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Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

February 6, 2009

Attention: Rulemaking and Adjudications Staff

Subject: Decommissioning Plant Coalition comments on U.S. Nuclear Regulatory Commission Proposed Rule 10 CFR 51 *Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operations* (73 Fed. Reg. 59547) and related *Waste Confidence Decision Update* (73 Fed. Reg. 59551), each dated October 9, 2008

Dear Ms. Vietti-Cook:

The Decommissioning Plant Coalition (DPC) appreciates the opportunity to provide comments on the Nuclear Regulatory Commission's (NRC) proposed revisions to 10 CFR 51 *Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation* (73 Fed. Reg. 59547) and the corresponding *Waste Confidence Decision Update* (73 Fed. Reg. 59551).

The Decommissioning Plant Coalition was established in 2001 to highlight issues unique to nuclear power plants undergoing decommissioning. The DPC focuses on addressing the needs of reactors at single-unit sites that are undergoing or have completed decommissioning activities. Members of the Decommissioning Plant Coalition joining in the submittal of these comments include the owners of the Connecticut Yankee (CT), LaCrosse (WI), Maine Yankee (ME), Rancho Seco (CA), and Yankee Rowe (MA) facilities.

As an initial matter and comment, it is our understanding that these initiatives are being undertaken with a view of facilitating the conduct of licensing activities, including proceedings on Combined Operating License (COL) applications for new reactors and we support the technical evaluation, based on the reasonable assurance of adequate protection of the public health and safety, of the Commission's proposed summary findings. There is a considerable basis for the

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Commission to express its confidence in the continued safe and effective management of spent nuclear fuel (SNF) until disposal is available.

The spent fuel (SF) and Greater-Than-Class-C (GTCC) material at our sites are under safe and secure storage and our efforts and those of the Commission's regulatory program ensure that this state will be maintained. We agree that the material will be safe and secure in dry storage for up to 50-60 years beyond the licensed life for reactor power operations. Moreover, there is no technical reason it couldn't be longer. Indeed, we agree with comments filed by the Nuclear Energy Institute that earlier conclusions of the Commission that spent nuclear fuel can be safely stored without significant environmental impact for at least 100 years has been bolstered and strengthened by the experience gained since it was first made in 1990. This technical evaluation is valid and it is fully appropriate that the Commission proceed with this action.

Additional Considerations Pertaining to Single-Unit Sites That Have Permanently Ceased Operations

There are, however, policy issues attendant with the Commission's actions that have unique and important implications for single-unit sites that have permanently ceased operations. As the Commission can appreciate, our members are poised to return their respective sites to other useful purposes for the community and society. The major impediment to that goal is the need to remove both SF and GTCC. Delays in our ability to completely return our sites to the full and free ranges of uses have significant societal impacts that exceed those at other facilities.

The DPC believes that the Commission's historical approach in formulating its proposed findings has taken into account a wider range of considerations beyond the technical evaluation of the length of time that SF and GTCC can be safely stored onsite and an estimate of the time necessary for DOE to begin to discharge its contract responsibilities to remove and dispose of this material. As relates to permanently shut down single unit sites, we believe it should continue to do so. We believe the Commission must extend its regulatory finding to encourage the U.S. Government to demonstrate actual and incremental progress toward transporting, consolidating, managing and ultimately disposing of the SF and GTCC at these sites.¹

The Commission currently, "supports timely disposal of spent fuel and high-level waste in a geologic repository and by this decision does not intend to support storage of spent fuel for an indefinitely long period" (FR 38482, September 18, 1990). It presumably reaffirms this position in this proposal by citing it in its

¹ One of our members, Dairyland Power Company, has no known GTCC at its Lacrosse site.

deliberations regarding finding 4. We strongly support this policy position and believe it should be explicitly stated in this update.

We also believe the Commission should go beyond the narrow limits of its proposed update and reinforce past positions taken by the NRC that this material should soon be removed from these sites. In 1995, the Commission testified² to its, "strong belief, a public health and safety belief, that the citizens and the environment would benefit significantly from an integrated three-phased approach to storage and disposal, all of the pieces, interim on-site storage, centralized offsite interim storage and deep geologic disposal, together with the transportation means to tie the three together." The NRC also stated that, "[C]onsidering the potential for decades of licensed storage, a centralized facility would allow for a more focused inspection and surveillance program by both NRC and DOE and would also offer operational and programmatic benefits on DOE's program for accepting waste from utilities."

Chairman Selin further opined that, "I don't think it makes any sense to figure out what you are going to do 50 years from now without worrying about what you are going to do 5 years, 10 years from now."

The NRC clearly impressed the Members of the House as it passed the Nuclear Waste Policy Act of 1995, noting in the accompanying Report:

"The NRC further testified that centralized interim storage would be a valuable component of DOE's program pending completion of the permanent repository. According to the NRC, a centralized facility would allow for a more focused inspection and surveillance program of spent nuclear fuel, and would decrease the already small likelihood of accidents at shut-down nuclear facilities with pool storage."³

The House also passed the Nuclear Waste Policy Act of 1997, and the accompanying Report repeated that same statement.⁴

Chairman Selin also offered his position that, "I do wish that I had been more active in saying that steps have to be taken in order to break the logjam on the high-level waste program. We took a perfectly defensible but ultimately ineffective position that we are regulators, we sit back, you bring us something and we tell you whether it will work or not. We have a strong interest in that the

² June 28, 1995 Hearing before the Subcommittee on Energy and Power, House Committee on Energy and Commerce

³ From House Report 104-254 Part 1 accompanying the Nuclear Waste Policy Act Of 1995

⁴ From House Report 105-290 Part 1 accompanying The Nuclear Waste Policy Act Of 1997

overall nuclear program to dispose of the waste correctly, not just that the specific site be licensable to do the job, and I wish I had been a little more proactive."

We believe that these words should carry weight with the Commission in approaching this update when considering our sites, as the logjam that existed in 1995 has not been appreciably relieved.

In addition, the long-term storage of SF and HLW has inordinate societal impacts in the locality of our sites. Additional periods of SF and HLW storage on our sites restrict the property owners and other local stakeholders from the full and free range of uses that would be desired once the SF and HLW are removed. It exacts inordinate economic burdens on local ratepayers and, to the extent that on-site storage precludes full productive uses of our sites, on local taxpayers. It leads to accumulating expenditures required by local entities regarding preparedness, etc., and it will lead to additional expenditure of resources to support re-licensing of our spent fuel storage facilities. At some locations it restricts any discussion that may take place about potential public uses for these tracts. Nationally, taxpayers will continue to be paying for breach of contract damages that already have been and will continue to be awarded to our companies for non-performance by the DOE.

Our sites differ from operating reactor sites in that the benefits to the community from the production of electricity via nuclear power have long-since passed. The current nuclear activity is to conduct storage of SF and GTCC under required surveillance and security, a long-term mission that was never envisioned at the outset of nuclear power generation activities in these communities.

We believe that, at a minimum, the Commission should express its expectation that these sites merit separate attention from those sites that have continuing nuclear power operations as the U. S. Government conducts its SF and HLW planning and operations

Extending periods of storage at our sites provide an avenue for the U.S. Government to prolong on-site storage while delaying the solution of the policy, fiscal, and other non-technical issues that affect the progress of SF and GTCC management. Your proposed update is a sound technical analysis of the safety case but provides no incentive for the U.S. Government to end the stalemate over when and how the DOE will take title to and remove the materials from our sites as provided by contract and national policy.

Your current analyses also take no account of the findings of recent studies by responsible bodies that are recommending the removal and consolidation of this material from our sites. The United States Congress, in its passage of the FY

2008 consolidated appropriation, clearly expressed its preference that the Department of Energy demonstrate progress in some element of nuclear waste policy by developing a plan to remove and consolidate this material from our sites (Report accompanying P.L. 110-161). The American Physical Society found; "Consolidated storage could facilitate the decommissioning of sites with reactors that have been shut down."⁵ The National Commission on Energy Policy urged that the government move ahead on a program to construct centralized dry-cask storage facilities to provide a back-up solution in case the repository is unduly delayed or derailed.⁶ The Keystone Center's Joint Nuclear Power Fact-Finding Report⁷ found value in centralized storage for decommissioned plant HLW and SF.

The Commission should also address and embrace the recent testimony of Kevin D. Crowley, Ph.D. Senior Board Director, Nuclear and Radiation Studies Board, National Research Council, before the Senate Committee on Commerce, Science, and Transportation Regarding the Safety and Security of Spent Nuclear Fuel Transportation on September 24, 2008; "Within the context of its current contracts with commercial spent fuel owners, DOE should initiate transport to the federal repository through a pilot program involving relatively short, logically simple movements of older fuel from closed reactors to demonstrate its ability to carry out its responsibilities in a safe and operationally effective manner."

We believe that the Commission's analysis must address these and other stakeholder endorsements as it considers this update to waste confidence. We therefore suggest that the Commission in this rulemaking add its expectation that the U.S. Government soon provide a demonstration that it can reach a consensus on a plan to take title to and remove SF and GTCC from permanently shut down, single-site facilities. Such an expectation and timeframe can be based on the success that the U.S. has demonstrated in safely handling and transporting SF and GTCC over many years, on the fact that our storage casks have dual-purpose licenses, on the fact that interim storage sites are licensable and/or available, and on the fact that shipments for reprocessing do occur regularly between commercial entities on an international scale. In short, with the knowledge that these and other options for removal and management do exist,⁸

⁵ Panel on Public Affairs, "Consolidated Interim Storage of Commercial Spent Nuclear Fuel: A Technical and Programmatic Assessment" (Feb 2007)

⁶ Page 58, NECP Report, "Ending the Energy Stalemate," December 2004

⁷ Nuclear Power Joint Fact Finding, Keystone Center, June 2007

⁸ The DPC also takes exception to analysis (in footnote 24) used to illustrate uncertainty regarding the prospective opening of a private storage facility, in this specific case PFS, and a February 2006 National Academy study used to illustrate "another issue" that is not otherwise developed and analyzed.

In the first instance, PFS, the simple fact is that the NRC has licensed the facility. The Commission would do well to comment that it is THE safe and secure licensed facility that should be utilized to reduce waste confidence concerns. You can observe, consistent with historical Commission concerns about dual and

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we believe the Commission should lay down firmly a charge to the Executive and the Legislative branches that they work with stakeholders to overcome funding, policy, legal, and other issues that might hinder action in the time frame you propose.

Otherwise, the Commission's intent to not support on-site storage of spent fuel for," an indefinitely long time," will be increasingly unenforceable and its meaning diminished with respect to these permanently shut-down sites.

Sincerely,



Michael S. Callahan
On behalf of the Decommissioning Plant Coalition

multiple regulation, that legislation can effect a reduction in the multiple and redundant political and regulatory jurisdictions over use of such facilities.

In the second instance, the NRC cites the National Research Council's report (Going The Distance...) on page 214, "malevolent acts against...shipment are a major technical...concern." We disagreed then and we do not agree now that there are major technical issues surrounding the shipment of GTCC and spent fuel. There are years of accumulated transportation experience that demonstrate otherwise. We suggest deleting this footnote or rewrite it with alternate and incontrovertible examples of the point or points the Commission wishes to make.

Rulemaking Comments

From: Michael Callahan [mike_callahan@govstrat.com]
Sent: Friday, February 06, 2009 2:13 PM
To: Rulemaking Comments
Subject: Comments re Waste Confidence
Attachments: DPC_WasteConfidenceComments.pdf; ATT00001.txt

Attached are Comments from the Decommissioning Plant Coalition re Waste Confidence.

Michael S. Callahan

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