemaking to obtain comment upon additional amendments as discussed above, or (2) initiate a rulemaking to make effective both the amendments requested by petitioner and the additional amendments discussed above.

The Honorable Samuel J. Chilk
March 17, 1992
Page 3

The District appreciates the opportunity to comment upon the petition for rulemaking.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

By Harry H. Voigt
Harry H. Voigt

Attorneys for
Omaha Public Power District

cc: Mr. Michael T. Lesar
Chief, Rules Review Section
Mail stop P-223

Southern Nuclear Operating Company
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 868-5086

DOCKET NUMBER
PETITION RULE PRM 50-57
(57FR2059)



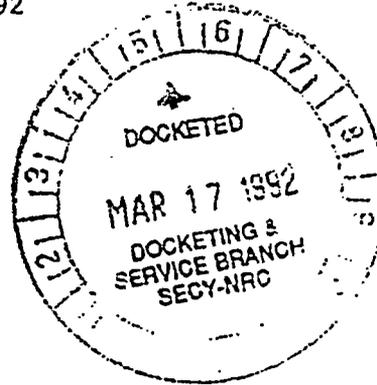
Southern Nuclear Operating Company
the southern electric system

J. D. Woodard
Vice President
Farley Project

March 17, 1992

Docket Nos. 50-348
50-364

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555



ATTENTION: Docketing and Service Branch

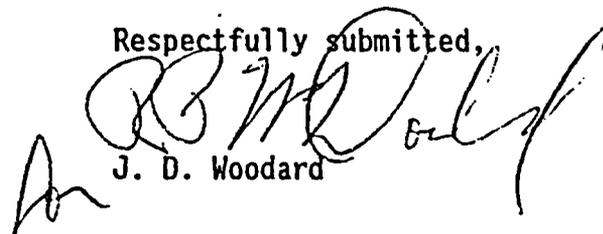
Comments on
"North Carolina Public Staff Utility Commission; Filing of Petition for
Rulemaking"
(57 Federal Register 2059 of January 17, 1992)

Dear Mr. Chilk:

Southern Nuclear Operating Company has reviewed the proposed rule, 10 CFR Parts 50 and 140, "North Carolina Public Staff Utility Commission; Filing of Petition for Rulemaking" published in the Federal Register on January 17, 1992. In accordance with the request for comments, Southern Nuclear Operating Company is in total agreement with the NUMARC comments which are to be provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,


J. D. Woodard

JDW/JDK

cc: Mr. S. D. Ebnetter
Mr. S. T. Hoffman
-- Mr. G. F. Maxwell

APR 15 1992

Acknowledged by card

Georgia Power Company
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 877-7122

DOCKET NUMBER
PETITION RULE PRM 50-57
(57FR 2059)

C. K. McCoy
Vice President, Nuclear
Vogtle Project



Georgia Power

the southern electric system

March 17, 1992

Docket Nos. 50-321 50-424
50-366 50-425

HL-2120
ELV-03575

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

(7)

ATTENTION: Docketing and Service Branch

Comments on
"North Carolina Public Staff Utility Commission; Filing of Petition for
Rulemaking"
(57 Federal Register 2059 of January 17, 1992)

Dear Mr. Chilk:

Georgia Power Company has reviewed the proposed rule, 10 CFR Parts 50 and 140, "North Carolina Public Staff Utility Commission; Filing of Petition for Rulemaking" published in the Federal Register on January 17, 1992. In accordance with the request for comments, Georgia Power Company is in total agreement with the NUMARC comments which are to be provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,

C.K. McCoy
C. K. McCoy

CKM/JDK

APR 15 1992

Acknowledged by card

Mr. Samuel J. Chilk
U.S. Nuclear Regulatory Commission
Page 2

cc: Georgia Power Company

Mr. J. T. Beckham, Jr., Vice President, Plant Hatch
Mr. W. B. Shipman, General Manager - Plant Vogtle
Mr. H. L. Sumner, Jr., General Manager - Plant Hatch
NORMS

U. S. Nuclear Regulatory Commission, Washington, DC
Mr. K. N. Jabbour, Licensing Project Manager - Hatch
Mr. D. S. Hood, Licensing Project Manager - Vogtle

U. S. Nuclear Regulatory Commission, Region II
Mr. S. D. Ebnetter, Regional Administrator
Mr. L. D. Wert, Senior Resident Inspector - Hatch
Mr. B. R. Bonser, Senior Resident Inspector - Vogtle



U.S. Council for Energy Awareness

Marvin S. Fertel
President, Technical Programs

DOCKET NUMBER:
PETITION RULE PERM 50-57
(57 FR 2059)

DOCKETED
USNRC

17MB 20
92 MAR 18 P4:44

Suite 400
1776 I Street, N.W.
Washington, DC 20006-2435
(202) 293-0770

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

FAO (202) 765-4019
(202) 765-4113

March 17, 1992

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

8

Attention: Docketing and Service Branch

Reference: Petition for Rulemaking
North Carolina Public Staff Utility Commission
57 Fed. Reg. 2059 (January 17, 1992)
Request for Comments

Dear Mr. Chilk:

These comments are submitted by the U.S. Council for Energy Awareness (USCEA) on behalf of its Nuclear Insurance and Indemnity Committee. They are in response to the U.S. Nuclear Regulatory Commission's (NRC) request for comments on the North Carolina Public Staff Utility Commission's Petition for Rulemaking (57 Federal Register 2059) concerning insurance requirements for shutdown reactors.

The USCEA Nuclear Insurance and Indemnity Committee is comprised of utilities, architect - engineering firms, insurers, law firms, nuclear steam supply system vendors, and consultants. The Committee monitors and provides its perspectives on the developments, changes, and impacts of federal regulations, insurance industry practices, and public acceptance in the area of liability and workers compensation as it applies to radiation.

While USCEA supports the use of well-defined rulemakings to improve efficiency and stability in the regulatory process, the situation covered by the proposed petition does not currently warrant such action by the NRC. Therefore, USCEA recommends that the petition be denied.

The basis for this recommendation is that current NRC regulations appropriately provide for relief from unnecessary insurance requirements for a shutdown reactor. Case-by-case exemptions to both liability insurance requirements and property damage insurance requirements are currently permitted under NRC rules in 10 CFR 140.8 and 10 CFR 50.12(a), respectively.

APR 15 1992

Acknowledged by card

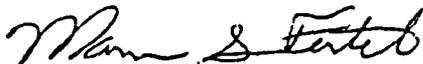
Mr. Samuel J. Chilk
March 17, 1992
Page Two

A number of plants such as Indian Point 1, Rancho Seco, and Fort St. Vrain have taken advantage of these rules and have received the necessary and appropriate exemptions. We believe experience with these plants and possibly the few others that over the next ten years will be placed in SAFSTOR and/or issued a possession only license provides the NRC with an opportunity to better define the issues that need to be addressed in such a rulemaking. The NRC should consider generic rulemaking on insurance requirements for plants being decommissioned after it gains experience with these facilities.

In conclusion, we believe the petition should be denied. However, the NRC should consider the benefits of a generic rulemaking in the future after more experience with shutdown plants and exemptions to property and liability insurance has been gained.

We appreciate the opportunity to comment on the proposed petition for rulemaking. If there are any questions regarding these comments please contact Felix Killar, or me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin S. Fertel".

Marvin S. Fertel



FPL

DOCKET NUMBER

PETITION RULE PRM 50-57 (57 FR 2059)

P.O. Box 14000, Juno Beach, FL 33408-0420

LOCKETED
USNRC

'92 MAR 19 P2:58

MAR 13 1992

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

L-92-69

(9)

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

Attention: Docketing and Service Branch

Re: Notice of Receipt of Petition for Rulemaking
from the North Carolina Public Staff Utility
Commission (57 Fed. Reg. 2059, January 17, 1992)

Dear Mr. Chilk:

On January 17, 1992, the U.S. Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of petition for rulemaking from the North Carolina Public Staff Utility Commission (57 Fed. Reg. 2059). These comments are submitted on behalf of Florida Power & Light Company (FPL), a licensed operator of two nuclear power plant units in Dade County, Florida and two units in St. Lucie County, Florida.

The petitioner requests that sections 10 CFR 50.54(w) and 10 CFR 140.11 be amended to reduce or eliminate insurance requirements for nuclear power reactors when all nuclear reactors on a reactor station site have been shut down and all nuclear fuel has been removed except as may be stored in a licensed Independent Spent Fuel Storage Installation. In this particular circumstance, the petitioner requests that paragraph 10 CFR 50.54(w) be amended to eliminate the need for insurance to cover the licensee's obligation, in the event of an accident at the licensee's nuclear reactor, to stabilize and decontaminate the reactor and the reactor station site. The petitioner also requests that 10 CFR 140.11 be amended to eliminate the need for a licensee to maintain financial protection, as that term is defined in NRC regulations.

FPL supports an undertaking by the Commission to study revising the limits of insurance coverage required of reactor licensees when a reactor has been permanently shut down, defueled, and awaiting decommissioning. However, the Commission should defer issuance of a proposed rule for comment until the completion of such a study,

and the formulation of a comprehensive and adequate basis for the type of action requested by the petitioner. The following points are pertinent to FPL's position:

- (1) There may be additional, generically-applicable circumstances where relief from the present requirements is appropriate. Such circumstances should also be reflected in any rule changes.
- (2) The nature of the protection addressed in 10 CFR 50.54(w) differs from that covered by 10 CFR 140.11. The former concerns a licensee's obligations for on-site property damage in the event of an accident at the licensee's reactor. The latter is pertinent to a licensee's ability to respond, in damages, for public liability. Consequently, in certain circumstances it may be appropriate to continue requiring insurance coverage of one type, while eliminating the requirement for the other.
- (3) There is no urgent need for revised regulations. Licensees currently have the option of seeking appropriate exemptions from the Commission's requirements when special circumstances are presented.
- (4) Modification of the regulations requires more detailed analysis of the risks associated with particular scenarios than the petitioner has presented in support of the suggested changes.

In conclusion, FPL supports and would encourage the undertaking by the Commission of a study to investigate the possible revision of insurance coverage required of a licensee when a reactor has been permanently shut down, defueled, and is awaiting decommissioning. This effort should include an opportunity for public input. Publication of a specific rule for comment, however, should await completion of such a study.

Very truly yours,



W.H. Bohlke
Vice President
Nuclear Engineering and Licensing

WHB/JAD/vmg

DOCKETED
USNRC



TUELECTRIC

Log # TXX-92152
File # 10185

92 MAR 19 P2:4

March 16, 1992

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

William J. Cahill, Jr.
Group Vice President

U. S. Nuclear Regulatory Commission
ATTN: Docketing and Service Branch
Washington, DC 20555

100

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
NORTH CAROLINA PUBLIC UTILITY COMMISSION;
FILING OF PETITION FOR RULEMAKING

Gentlemen:

On January 17, 1992 the NRC published for public comment in the Federal Register (57FR2059) a request for rulemaking from the North Carolina Public Utility Commission (NCPUC). TU Electric, by this letter provides comment to this petition for Rulemaking.

The NCPUC has requested that the insurance requirements of 10CFR50.54 and 10CFR140.11 be substantially reduced or preferably eliminated for a nuclear plant where all the fuel has been removed from the site. The NCPUC states that in the absence of fuel the insurance requirements of 10CFR50.54, whose purpose is for the stabilization of the reactor and decontamination of the reactor and the station in the event of a nuclear accident, seem unreasonable and requests the requirement be waived.

The petitioner is correct in stating that there is no criticality risk associated with an empty vessel or fuel pool. However, even after the fuel is removed there is still the risk, although reduced, of airborne contamination or accidental spills for which some type of property insurance is needed. The NRC has provisions in 10CFR50.12 and has granted case by case exemptions from the requirements of 10CFR50.54 to Shoreham, Rancho Seco, and Fort St. Vrain.

The NCPUC also petitions that the requirements for public offsite liability insurance required under 10CFR140.11 be waived for a reactor awaiting decommissioning when all fuel has been removed from the site. 10CFR140.11 requires licensees to have and maintain financial protection of \$200 million plus the amount available as secondary financial protection. This secondary financial protection is available under an industry retrospective plan where each licensee is liable for a pro-rata share of the aggregate public liability in the event of an accident. The NCPUC states that in the absence of fuel at the site it is unreasonable that the owner of a dormant reactor continue for many years to be liable for a pro-rata share of the secondary financial protection plan. Again, 10CFR50.12, as well as the Price-Anderson Act do allow case by case exemptions from the requirements of 10CFR140.11. Therefore, no rulemaking is needed to assure that waivers of this requirement are granted by the NRC at the appropriate time.

APR 15 1992

In addition, allowing automatic waivers from the requirements of 10CFR140.11 would have the effect of shrinking the secondary insurance pool as more plants reach their end of life. The alternative would be for Congress to increase the liability for the remaining operating plants to the point where the cost of the financial protection would be prohibitive. Those plants reaching end of life and decommissioning early, although not the most advanced design, have had the protection of and enjoyed the collective security of the secondary protection plan. Thus, it is not necessarily fair to exempt plants from the secondary insurance pool to the detriment of the remaining plants.

Sincerely,

William J. Cahill, Jr.

By: 

J. S. Marshall
Generic Licensing Manager

JDR/grp

c - Mr. R. D. Martin, Region IV
Resident Inspectors, CPSES (2)

Duke Power Company
Legal Department
422 South Church Street
Charlotte, NC 28242-0001



DUKE POWER

704/382-8129

DOCKET NUMBER
PETITION RULE PRM 50-57
(57FR2059)

DOCKETED
USNRC

'92 MAR 20 P3:27

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

March 17, 1992

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

Re: Notice of Receipt of Petition for Rulemaking
Insurance Requirements for Shutdown Reactors
(PRM-50-37)
57 Fed. Reg. 2,059 (Jan. 17, 1992)

11

Dear Mr. Chilk:

In accordance with the above-referenced Notice of Petition for Rulemaking, I hereby submit the following comments on behalf of Duke Power Company (Duke). The Petition, which was filed by the Public Staff of the North Carolina Utilities Commission (Public Staff), requests that the Commission initiate a rulemaking which would reduce or eliminate insurance requirements for nuclear power reactors if all the nuclear reactors on a particular station site have been shut down and are awaiting decommissioning, and all nuclear fuel has been removed from the site. The effect of such a rule, according to Public Staff, would be to encourage utilities to adopt the SAFSTOR decommissioning option through reduction of SAFSTOR costs by the amount of insurance coverage now required to be carried.

For the reasons set forth herein, Duke opposes the Petition. While there may be some merit to the "cost-saving" aspect of the regulation proposed by the Public Staff in those instances in which current insurance requirements are truly unnecessary, Duke does not believe that a rulemaking is warranted. Duke believes the current regulatory mechanism (i.e., the exemption process) already permits licensees to seek the appropriate relief from insurance requirements on a case-by-case basis. Because the exemption process exists and because the Commission already has utilized that process in allowing utilities to reduce coverage in appropriate circumstances, Duke does not believe any need has been demonstrated for adoption of a generic rule for removal of coverage. Indeed, adoption of such a rule would remove the flexibility that now exists to address each licensee's situation on an individual basis.

(704) 382-3137 Fax

STEVE C. GRIFFITH, JR.
LEWIS F. CAMP, JR.
RAYMOND A. JULY, JR.
W. EDWARD POE, JR.
ELLEN T. RUFF
WILLIAM LARRY PORTER
JOHN F. LYNCHIE
ALBERT V. CARR, JR.
WILLIAM J. BOWMAN, JR.
ROBERT M. BISANAR
EDWARD M. MARSH, JR.
RONALD V. SHEARIN
W. WALLACE GREGORY, JR.
JEFFERSON D. GRIFFITH, III
JEFFREY M. TREPPEL
PAUL R. NEWTON
GARRY S. RICE
LISA A. FINGER
KAROL P. MACK
CHRISTIN J. BRAMLETT
OF COUNSEL
WILLIAM I. WARD, JR.
GEORGE W. FERGLSON, JR.

APR 15 1992

ACKNOWLEDGED BY USNRC

Summary of Petition for Rulemaking

The Petition for Rulemaking requests that the Commission initiate a rulemaking which would propose changes to 10 C.F.R. §50.54(w) and to 10 C.F.R. §140.11 which (1) would waive the requirements to maintain \$1.06 billion in insurance for on-site property insurance and (2) would waive the requirement under the Price-Anderson Act to maintain \$200 million in primary liability insurance protection (and secondary coverage in the form of a potential \$63 million retrospective premium assessment in the event of an extraordinary nuclear occurrence). The Petition proposes that these requirements be waived if "all nuclear reactors on a station site have been shutdown and all nuclear fuel has been removed from the reactor station site except as may be stored in a licensed Independent Spent Fuel Storage Installation (ISFSI)." The proposal assumes that, during SAFSTOR, the spent nuclear fuel will be stored in an ISFSI.

As the basis for the proposal, the Petition asserts that there are no health and safety reasons that would require maintenance of the on-site property damage insurance at a reactor that has been shut down with no nuclear fuel on site. The petition also asserts that in the case of public liability insurance, it would be unreasonable for the owner of a permanently shutdown reactor to continue to be liable for retrospective premium charges in the event of an accident at an operating reactor elsewhere when the occurrence of an accident is not considered possible at the reactor that has been shut down.

The Petition asserts that the proposal is of immediate importance in that the insurance required during SAFSTOR decommissioning will result in significant collections from utility rate payers during current operating years.

Comments on Petition for Rulemaking

The Commission requires that electric utility licensees take reasonable steps to obtain "property" or "on-site" insurance coverage to be used to stabilize and decontaminate the reactor and reactor station site in the event of a nuclear accident. 10 C.F.R. §50.54(w). The Price-Anderson Act, as amended, 42 U.S.C. §2210, and the NRC's implementing regulations, 10 C.F.R. §140.11(a)(4), require each licensee having a nuclear plant that is "designed for producing substantial amounts of electricity," 42 U.S.C. §2210(b)(1)(C), to maintain primary and secondary financial protection in specified amounts.

There is no need for the Commission to initiate a proceeding to consider whether adoption of a generic rule for exemption from these requirements is necessary. First, contrary to the implications in the Petition, the costs referenced by the Public Staff are not a significant factor in the context of the decommissioning funding requirements established by the NRC. Moreover, and most importantly, the Commission

currently has the authority to consider, on a case-by-case basis, whether specific conditions applicable to specific licensees warrant partial or total relief from the existing generic requirements.

With respect to property insurance, the Commission already has found in several individual cases (Rancho Seco, Shoreham, Humboldt Bay and Seabrook) that where a licensee has shut down and defueled a large light water reactor, the possibility for an accident that would necessitate full insurance coverage as required in 10 C.F.R. §50.54(w) is substantially reduced and, therefore, partial exemptions from Section 50.54(w) are warranted. The current regulatory scheme also allows the Commission, in the case of a reactor which has been shut down, to consider reduction or elimination of Price-Anderson coverage through the exemption process. ^{1/} Consequently, it is unnecessary for the Commission to initiate rulemaking to enable licensees to pursue reduction of such coverage.

Because the Commission's exemption process allows licensees, based on their specific situation, to pursue reduction in the required property insurance coverages and/or Price-Anderson coverages, there is no need for the Commission to initiate a proceeding to adopt a generic rule to provide for such reduction. Indeed, to adopt such a rule would remove the already-existing flexibility from licensees and the Commission to deal with individual circumstances in a way that best meets the needs of all concerned. For both Price-Anderson and property insurance coverages, the better regulatory scheme is for licensees to continue to pursue reduction of such coverages on a case-by-case basis, using the existing exemption process, if necessary, so as to take into account considerations unique to each facility.

Conclusion and Recommendation

For the reasons set forth above, Duke urges the Commission not to undertake the rulemaking requested by the Petition. Given the present

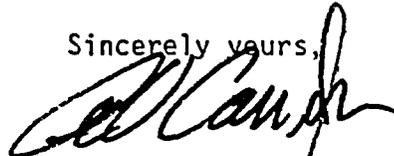
^{1/} The NRC has permitted withdrawal from the secondary insurance program for Indian Point Unit 1, a reactor which has been shut down. In that case, other reactors (Indian Point Units 2 and 3) continue to operate at the site, the licensee still possesses a provisional operating license for the plant, has spent fuel on site, and intends to undertake actual decommissioning in the next century. The Commission reviewed that specific situation and concluded that "no participation in the secondary financial protection program shall be required with respect to a reactor which has been permanently shut down, and where the licensee's authority to operate the unit as a power reactor has been revoked by the Commission." This situation is noteworthy, and highlights the benefit of case-by-case review, in that such relief would not be available under the conditions contemplated by the Petition because there are still reactors operating at the station site.

existence of a regulatory mechanism to obtain the relief sought by the Petition, the resources that would be dedicated to a rulemaking effort would not be justified.

We would urge the Commission, upon denial of the Petition, to reiterate the availability of the exemption process and encourage licensees to utilize that mechanism when appropriate for reducing insurance obligations. Such a statement of intent would serve to reconfirm the viability of the current regulatory scheme.

We appreciate the opportunity to comment on this Petition for Rulemaking.

Sincerely yours,

A handwritten signature in black ink, appearing to read "A. Carr, Jr.", written over the typed name below.

Albert V. Carr, Jr.
Associate General Counsel

AVC,Jr./sjr



SACRAMENTO MUNICIPAL UTILITY DISTRICT □ 6201 S Street, P.O. Box 15830, Sacramento CA 95852-1830, (916) 452-3211
AN ELECTRIC SYSTEM SERVING THE HEART OF CALIFORNIA

BUCKET NUMBER
PROPOSED RULE PR M-50-57
(57FR2059)

DO FILED

92 MAR 20 P 4 04

DAGM/NUC 92-055

March 17, 1992

12

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

Attention: Docketing and Services Branch

COMMENTS ON THE PETITION FOR RULEMAKING REGARDING THE REDUCTION OF
INSURANCE REQUIREMENTS FOR PERMANENTLY SHUTDOWN NUCLEAR POWER
REACTORS

Dear Mr. Chilk:

The Sacramento Municipal Utility District (District) generally agrees with the North Carolina Public Utility Commission's petition for rulemaking. The NRC should include provisions in 10 CFR 50.54(w) and 10 CFR 140 for reducing the insurance requirements for nuclear power reactors that have shut down permanently and have removed all of the fuel from the reactor.

The regulatory requirements for onsite decontamination and property insurance, and primary liability coverage and secondary protection were predicated on accident conditions that could exist at an operating facility. The requirements of 10 CFR 50.54(w) are intended to ensure that an electric utility licensed under 10 CFR 50 has sufficient property and decontamination insurance to protect the licensee's obligation to stabilize and decontaminate the reactor in the event of an accident. The requirements in 10 CFR 140 are intended to indemnify and limit third party liability regarding the costs of third party liability for extraordinary nuclear occurrence or nuclear incident.

These insurance and financial protection requirements were based on the design basis accidents for operating nuclear power plants. After a nuclear power facility has shut down permanently, and the reactor has been completely defueled, the number of credible accidents that could pose a threat to public health and safety is reduced substantially. In many cases, there are no credible accidents that could exceed 10 CFR 100 limits.

The amount of coverage and financial protection required by the regulations is based on an operating facility. The amount of

APR 13 1992

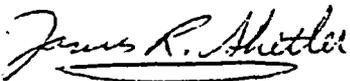
RECORDED BY 6210

coverage that should be required for a permanently shut down facility should be significantly less than that considered when the rule was contemplated and subsequently amended. Literal compliance with these requirements could result in undue financial hardship, because the cost to the ratepayers to maintain the required insurance and financial protection is significantly in excess of that contemplated when the rule was adopted. Moreover, it would not be reasonable to require a non-operating plant to participate in the secondary financial protection program with a financial exposure of up to \$66 million per accident when the same plant creates no credible risk of retrospective assessments against other reactor operators.

While the District does not favor automatic blanket exemptions from property/decontamination and liability insurance/retrospective assessments, specific relief is warranted. Utilities that have a permanently shutdown reactor should be allowed to develop and evaluate appropriate maximum foreseeable property loss and liability scenarios to determine the effects (e.g., property loss, radiological consequences, liability) of credible accidents, and determine appropriate property and liability insurance protection requirements. NRC regulations should provide for a reduction in the insurance requirements commensurate with the results of the evaluation.

Members of your staff with questions requiring additional information or clarification may contact Bob Jones at (916)452-3211, extension 4676.

Sincerely,



James R. Shetler
Deputy Assistant General Manager
Nuclear

cc: J. B. Martin, NRC, Walnut Creek
S. Weiss, NRC, Washington

DOCKET NUMBER
PETITION RULE PRM 50-57
PHILADELPHIA ELECTRIC COMPANY (57 FR 2059)
NUCLEAR GROUP HEADQUARTERS
955-65 CHESTERBROOK BLVD.
WAYNE, PA 19087-5691
(215) 640-6000

DOCKETED
USNRC

'92 MAR 23 A11:47

NUCLEAR ENGINEERING & SERVICES DEPARTMENT

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
March 17, 1992

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, DC 20555

13

Subject: Philadelphia Electric Company
Comments Concerning the Nuclear Regulatory Commission's
10 CFR 50 and 140 Petition for Rulemaking by the North
Carolina Public Staff Utility Commission (57 FR 2059)

Dear Mr. Chilk:

This letter is being submitted in response to the Nuclear Regulatory Commission's (NRC's) request for comments concerning the 10 CFR 50 and 140 Petition for Rulemaking (PRM) by the North Carolina Public Staff Utility Commission published in the Federal Register (57 FR 2059, dated January 17, 1992).

Philadelphia Electric Company (PECo) appreciates the opportunity to comment on this PRM. The North Carolina Public Staff Utility Commission filed this PRM with the NRC on September 25, 1991, requesting that the NRC substantially reduce or eliminate insurance requirements for nuclear power reactors when all the reactors on a site have been shut down and are awaiting decommissioning and all nuclear fuel has been removed from the site. PECo does not consider that rulemaking, as proposed, is needed at this time and provides the following discussion in support of our position.

Although this PRM requests that the level of insurance for permanently shut down nuclear reactors be reduced or eliminated, a utility's best interest may best be served by maintaining a level of insurance coverage commensurate with any potential risks (i.e., flooding, fire, etc.) which could result in the spread of contamination. Insurance rates should reflect the level of potential risk. Currently, during an outage, insurers provide reduced premiums through use of shutdown credits. Depending on the activities performed during an outage, the shutdown credit can be significant. Therefore, when all the nuclear fuel is removed from a reactor site, insurers should reduce the rates associated with nuclear liability and property insurance coverage. We consider that maintaining nuclear liability

acknowledged by card APR 15 1992

insurance coverage after a reactor has been permanently shut down may be necessary in order to provide adequate coverage for late reported claims related to reactor operation but not identified until many years later. Furthermore, rulemaking as requested by this PRM may not be necessary, since under the current regulations the NRC may grant exemptions to licensees to reduce the amount of liability and property insurance coverage on a case-by-case basis. Finally, we support the Nuclear Management and Resources Council's (NUMARC's) position and comments regarding this PRM.

If you have any questions, please do not hesitate to contact us.

Very truly yours,



G. J. Beck
Manager
Licensing Section



DOCKET NUMBER
PETITION RULE PRM 50-57
(57 FR 2059)

DOCKETED
USNRC

JOSEPH MARRONE
Senior Vice President
and General Counsel

'92 MAR 23 A9:42

March 19, 1992

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

14

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

Attention: Docketing & Service Branch

COMMENT ON PETITION FOR RULEMAKING
OF NORTH CAROLINA PUBLIC STAFF
UTILITY COMMISSION
(DOCKET NO. PRM-50-57)

American Nuclear Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU) have provided nuclear liability insurance and property insurance to the nuclear industry since 1957. ANI and MAELU have actively participated in the discussions leading to modifications, from time to time, in the Price-Anderson Law and in regulations that set forth insurance requirements.

While we do not make a recommendation respecting the NRC's response to the petition, we offer comment on the issues that underlie the NRC's consideration of the matter. Our interest is that changes made in insurance requirements not detract from the soundness of the system in place to assure protection for the public and for those who may be liable.

General Observations

As respects the petition for change in the stabilization and decontamination insurance required by section 10CFR 50.54(w), we note that section 50.12 (Specific Exemptions) grants the NRC broad authority to exempt a licensee from the requirements of Part 50. As respects the second petition concerned with nuclear liability insurance required by 10 CFR 140.11(a)(4), section 140.8 (Specific Exemptions) similarly authorizes broad authority to exempt a licensee from the requirements of Part 140.

Petitioners have not elected to leave it to the licensees to apply for specific exemption. The reasons offered for the proposed changes in insurance requirements would have broad application, and consideration of generic rulemaking at some point, after appropriate study, may be warranted. If generic rulemaking proves inappropriate, application for specific exemption remains available.

The petitioners would have the NRC decide now what its insurance requirements for licensees will be far into the future at the time a nuclear facility is shut down and all fuel is removed from the

APR 15 1992

RECORDED BY CARD

site. The petitioner is concerned that charges to utility ratepayers in current operating years for future insurance costs may be excessive. They believe this may be so because there will either be no need for any insurance, or lesser amounts of insurance would suffice. Projections for these costs might then be reduced, benefiting current and future utility ratepayers.

An important factor that must be weighed by those who are concerned with future decommissioning costs, is not simply the amount of required insurance, but also the price of the future insurance. The insurance premium for a nuclear facility that has ceased operations under normal conditions, and has all fuel removed from the site, would be much less than the premium for an operating reactor. The property insurance that a licensee would purchase at the time of SAFSTOR would likely not include much coverage for physical damage to the property in SAFSTOR because it presumably has limited insurable value. The main area of coverage would probably be to insure the licensee's obligations under 10CFR50.54(w), and the premium would reflect reduced coverage as well as reduced activity at the facility.

It would be erroneous by a wide margin to use insurance costs for an operating nuclear facility to estimate future insurance premium during SAFSTOR (with spent fuel removed) when there is reduced activity at the site. Better information respecting the difference in premium should produce more accurate projections that would result in more equitable assignment of costs. This may alleviate much of the concern of the petitioner.

I. Comments on Proposed Change to 10CFR50.54(w)

The purpose of this regulation is to assure that there are sufficient funds to remedy conditions on a nuclear facility that pose a threat to the public as the result of a severe nuclear accident. In circumstances where the licensee has suffered a great financial loss this regulation assures the adequacy of resources (\$1.06 billion) to remove the danger.

However, if circumstances are such that a severe nuclear accident cannot occur, it would be reasonable to substantially reduce, and possibly, eliminate the insurance requirement. Were a lesser incident to occur, such as a fire that might further spread contamination on-site, the licensee would likely have the resources to remove any plausible threat to the public since the licensee has not simultaneously suffered the great financial loss that would result from a major nuclear accident.

In summary, we believe that substantially reducing, and possibly even eliminating the insurance requirement under -- section 50.54(w), is unlikely to compromise the protection for the public in circumstances where a facility has had a normal end-of-life shutdown and all fuel is removed from the site.

Our view of this issue is not materially different if a Licensed Independent Spent Fuel Storage Installation for the site operator's spent fuel is established at the location. Though this poses more risk than having no fuel on the site, it is likely the licensee, assuming normal financial conditions, would have adequate resources to rectify conditions on-site that pose a threat to the public.

II. Petition for Amendment of 10 CFR 140.11

Nuclear liability insurance provided by the Pools under the Facility Form has been utilized by all nuclear power reactor operators as primary financial protection to satisfy the first layer of the financial protection requirements of the Price-Anderson Law. In addition, the Pools administer the secondary layer of financial protection by means of a Nuclear Energy Liability Insurance policy in which all funds required to pay claims and claims expense are provided by retrospective premiums paid by licensees of power reactors as required by section 170b. of the Atomic Energy Law.

Amending the level of required financial protection poses more complex questions than the change requested in 10 CFR 50.54(w). The insurance required by 10 CFR 50.54(w) is only activated by a major reactor accident. The insurance is dormant until such time. The financial protection required pursuant to 10 CFR 140.11, however, has applied throughout the operating life of the reactor. During that period controlled amounts of nuclear material have been released to the environment in the course of normal operations, and persons on-site received controlled occupational exposures.

In addition, unlike the protection required by 10CFR50.54(w) which insures only the licensee, this regulation requires financial protection that includes as an insured all private entities that may be liable. Changes in 10CFR140.11 thus could adversely affect a much wider range of interests.

Tort liability claims by the public or on-site workers may allege harm caused at any time in the operating history of the reactor. Such claims might be asserted many years after the alleged exposure occurred. If the financial protection provided through policies issued by ANI and MAELU was terminated, as suggested by the petitioner, only claims for injury or damage caused during the policy period which are asserted within 10 years of the end of the policy period would be covered. ¹

¹ As respects claims arising out of an "Extraordinary Nuclear Occurrence", the ten-year period is extended to twenty years.

Other complications arise from terminating the policies.

For example, a claimant demands damages for alleged harm from contact with nuclear material both during and after the policy period. The terminated policies cover only liability for bodily injury or property damage during the policy period (the time the policies are in effect). The policies do not cover that part of the claim for harm caused after the end of the policy period.

Or, nuclear material may have been released while the policy was in effect, but the alleged contact with the material, and hence, the harm, was caused after termination of the policies. There would be no coverage under the policies for this claim.

The need to retain the primary layer of financial protection is reinforced by circumstances where a continuing risk is present in the form of a Licensed Independent Spent Fuel Storage Installation at the location.

So long as private insurance is available at reasonable cost and on reasonable terms, it should be utilized before the application of government indemnity. Assuming that these qualifying conditions are satisfied, the primary layer of financial protection of \$200 million, whether satisfied by our policies, or by other means, should be continued. The desirable result would be uninterrupted primary financial protection from private sources from the time new fuel is first shipped to the site until such time as the facility is released for unrestricted use. The ten-year discovery period which limits coverage to claims brought within ten years after the end of the policy period would only begin to run at that late date.

III. Secondary Layer of Financial Protection

The petitioner urges that a licensee not continue to be liable for retrospective assessments in the second layer of financial protection if all power reactors at its site have been shut down with all fuel removed from the location. The licensee would then be relieved of the assessment liability prescribed in Section 170b. of the Atomic Energy Law to contribute to the indemnity and claims expense due to nuclear incidents at any licensed power reactor.

It is reasonable that a licensee of a power reactor which is shutdown under normal conditions, and has had all fuel removed from the location, be relieved from having to continue its participation in the second layer. The relief afforded would be as respects liability for assessments for nuclear incidents that occur after a specified date. Assume, for example, that all fuel has been shipped from the site of the shutdown reactor and delivered elsewhere by December 31, 1995. The

licensee could be relieved of liability arising from nuclear incidents which occur after that date. Its Certificate of Insurance evidencing participation in the Second Layer of Protection would be terminated as of December 31, 1995.

Our view is the same in circumstances where a Licensed Independent Spent Fuel Storage Installation is established at the location. The risk to the public is orders of magnitude less than that of an operating reactor, and does not equitably support continuing the liability of the licensee for new events in the second layer of financial protection.

Though relieved of liability for future incidents, under the terms of the licensee's Certificate of Insurance, the licensee continues to be liable for claims which arise from nuclear incidents during the time its Certificate was in effect if such claims are brought within ten years after the Certificate is terminated.²

In summary, as respects section 10CFR140.11, it is important that the requirement for the full amount of the primary layer of financial protection be continued. This assumes that the financial protection available to licensees continues to be provided at reasonable cost and on reasonable terms.

We appreciate this opportunity to offer comment, and have sought to be constructive in our remarks.

Very truly yours,


Joseph Marrone
Sr. Vice President
& General Counsel
JM/jr

² With respect to claims that arise from an Extraordinary Nuclear Occurrence, the Second Layer of Financial Protection provides coverage for claims brought without limitation as to time.

JUCKEILL
USNRC

'92 MAR 25 A9:30

Marvin I. Lewis
7801 Roosevelt Boulevard
Suite 62
Phila., PA 19152
(215)624-1574

OFFICE OF SECRETARY
DUCKETING & SERVICE
BRANCH

Secretary
USNRC
Washington, D. C. 20555

15

Dear Mr. Secretary:

Docket PRM 50 57 is a petition for relief from insurance requirements. The petition ignores many facts. Contamination has occurred at many nuclear facilities, and the Department of Energy and the Department of Defense are admitting to cleanups which will cost in excess of \$150,000,000,000.00.

Hanford tanks may explode causing radioactive waste accidents in excess of those at Kyshtym in the Urals.

We have had too many nuclear surprises of late. We do not need to meet more nuclear surprises without sufficient insurance to assuage the injured parties.

I, respectfully, request that the NRC deny this petition for cause and with prejudice.

Respectfully submitted,

Marvin I. Lewis
3-15-92.