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RULEMAKINGS AND
ADJUDICATIONS STAFF**

August 29, 2005

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Ms. Annette Viete-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications StaffBy E-mail: SECY@nrc.gov**The Comments of Nuclear Information and Resource Service in Support of
PRM-54-02**

Dear Ms. Cook:

As noticed in the Federal Register 15, 2005 (Volume 70, Number 114) under Proposed Rules at Pages 34700-34702, I am submitting comments on behalf of Nuclear Information and Resource Service (NIRS) in support of Proposed Rulemaking 54-02 as offered by the State of New York's Westchester County Executive Andrew Span.

NIRS concurs and supports the findings, conclusions and requested actions as outlined in PRM 54-02 as presented by the petitioner, Westchester County Executive Andrew Spano.

NIRS concurs with the petitioner that the current process and criteria for twenty-year license extensions for commercial nuclear power stations are seriously flawed. NRC has established an inadequately low bar for public health, safety, security and environmental concerns under present rule that need only consider two fundamental criteria of whether an aging and in some cases antiquated nuclear power station judged by standards established when the reactor was originally built "continues to maintain adequate levels of safety" and whether the power reactor will do any harm to the immediate environment.

NIRS concurs with the petitioner that the process and criteria need to be amended so as to review the application for license extension as if the reactor site was being proposed *de novo* for initial construction. The criteria to be examined as part of a *de novo* renewal application should include areas of public health, safety and security currently addressed by NRC and nuclear industry's generic treatment of the majority of environmental issues and public safety within the license extension process. NIRS asserts that the current treatment unfairly excludes and denies the public and its independent experts from critical analysis on the risks and benefits of twenty additional years of operational wear and tear on safety-related equipment, as well as extending and enlarging the adverse environmental impacts from nuclear waste generation, routine and unscheduled offsite

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radioactive releases and the vulnerability of onsite nuclear waste storage systems to domestic security threats.

The Current License Renewal Process Has Created a Crisis of Confidence in the Age-Related Management of Safety-Related Reactor Systems, Structures and Components that can be Redressed by this Rulemaking

According to independent investigative reports from the U.S. Government Accountability Office and the NRC Office of the Inspector General, so-called "adequate levels of safety" are documented to have been compromised by NRC and the nuclear industry to prioritize the financial interests of the nuclear industry over public health and safety.¹ As such, NIRS contends that NRC and the nuclear industry have created a crisis of confidence in the application of its Generic Aging Lessons Learned (GALL) reactor safety management program as part of the license extension proceedings that inappropriately disallows public challenges to age-related degradation of safety-related systems, structures and components under the guise of effective ongoing generic age-related degradation management programs. For example, the vessel head inspection program had been established to manage cracking in control rod drive penetration sleeve cracking prior to the discovery of extensive corrosion in the Davis-Besse reactor pressure vessel head. In fact, NRC Regional III headquarters had evidence of extensive corrosion at Davis-Besse prior to the reactor restart in April 2000 that was ignored by NRC's Reactor Oversight Process. In fact, as early as September 2001, NRC staff had determined that the continued operation of an uninspected Davis-Besse vessel head presented an unacceptable risk to public health and safety and staff had drafted and finalized an Order to immediately shut the reactor down for critical inspections. At the eleventh hour, after meeting with senior management of the Davis-Besse operator, First Energy Nuclear Corporation, NRC senior management withdrew the Order in a compromise based in large part on the financial concerns of the operator. As a result, Davis-Besse was allowed to operate with ongoing corrosion that was removing load bearing carbon steel of the vessel head at unidentified rates. NRC gambled with the public safety margins to protect industry profit margins.

As such, the license extension process needs to be broadened in its scope and discontinue the GALL program as part of the agency's license extension process so as to provide public safety intervenors the opportunity to raise site-specific contentions on age-related degradation management issues.

The Current License Renewal Process Has Created a Crisis of Confidence in the

¹ "Nuclear Regulation: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown," United States Government Accountability Office, GAO-04-415, May 2005.

"NRC's Regulation of Davis-Besse Regarding Damage to the Reactor Vessel Head," Case No. 02-035, Office of the Inspector General, December 30, 2002.

**Safety and Security of Nuclear Waste Management that Must be Redressed that
Must be can by this Rulemaking**

Furthermore, NRC and the nuclear industry have also created a crisis of confidence in its license extension process by disallowing public adjudicatory involvement in the extension of nuclear waste generation at reactor sites seeking 20-year license renewals without a scientifically approved and demonstrated nuclear waste management program. Currently, the NRC license extension process disallows public safety and environmental based contentions on nuclear waste generation through reliance on its Nuclear Waste Confidence Decision of 1990. The Confidence Decision predicts for the purpose of nuclear power station licensing that a geologic repository will become available in the United States by the year 2025 and that high level radioactive waste or so-called "spent nuclear fuel" can be stored safely without significant environmental impact for at least 30-years beyond the licensed life of operation of the reactor it is generated at, including the term of a renewed reactor operating license. With the passage of time and the ongoing and continued slippage of the Department of Energy's Yucca Mountain, Nevada schedule (the only nuclear waste repository under characterization and licensing in the United States) that possibility no longer reasonably exists without unacceptably pre-judging the viability of a yet-to-be submitted License Application by the Department of Energy.

Additionally, in April 2005, the National Academy of Sciences released the public version of its Report to Congress on the "Safety and Security of Commercial Spent Nuclear Fuel Storage" whose findings include 1) terrorists attacks on nuclear power plant facilities pose a real threat because of large inventories of radionuclides they contain; 2) that terrorists might therefore chose to target "spent" nuclear fuel pools because they are less well protected structurally than reactor cores; 3) a successful attack on a "spent" nuclear fuel pool could have significant public health consequences.

Therefore, the license extension process needs to be broadened in its scope and not hide behind an increasingly dubious Nuclear Waste Confidence Decision by providing for the public intervention process to independently analyze and challenge inadequate site-specific onsite "spent" fuel storage systems including storage ponds and dry cask storage systems.

Sincerely,
Paul Gunter, Director
Reactor Watchdog Project

From: "Paul Gunter" <pgunter@nirs.org>
To: <SECY@nrc.gov>
Date: Mon, Aug 29, 2005 5:47 PM
Subject: NIRS Comments on PRM 54-02

Hello,

Attached please find the comments of Nuclear Information and Resource Service in support of PRM 54-02.

Thanks,

Paul Gunter, Director

Reactor Watchdog Project

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