

PRM-54-6  
(75FR59158)



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NUCLEAR ENERGY INSTITUTE

DOCKETED  
USNRC

Ellen C. Ginsberg  
VICE PRESIDENT, GENERAL COUNSEL & SECRETARY

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**BY ELECTRONIC MAIL**

Ms. Annette Vietti-Cook  
Secretary of the Commission  
Attn: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

**Re: Request for Comment, PRM-54-6; NRC-2010-0291  
75 Fed. Reg. 59,158 (Sept. 27, 2010)**

Dear Ms. Vietti-Cook:

In response to the above-referenced *Federal Register* notice, the comments of the Nuclear Energy Institute (NEI)<sup>1</sup> on the petition for rulemaking docketed as PRM-54-6 are set forth in the Enclosure to this letter. NEI opposes the Petition in its entirety.

This Petition seeks amendment of 10 CFR 54.17(c) to require that license renewal applications be submitted to the NRC no earlier than 10 years before expiration of the current operating license or combined license. Section 54.17(c) now provides: "An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect." In addition to halving the lead time available for submittal of NRC license renewal applications, Petitioners request that this more restrictive schedule be applied to all pending license renewal applications that have not yet been issued an NRC Final Safety Evaluation Report, and that the NRC also suspend all license renewal reviews pending disposition of the rulemaking.

As discussed in the enclosed NEI comments, the Petition fails to provide adequate legal, factual or policy-based support for the assertions it makes or the relief it seeks. First, by raising issues that the Commission thoroughly considered in promulgating its 1991 and 1995 license renewal

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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rules, the Petition ignores the carefully crafted regulatory framework, including 10 CFR 54.17(c), that supports license renewal. Granting this Petition would directly undermine the Commission's intent in developing the regulatory framework for license renewal to "meet the need of utilities to be informed of license renewal requirements sufficiently early so that utilities can either prepare for license renewal or pursue alternative sources of generating capacity." NRC's recognition of the need for sufficient lead time for corporate decision-making, which underlies Section 54.17(c), applies whether companies opt for license renewal of their nuclear facilities or development of alternative sources of generating capacity.

Because Petitioners present no new information that contradicts NRC positions in the existing renewal regulations or that provides sufficient cause to modify those positions, ample grounds exist to deny the Petition. Additionally, Petitioners fail to demonstrate that the existing 10 CFR 54.17(c) is "unduly non-conservative" in any respect, or that this provision adversely impacts the completeness and accuracy of NRC license renewal applications, public participation in NRC licensing hearings, the adequacy of plant aging analyses or environmental analyses in renewal applications, or license renewal applicants' compliance with National Environmental Policy Act or changing NRC regulations.

From a policy perspective, the Petition also should be denied because granting the relief sought could disrupt utility planning for future electric generation at a time when continued operation of the nuclear fleet (which license renewal facilitates) is needed to ensure a reliable energy supply. Given the significance of nuclear power to the Nation's long-term energy security, and the number of license renewal applications now pending at the NRC or expected to be filed in the next several years, such a result is untenable:

In sum, granting the relief Petitioner seeks will not enhance the NRC's license renewal process. It would, however, unfairly constrain NRC licensees' ability to file renewal applications sufficiently far in advance of existing license expiration, thus unnecessarily impeding current and future license renewal proceedings for commercial nuclear power plants.

Because it is deficient in all of these respects, as shown in the enclosed comments, the Petition should be denied in its entirety.

Sincerely,



Ellen Ginsberg

Enclosure

c: Stephen G. Burns, NRC General Counsel

**NUCLEAR ENERGY INSTITUTE COMMENTS OPPOSING PETITION FOR  
RULEMAKING (PRM 54-6) TO AMEND NRC REQUIREMENTS IN  
10 CFR 54.17 AND FREEZE ALL NRC RE-LICENSING ACTIVITY**

**I. OVERVIEW**

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> submits the following comments in opposition to the August 17, 2010, petition for rulemaking (Petition) docketed as PRM-54-06. The Petition was filed with the U.S. Nuclear Regulatory Commission (NRC) on behalf of Earth Day Commitment d/b/a Friends of the Coast Opposing Nuclear Pollution, Beyond Nuclear, New England Coalition on Nuclear Pollution d/b/a New England Coalition, Inc., Seacoast Anti-Pollution League, Pilgrim Watch, and C-10 Research & Education Foundation. NRC published a notice of receipt of the rulemaking petition at 75 Fed. Reg. 59,158 (Sept. 27, 2010).

Regarding the time frame for filing license renewal applications (LRAs), NRC regulations in 10 CFR 54.17(c) provide that: "An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect." The Petition seeks amendment of 10 CFR 54.17(c) to require that license renewal applications be submitted to the NRC no earlier than 10 years before expiration of the current operating license (OL) or combined license (COL). Petitioners suggest that halving the lead time permitted for NRC license renewal applications from 20 to 10 years will "restore some margin of conservation."

Further, Petitioners request that their proposed change be applied retroactively to all pending license renewal applications that have not yet been issued an NRC Final Safety Evaluation Report. Petition, p. 13. However, retroactivity is not favored under the law. *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988). On this point, see the discussion in the comments of NextEra Energy on PRM-54-6, pp. 11-12.

In addition to advocating a significant change to the license renewal process, the Petition asks NRC to "suspend all license renewal review" pending disposition of the rulemaking. Petition, p. 12. The NRC has determined that this request is not part of the rulemaking process and has indicated it will address the request in a separate action. See 75 Fed. Reg. at 59,160. NEI agrees with the NRC's determination and we therefore do not address that aspect of the Petition further in these comments, except to note that we do not support Petitioners' stated rationale for suspending all license renewal reviews. In this regard, 10 CFR 2.802(d) allows a petitioner to make such a suspension request only with respect to a "licensing proceeding to which the petitioner is a party."

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<sup>1</sup> NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, as well as nuclear plant designers, architect-engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry. NEI therefore has a direct and substantial interest in the outcome of this rulemaking petition.

The Petition fails to provide adequate legal, factual or policy-based support for the assertions it makes or the relief it seeks. By raising issues the Commission has already considered in promulgating its license renewal rules, the Petition ignores the carefully crafted regulatory framework, including 10 CFR 54.17(c), that supports license renewal. Other aspects of the Petition address topics that are managed by the Commission's ongoing regulatory oversight processes and regulations, which should not be addressed through changes to the license renewal rules. Significantly, Petitioners present no new information that contradicts NRC positions in the existing renewal rule or that provides sufficient cause to modify those positions. Under such circumstances, ample precedent exists to support denial of the Petition.<sup>2</sup>

Granting this Petition would countermand the Commission's intent in developing the regulatory framework for license renewal to "meet the need of utilities to be informed of license renewal requirements sufficiently early so that utilities can either prepare for license renewal or pursue alternative sources of generating capacity."<sup>3</sup> Requiring licensees to delay filing renewal applications until 10 years (rather than 20 years) before OL expiration would undermine that purpose and create a disincentive for future license renewal applicants.

NRC's recognition of the need for sufficient lead time for corporate decision-making, which underlies Section 54.17(c), applies whether companies opt for license renewal of their nuclear facilities or development of "alternative sources of generating capacity." Completion of the business planning process that many NRC licensees follow effectively requires decisions about future generating capacity to be made many years in advance. If a decision is made to pursue license renewal, many months are needed to prepare the LRA, followed by several additional years for the NRC staff to review and act on the application. During the pendency of the LRA, the applicant must support the NRC's review and participate in any contested licensing hearings. While the Commission anticipates that the renewal process generally takes 24 to 30 months, the accuracy of this estimate has been challenged by several extended license renewal proceedings (e.g., Vermont Yankee (VY) and Pilgrim) that are each approaching five years since LRA submittal without an NRC decision. Similar delays may also arise in other renewal proceedings. Thus, NRC's authorization of a 20-year lead time for filing an LRA has been shown to be a reasonable and prudent policy decision.

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<sup>2</sup> See NRC denial of petitions for rulemaking submitted by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02), and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03), which states: "The NRC is denying the petitions because the petitioners raise issues that the Commission has already considered at length in developing the license renewal rule. These issues are managed by the on-going regulatory process or under other regulations; or are issues beyond the Commission's regulatory authority. The petitioners did not present new information that would contradict positions taken by the Commission when the license renewal rule was established or demonstrate that sufficient reason exists to modify the current regulations." 71 Fed. Reg. 74,848, 74,851 (Dec. 13, 2006); *aff'd*, *Spano v. NRC*, 293 Fed. Appx. 91 (2d Cir. 2008) (unpublished order).

<sup>3</sup> 53 Fed. Reg. 32,919 (Aug. 29, 1988); see also U.S. NRC, "Regulatory Options for Nuclear Plant License Renewal," NUREG-1317 at 2-4 (Aug. 1988).

Similarly, if the decision is made to pursue alternative sources of generating capacity, Section 54.17(c) recognizes that it may take 12 to 14 years to plan, site, engineer, procure, and construct a replacement facility. 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991). Our view, therefore, is that allowing renewal applications to be submitted no earlier than 10 years before the expiration of the current OL would leave inadequate time to prepare for development of alternative power sources if license renewal is denied. This is particularly true in the case of a 5-year NRC licensing review scenario like that described above. Industry experience indicates that five years is almost certainly inadequate to obtain the necessary permits and financing, complete construction and bring another generation source on line.<sup>4</sup> From a policy perspective, granting the Petition could disrupt utility planning for future electric generation, at a time when continued operation of the nuclear fleet (which license renewal facilitates) is needed to ensure a reliable energy supply. Given the significance of nuclear power to the Nation's long-term energy security, and the number of license renewal applications now pending at the NRC or expected to be filed in the next several years, such a result is untenable.

Contrary to their claims, Petitioners also fail to demonstrate that the existing 10 CFR 54.17(c) is "unduly non-conservative" in any respect, or that this provision adversely impacts the completeness and accuracy of NRC license renewal applications,<sup>5</sup> public participation in NRC licensing hearings, the adequacy of plant aging analyses or environmental analyses in renewal applications, or license renewal applicants' compliance with National Environmental Policy Act (NEPA) or changing NRC regulations.

In sum, granting the relief Petitioner seeks will not enhance the NRC's license renewal process, under which NRC thoroughly considers both the relevant safety issues and those bona fide environmental impacts that might proximately be caused by the underlying licensing action. Granting the Petition would, however, hamstring NRC licensees' ability to file renewal applications sufficiently far in advance of existing license expiration. This could unnecessarily impede current and future license renewal proceedings for commercial nuclear power plants.

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<sup>4</sup> The Petitioners fail to account for the fact that if it were to opt not to pursue license renewal, NextEra would still not be in a position to wait 20 years, survey the status of offshore wind technology, and immediately install wind turbines even if that technology were technically feasible and commercially viable. Petition, pp. 10-11. As the Commission has recognized, it can take a decade or more to replace a large baseload generating facility. We understand that at least 10 years, if not longer, would be needed to plan and/or procure, license and construct the transmission lines and wind turbines necessary for such a project. This reality underscores the conclusion that the alternatives the NRC is required to evaluate are those that are available now. It would be unreasonable to require any reactor licensee to wait until near the end of the current period of licensed operation before considering whether to renew the license of such a large source of baseload electricity. Similarly, it would be unreasonable to consider denying renewal applications on the basis of speculation about a currently unavailable alternative energy source.

<sup>5</sup> 10 CFR 50.9 requires that information provided to the NRC by a license applicant be maintained so as to be "complete and accurate in all material respects." As the Petition does not show that 10 CFR 54.17 compromises the completeness and accuracy of LRAs in any way, we do not address Petitioners' statement about completeness and accuracy further.

Because it is deficient in all of these respects, as discussed in more detail below, the Petition should be denied.

## **II. ARGUMENTS SUPPORTING THE DENIAL OF THE PETITION FOR RULEMAKING**

### **A. NRC Permissibly Exercised its Broad Statutory Authority in Establishing a License Renewal Framework through an Informed Rulemaking Process**

The Atomic Energy Act of 1954, as amended (AEA), gives the Commission considerable latitude in determining how to achieve its statutory mandate to protect the public health and safety against radiological hazards. *Siegel v. NRC*, 400 F.2d 778, 783 (D.C. Cir. 1968). This is particularly true with respect to license renewal, where both the AEA and its legislative history are silent concerning how license renewal is to be accomplished and what standards apply.

The NRC's license renewal rules represent an informed, reasoned, and permissible exercise of this statutory authority. The Commission established its renewal regulations after extensive deliberations, based on its determination that existing regulatory processes are adequate to ensure that the licensing bases of currently-operating nuclear power plants provide and maintain an adequate level of safety.<sup>6</sup> The license renewal rules further reflect the NRC's considered policy judgments that (i) issues relevant to both current operation and extended operation during the license renewal period should be addressed when they arise, not postponed until a license renewal decision (56 Fed. Reg. 64,943, 64,946); and (ii) duplicating the Commission's ongoing regulatory reviews in a license renewal proceeding would waste NRC resources, which are better focused on aging management concerns.<sup>7</sup>

In promulgating its license renewal rules, the Commission explained how its regulatory processes reasonably assure that each plant's current licensing basis (CLB) (as defined at 10 CFR 54.3) maintains an adequate level of safety:

Since initial licensing, each plant has continually been inspected and reviewed as a result of new information gained from operating experience. Ongoing regulatory processes provide reasonable assurance that, as new issues and concerns arise, measures needed to ensure that operation is not inimical to the public health and safety and common defense and security are "backfitted" onto the plants.

56 Fed. Reg. at 64,945. Further, stated the NRC:

[T]he Commission engages in a large number of regulatory activities which, when considered together, constitute a regulatory process that provides ongoing assurance that the licensing bases of nuclear power plants provide an acceptable level of safety.

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<sup>6</sup> See 71 Fed. Reg. 74,848, 74,851 (NRC denial of Spano and Sparpelli rulemaking petitions); see also 60 Fed. Reg. 22,461, 22,464 and 22,481-82 (May 8, 1995) (NRC final rule amending license renewal rules).

<sup>7</sup> See 56 Fed. Reg. at 64,946; *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001).

This process includes research, inspections, audits, investigations, evaluations of operating experience, and regulatory actions to resolve identified issues. The Commission's activities may result in changes to the licensing bases for nuclear power plants through the promulgation of new or revised regulations, acceptance of licensee commitments for the modification to nuclear power plant designs and procedures, and the issuance of orders or confirmatory action letters or confirmation that there is no need to change the licensing basis. In this way, the Commission's consideration of new information provides ongoing assurance that the licensing bases of all nuclear power plants provide an acceptable level of safety. This process will continue through the term of a renewed license.

56 Fed. Reg. at 64,947; 71 Fed. Reg. at 74,845. The Commission also discussed the NRC inspection programs conducted to ensure that each nuclear power plant remains in compliance with its current licensing basis. 56 Fed. Reg. at 64,951.

**B. NRC Considered Petitioners' Arguments on the 10 CFR 54.17(c) 20-Year Timing Requirement in Promulgating the 1991 and 1995 License Renewal Rules and Petitioners Have Not Presented Information to Disturb the Commission's Judgments**

The issues Petitioners raise concerning the timing of license renewal applications were fully and thoughtfully considered by the Commission in the 1991 rulemaking promulgating 10 CFR Part 54. There was an opportunity for public comment on the renewal application timing question in that rulemaking. In the Supplementary Information accompanying the 1991 final rule, the NRC pointed out that "neither the AEA [Atomic Energy Act] nor the Commission's current regulations set a limit on how long before expiration of the operating license a renewal application may be filed." The NRC imposed such a limit "to ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application." See 56 Fed. Reg. at 64,963. In particular, the Commission stated:

While the Commission accepts the premise that operating experience is important, it rejects the suggestion that 20 years of operational and regulatory experience with a particular plant is an insufficient period in which to accumulate information on plant performance. A nuclear power plant will undergo a significant number of fuel cycles over 20 years, and plant and utility personnel will have a substantial number of hours of operational experience with every system, structure, and component. The NRC believes that the history of operation over the minimum 20-year period provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation.

Commenters incorrectly suggest that new information about plant systems and components as well as age-related degradation concerns discovered after the renewed license is issued would not be considered by the NRC or would not be factored into a plant's programs. The CLB of a plant will continue to evolve throughout the term of the renewed license to address the effects of age-related degradation as well as any other operational concern that arises. The licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis. The NRC's regulatory oversight activities will also assess any new information on age-related degradation or

plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety. The commenters ignore the fact that both renewal applicants and the NRC will have the benefit of the operational experience from the nuclear industry and are not limited to information developed solely by the utility seeking a renewed license. For example, there are now approximately 1400 reactor years of operating experience in the U.S. nuclear power industry. This experience will increase each year. All of this experience would be considered by the NRC in evaluating the adequacy of licensee-proposed activities to address age-related degradation in connection with a renewal application.

The Commission disagrees with a commenter's proposal that a 5-year, or even a 15-year, time limit for filing renewal applications will be adequate. In proposing the earliest date of application, the Commission considered the time necessary for utilities to plan for replacement of retired nuclear plants. Industry studies estimate that the lead time to build a new electric generation plant is 10 to 12 years for fossil fuels and 12 to 14 years for nuclear or other new technologies. When the staff review is factored into the decision process, the Commission concludes that applications 18 to 20 years before expiration of a licenses [sic] are not unreasonable. For these reasons, the final rule permits the application for a renewed license to be filed 20 years before expiration of an existing operating license.

56 Fed. Reg. 64,943, 64,963.

Subsequently, in the 1995 rulemaking amending 10 CFR Part 54, the NRC addressed the question of whether reactor licensees should be allowed to submit renewal applications *more than 20 years* before expiration of the current license, and again sought public comment on the question of whether a sufficient plant-specific history exists before 20 years of operation to provide reasonable assurance that aging concerns would be identified.<sup>8</sup> After evaluating public comment on this question, the NRC decided not to modify the 1991 rule on this point but stated its willingness to consider "plant-specific exemption requests by those applicants who believe that they may have sufficient information available to justify applying for a renewal license prior to 20 years from the expiration date of the current license." 60 Fed. Reg. 22,461, 22,488. Several license renewal applicants have followed that approach.

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<sup>8</sup> On this issue, the Supplementary Information accompanying the final rule states: "The Commission concluded in the SOC for the current license renewal rule (56 FR 64963; December 13, 1991) that 20 years of operational and regulatory experience provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation. In addition, a license renewal decision with approximately 20 years remaining on the operating license would be reasonable considering the estimated time necessary for utilities to plan for replacement of retired nuclear power plants. One utility has recently indicated that decisions regarding license renewal made earlier in the current license term may create substantial current-day economic advantages while still providing sufficient plant-specific history. This utility suggested that the earliest date for filing a license renewal application be changed so that a license renewal application can be submitted earlier than 20 years before expiration of the existing operating license. The term of the renewed license would still be limited to 40 years." 60 Fed. Reg. 22,461, 22,487.

In sum, NRC discussion accompanying promulgation and amendment of the license renewal rules clearly sets forth the agency's informed decision that the 20-year lead time allowed for submittal of LRAs under 10 CFR 54.17(c) is appropriate. By urging the Commission to re-interpret and contort the license renewal regulatory framework to achieve the result they seek, Petitioners ignore this important regulatory history. NRC established its renewal process through extensive and transparent rulemakings, as a valid exercise of its broad statutory authority. The resulting license renewal rules reflect reasoned determinations and policy judgments concerning the renewal process, including the schedule for filing renewal applications. Petitioners fail to present any information that undermines those agency judgments or otherwise shows that the renewal process is flawed as a matter of law, policy or licensing experience. The Petition should therefore be denied.

C. The Petition Fails to Demonstrate that the 10 CFR 54.17(c) Filing Schedule for Renewal Applications Is "Non-Conservative" or Obsolete

In section II.C., argument 1, the Petition alleges but does not demonstrate that 10 CFR 54.17(c) is "antiquated and obsolete" and must be reconsidered in light of "sweeping changes in NRC oversight and prior to economic and regulatory shifts that enabled unprecedented changes in ownership and an industry-wide shift of focus from anticipated decommissioning to uprate and license renewal." Petition, pp. 4-5. The Petition is devoid of information supporting this broad assertion. It provides neither examples of changes in "NRC oversight" nor any explanation as to how such changes allegedly affected licensees' aging management reviews and/or their schedules for submitting renewal applications. Absent any specifics to support this claim, Petitioners' argument must be discounted.

Nor does the Petition address the purported relevance of industry deregulation and changes in nuclear plant ownership to "the dynamics of license renewal aging analysis and aging management planning." All applicants for NRC license renewal, regardless of their corporate structure, must comply with the Commission's requirements. Further, the Petition includes no analysis of how industry deregulation allegedly made Section 54.17 "obsolete." Such broad, unsubstantiated claims provide no viable support for the rulemaking petition.

This section of the argument further states that: "Of 32 license renewals granted, to the petitioner's knowledge, none were filed 20 years in advance of license expiration . . . ." (Petition, p. 5). Contrary to Petitioners' assertions, the NRC website shows that NRC has, to date, granted renewed licenses for 60 nuclear power plants and the NRC staff is currently reviewing renewal applications for an additional 22 nuclear plants. Moreover, Petitioners' claim that the renewal application for the Seabrook Station, Unit 1, is the first renewal application to have been filed 20 years in advance of the expiration of the current OL is incorrect. In fact, the NRC has granted renewal licenses for several LRAs (e.g., McGuire Unit 1, Beaver Valley Unit 2, V.C. Summer, Wolf Creek, Shearon Harris, and Vogtle Unit 1) filed around the 20-year point. The Commission's willingness to consider exemptions from 10 CFR 54.17(c) also has allowed a number of licensees to submit renewal applications for facilities (including Vogtle Unit 2, Nine Mile Point Unit 2, St. Lucie Unit 2, McGuire Unit 2, Catawba Units 1 and 2, and Millstone Unit 3) with more than 20 years remaining on their OLs. Given this precedent, NextEra Energy Seabrook, LLC, the licensee for the Seabrook Station, is not an outlier and need not provide a

"justification" for its filing date (beyond that required in NRC regulations). Accordingly, the arguments in this section do not justify modifying the license renewal rules.

D. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Unfairly Affects Public Stakeholders' License Renewal Hearing Rights

In section II.C., argument 2, the Petition states: "The rulemaking for 10 CFR 54.17(c) proceeded without sufficient consideration of the impact of 20 year advance consideration of license renewal on the hearing rights of affected persons." Petition, pp. 5-6. To the extent Petitioners seek to suggest that the hearing rights currently provided in connection with NRC license renewal applications are legally insufficient because of the application filing schedule allowed under Section 54.17(c), this assertion is groundless and should be rejected.

First, "there is no fundamental right to participate in administrative adjudications."<sup>9</sup> Section 189.a. of the Atomic Energy Act of 1954, as amended (AEA), provides *an opportunity for a hearing* in connection with certain NRC licensing activities; NRC regulations set forth procedures to be followed for license renewal-related licensing hearings. See 56 Fed. Reg. 64,943, 64,960-61. The scope of the license renewal hearing is limited to consideration of age-related degradation unique to license renewal and compliance with NEPA. The hearing does not address the adequacy of, or compliance with, the plant's licensing basis. *Id.*

Further, as a practical matter NRC rules contemplate that when a contested license renewal hearing is held, the schedule for the hearing is established in relation to the NRC staff's issuance of its safety (SER) and environmental (SEIS) licensing documents. Parties in NRC contested licensing hearings have the opportunity to raise issues both after the LRA is submitted and also during the months immediately following the staff's completion of its extensive licensing review and the issuance of the safety and environmental licensing documents. The advantages of this approach are obvious. Because the licensing hearing focuses on the license renewal application itself (not future generations of potential stakeholders, visitors and commercial interests as the Petition suggests), hearing issues are most effectively addressed while the LRA is before the agency. Contrary to Petitioners' assertion, there is no statutory, regulatory or other rationale for delaying the hearing until the renewed license goes into effect. Nor do we believe most interested persons would agree to such a delay, which would surely undercut the timely consideration of licensing issues.

Petitioners' suggestion that a license renewal phase adjudicatory hearing is the only avenue of communication available to members of the public that wish to raise license renewal concerns closer to the date of the renewal license also ignores other regulatory provisions. Any safety issues relating to plant operation that arise after license renewal will be addressed using the array of processes available to the Commission. Members of the public have the right to be involved in other licensing hearings (e.g., license amendment proceedings), notice and comment rulemakings, public comment on the development of NRC regulatory guidance, and petitions to the NRC seeking enforcement action under 10 CFR 2.206. Accordingly, the arguments in this section do not justify modifying the license renewal rules.

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<sup>9</sup> *Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 354 (1<sup>st</sup> Cir. 2004).

E. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Constitutes Improper "Segmentation" of the Proposed Licensing Action under NEPA

Argument 2 also asserts that 10 CFR 54.17(c) allows "effective segmentation of the proposed action rendering the permission so far removed in time from the implementation as to provide an intellectual disconnect or, in effect, void legal notice." Petition, pp. 5-6. To the extent this statement is intended to suggest that Section 54.17 allows improper "segmentation" of NRC licensing decisions relating to license renewal, that claim is incorrect and should be rejected.

NEPA requires that an agency consider "connected actions," which CEQ regulations define as proposed actions that (i) automatically trigger other actions which may require environmental impact statements, (ii) cannot or will not proceed unless other actions are taken previously or simultaneously, or (iii) are interdependent parts of a larger action and depend on the larger action for their justification.<sup>10</sup> Courts have therefore held that an agency may not "segment" or consider portions of a project separately to avoid acknowledging significant environmental impacts.<sup>11</sup>

The Commission has addressed the concept of segmentation in the final rule promulgating the 2007 amendments to the Limited Work Authorization regulations:

Generally, the NEPA segmentation problem arises when the environmental impacts of projects are evaluated in a piecemeal fashion and, as a result, the comprehensive environmental impacts of the entire Federal action are never considered or are only considered after the agency has committed itself to continuation of the project. Another associated segmentation problem arises when pieces of a Federal action are evaluated separately and, as a result, none of the individual pieces are considered "major Federal actions" requiring an EIS.

Neither of these situations describes Petitioners' dissatisfaction with the NRC's license renewal process. Further, in the example posed by the Petitioners there can be no illegal segmentation since there is only a single, unsegmented Federal action whose environmental impacts must be considered under NEPA. The issuance of a renewal license and the initiation of the period of extended operation under that renewal license are part of the same Federal action; there is no additional "connected action." Therefore, the potential environmental impacts of the proposed license renewal are considered together, not piecemeal. There is simply no showing of any attempt by the NRC to avoid consideration of the environmental impacts associated with license renewal projects, or to deprive the public of information related to those impacts, by dividing a larger project into smaller units. Put another way, Section 54.17(c) does not provide for (or result in) NRC consideration of different aspects of the Federal action separately in an effort to

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<sup>10</sup> See 40 CFR §§ 1508.7, 1508.8, and 1508.25; see *Scientists' Institute for Public Information v. AEC*, 481 F.2d 1079, 1087 (D.C.Cir. 1973) (EIS required for overall project where individual parts of project are related logically or geographically).

<sup>11</sup> See e.g. *West Chicago v. NRC*, 701 F.2d 262 (7th Cir. 1983) (illegal "piecemealing" or "segmentation" allows agency to avoid requirements of NEPA).

avoid acknowledging significant environmental impacts. Accordingly, the arguments in this section do not justify modifying the license renewal rules.

F. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Improperly Allows License Renewal Applications to Avoid Addressing Environmental Changes

In section II.C., argument 3, Petitioners assert that Section 54.17(c) permits license renewal applicants and NRC Staff "to press to untenable lengths the unproven ability to predict the aging and deterioration of systems, structures, and components." Petition, p. 6. No specific support is provided for this speculative claim, which in any event is refuted by the regulatory history of 10 CFR Part 54, discussed above. Moreover, the focus of NRC's license renewal program is not to predict specific failures but rather to demonstrate how renewal licensees' programs will effectively detect and manage the effects of aging, and continue to perform their intended function, during the period of extended operation.<sup>12</sup> In sum, the arguments in this section do not justify modifying the existing license renewal rules.

G. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Allows LRA Submittal Before Sufficient Information on Plant Aging Is Available

In section II.C., argument 4, Petitioners contend that filing for license renewal 20 years before expiration of the current OL minimizes the plant information available since "anticipated end-of-life design and aging issues have hardly, if at all, begin to emerge . . . ." Petition, p. 7. The Petition refers to the "Beaver Valley containment issue" and, even more broadly, the Vermont Yankee (VY) "later life structural failures," but offers no supporting details. What the Petition does not say is that to the extent these component failures were within the scope of license renewal, they would have been considered in these facilities' renewal proceedings. To the extent these matters were not properly within the scope of license renewal, they were addressed as part of the licensees' ongoing operation, e.g., the corrective action and operating experience programs, and the NRC's continuing regulatory oversight process. In fact, these are good examples of the way licensees' aging management programs are continuously evaluated and adjusted, no matter how many years the plant has operated. Finally, Petitioners make no showing that the identification and resolution of either the Beaver Valley or the VY issues would have been any different if those licensees had been required to filing their renewal application within 10 years (rather than 20 years) before expiration of the existing operating licenses.

This section also mentions the "bath tub curve" to support the claim that "for many SSCs the information flow rates increase rapidly in the fourth quarter and toward the end of the license." Petition, p. 7. Because Petitioners provide no additional detail to support this claim, it should be discounted. Moreover, the relevance of this technical concept to the relief requested seems quite tenuous, since, as we understand it, the so-called "bath tub curve" for component reliability trends does not apply to components that are subject to aging management programs. Rather, this curve applies when components have little or no maintenance or aging management activities applied. Aging management programs identify aging effects and

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<sup>12</sup> See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 4.

manage them prior to component failure such that the projected high failure rate portion of the "bath tub curve" is avoided. This continuous "resetting" of the component reliability baseline due to the aging management activities ensures that failure trends do not increase with time.

To the extent the Petition claims that 20 years of plant operating experience is insufficient to provide a valid basis for renewal applications, the Commission has previously addressed and dismissed that argument in its 1991 final rule:

While the Commission accepts the premise that operating experience is important, it rejects the suggestion that 20 years of operational and regulatory experience with a particular plant is an insufficient period in which to accumulate information on plant performance. A nuclear power plant will undergo a significant number of fuel cycles over 20 years, and plant and utility personnel will have a substantial number of hours of operational experience with every system, structure, and component. The NRC believes that the history of operation over the minimum 20-year period provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation.

56 Fed. Reg. 64,943, 64,963. Petitioners make no showing that undermines this agency decision or its underlying rationale. Further, with respect to industry operating experience, NRC has recognized that "both renewal applicants and the NRC will have the benefit of the operational experience from the nuclear industry and are not limited to information developed solely by the utility seeking a renewed license. . . . This experience will increase each year." *Id.* NRC considers this experience in evaluating the adequacy of activities to address age-related degradation in connection with a renewal application.<sup>13</sup>

Petitioners' argument is also belied by the stringency of the NRC's license renewal process and the application of that mature process to 60 reactors to date – over half the U.S. fleet. For example, plant aging effects are continuously monitored, trended, and addressed from the date the plant begins operation. Plant aging management programs include monitoring, trending, inspection, and surveillance activities that begin at year 1 and continue for the operating term of the plant, whether it is 30, 40, 60, or more years. These programs ensure that aging effects are managed and components are repaired, maintained, refurbished, or replaced prior to a loss of function.

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<sup>13</sup> The continuous review of operating experience is an important element of every aging management program. The data collected is analyzed and evaluated to ensure that relevant operating experience is applied to modify, adjust, add, or delete aging management activities. If an aging management program is found to be ineffective or less effective than planned, the corrective action program is used to address the identified weaknesses. In terms of the scope of operating data available, the 104 operating nuclear power plants in the U.S. have experience with aging management programs spanning more than 40 years. The collective U.S. and world experience is used when evaluating LRAs for plants with 20 years or more of operating experience. It is incorrect to conclude (as Petitioners suggest) that plants with less than 30 years of operating experience lack sufficient aging data to support a renewal application and review by NRC.

Utilities that apply for license renewal with 20 years remaining on their operating license are proactive in dealing with long term aging management. These renewal applicants should be encouraged to perform the required aging management and environmental reviews as earlier as possible, since that would allow more time to evaluate and implement aging management programs for long term operation. Rather than discourage early applications, it would make more sense to encourage such proactive efforts. In sum, the arguments in this section do not justify modifying the license renewal rules.

H. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Exacerbates NRC Staff and Licensee Difficulty in Implementing License Renewal Commitments

In section II.C., argument 5, the Petition alleges that Section 54.17(c) will exacerbate the difficulty of implementing license renewal-related commitments: "Regulatory experience shows NRC staff turnover, changes in oversight, licensee staff changes, and ownership (licensee) changes, greater in a twenty year period than a ten year period, will at once complicate and place increased emphasis on proper handoff of unfulfilled licensee commitments." Petition, p. 5. No details or examples of such experience are cited to substantiate this alarmist assertion.

In addition to the total lack of support for this claim, the Petition ignores the fact that 10 CFR Part 54 requires license renewal commitments to be reflected in the Updated Final Safety Analysis Report (UFSAR). The NRC Staff's commitment tracking documentation can also be found on the facility's NRC docket, which is available to the public. Further, the Petition fails to acknowledge (or refute) the fact that the NRC's established regulatory oversight process for nuclear power plants (and other NRC licensees) has been functioning effectively for decades, despite "staff turnover, changes in oversight, licensee staff changes, and facility ownership changes." Absent specific information to the contrary, this argument must be rejected.<sup>14</sup>

This claim also ignores and/or misrepresents the overall rigor of the current NRC license renewal framework, which requires applicants to undertake certain actions, develop certain programs, and conduct certain analyses to ensure continued safe operation during the period of extended operation. 10 CFR 54.21 describes LRA requirements relating to the integrated plant assessment, the time-limited aging analyses, the CLB changes, and the FSAR supplement. 10 CFR 54.22 describes the requirements for technical specification changes or additions needed to manage the effects of aging during the period of extended operation. 10 CFR 54.29 sets forth the findings the Commission must make that actions have been identified and have been or will be taken in connection with (i) managing the effects of aging during the period of extended operation on the functionality of structures and components that require review under Section 54.21(a)(1); and (ii) any time-limited aging analyses that have been identified as requiring review under Section 54.21(c). The Commission must find that reasonable assurance exists that the activities authorized by the renewed license will continue to be conducted in

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<sup>14</sup> See also *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002): "Nothing in our case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans . . . ."

accordance with the current licensing basis, and that changes made to the CLB will accord with the AEA and NRC requirements.

As Petitioners recognize, renewed licenses may contain conditions, including technical specifications, and commitments to be fulfilled during the period of extended operation. This is intended to "help ensure that systems, structures and components subject to review under license renewal rules will continue to perform their intended functions for the period of extended operation." See 10 CFR 54.33(b). NRC regulations and guidance provide various processes (including program development, testing, formalized commitment processes, NRC inspections, etc., all of which require significant recordkeeping of commitment status) for ensuring that the licensee satisfies such commitments. Moreover, during the term of the renewed license the licensee continues to be subject to all NRC regulations in 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100, and their appendices, as applicable to holders of operating licenses under 10 CFR Part 50 or combined license holders under 10 CFR part 52. See 10 CFR 54.35.

Particularly when considered against the rigorous regulatory and technical requirements embedded in the license renewal process, Petitioners' generalized claim lacks any merit and should be rejected.

I. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Heightens the Risk of Renewal Licensees' Non-Compliance with Future Changes to NRC Regulations

In section II.C., argument 6, the Petition states that Section 54.17(c) will increase the likelihood that renewal licensees will fail to comply with new NRC requirements such as aging management for underground, buried or inaccessible pipes and aging management for safety-related low voltage cables that are "below grade and not qualified for a wet environment." Petition, p. 7. Petitioners provide no support for this unfounded claim, which should therefore be rejected.

The Commission considered and dismissed this very concern in promulgating the original license renewal rules. From the outset, the license renewal process has emphasized that for renewal licensees (as well for reactor licensees that do not seek a renewed license), the NRC will consider new information and impose new requirements as appropriate:

*The CLB of a plant will continue to evolve throughout the term of the renewed license to address the effects of age-related degradation as well as any other operational concern that arises. The licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis. The NRC's regulatory oversight activities will also assess any new information on age-related degradation or plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety.*

56 Fed. Reg. at 64,963 (emphasis added). More recent Commission pronouncements confirm that this position has not changed:

[W]e expect licensees and license renewal applicants to adjust their aging management programs to reflect lessons learned in the future through individual and industrywide experiences. 'The license renewal program is a living program' that continues to evolve. As new insights or changes emerge over time, we expect the Staff to require, as appropriate, any modification to systems, structures, or components that is necessary to assure adequate protection of the public health and safety, or to bring the facility into compliance with a license, or the rules and orders of the Commission.<sup>15</sup>

As a matter of policy, the Commission was clearly correct in determining that *existing issues* at an operating nuclear facility must be addressed under the current license instead of postponing the matter until the license renewal period. Obviously, the resolution of any current safety concerns should not be deferred. By the same token, the resolution of current issues may have little or no relevance to safety during the period of extended operation, because those issues may be obviated by future changes in circumstances or regulatory requirements. For example, roadways, technology for public alerts, and other factors affecting emergency preparedness may be quite different in a future period of extended operation. As the Commission has held, it makes no sense for the NRC or parties to spend valuable resources litigating allegations of *current* deficiencies in a proceeding that is directed to *future-oriented* issues.<sup>16</sup> Additionally, the NRC's license renewal process includes a "safety valve" allowing consideration of additional issues if appropriate (see 10 CFR 2.335). As noted above, NRC regulations also provide other methods by which petitioners may also raise concerns outside the context of an adjudication.<sup>17</sup> Accordingly, the arguments in this section do not justify modifying the license renewal rules.

J. The Petition Fails to Demonstrate that 10 CFR 54.17(c) Conflicts with NEPA

In section II.C., argument 8, the Petition states that Section 54.17(c) "conflicts with, circumvents, and otherwise frustrates" the letter, the spirit, and the goals of the National Environmental Policy Act. Petition, pp. 7-11.<sup>18</sup> The gist of Petitioners' complaint in this section appears to be that allowing submittal of the license renewal ER 20 years in advance of the expiration of the current OL produces a "premature snapshot," and a defective assessment of alternatives to the proposed action. Notably, the Petition fails to demonstrate through NEPA

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<sup>15</sup> *AmerGen Energy Co., LLC, et al. (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 485 (2008)* (internal footnotes omitted).

<sup>16</sup> *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 561 (2005).*

<sup>17</sup> NRC regulations in 10 CFR 2.206 allow any person to petition the Commission at any time to modify, suspend or revoke a license, or to take any other deemed necessary to protect the public health and safety. Anyone who believes that the current licensing basis of a nuclear plant does not sufficiently protect public health and safety may use this process.

<sup>18</sup> Petitioners' suggestion that Section 54.17(c) does not comply with Council on Environmental Quality regulations at 40 CFR 1500.2 and 1501(b) lacks any support and is not discussed further herein.

case law or other legal support that compliance with the NRC's existing license renewal-related NEPA regulations is insufficient to satisfy NEPA.<sup>19</sup>

As a matter of administrative law, "agencies have broad discretion to formulate their own procedures—and the NRC's authority in this respect has been termed particularly great." Similarly, although "an agency may alter its rules in light of its accumulated experience in administering them . . . [a]n agency must, however, offer a reasoned explanation for the change." *Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 351-52. Petitioners' request for relief provides no such reasonable basis for overturning the NRC's current license renewal framework. Moreover, in the context of environmental regulations, the Supreme Court has made clear that "NEPA does not require agencies to adopt any particular internal decisionmaking structure;" *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 100 (1983), and that "the only procedural requirements imposed by NEPA are those stated in the plain language of the Act." *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 548 (1978). Therefore, the Court found, "it is clear that NEPA cannot serve as the basis for a substantial revision of the carefully constructed procedural specifications of the APA." *Vermont Yankee, id.* Against this legal background, the Petition's argument that NEPA somehow mandates amendment of 10 CFR 54.17(c) is untenable.

Regarding the consideration of alternatives under NEPA, the Petition's claims are similarly lacking in support. It is well-established that the scope of the environmental review required in connection with license renewal is appropriately limited; that limited scope of review has been consistently upheld.<sup>20</sup> NRC regulations do require a discussion of alternatives by both the applicant (in the Environmental Report) and the NRC Staff (in the Supplemental Environmental Impact Statement) in connection with renewal applications. Licensees' compliance with these NRC requirements constitutes compliance with NEPA. In sum, the Petition provides no basis for concluding that no adequate NEPA alternatives analysis can be conducted consistent with Section 54.17(c).

### III. CONCLUSION

For all of the foregoing reasons, NEI submits that PRM-54-6 should be denied.

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<sup>19</sup> Further, to the extent that the Petition seeks to use this rulemaking petition as the venue for addressing facility-specific issues currently being adjudicated in NextEra's license renewal application for the Seabrook nuclear power station (Petition, pp. 10-11), NEI submits that this is not a proper venue for those issues. To the extent Petitioners argue that the Seabrook LRA is deficient, their claims should be raised in the ongoing adjudicatory proceeding, in which several of the Petitioners are currently participating.

<sup>20</sup> See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 290-91 (2002); *Florida Power & Light Co.*, 54 NRC 3, 6-13; see generally *New Jersey Dept. of Environmental Protection v. U.S. N.R.C.*, 531 F.3d 132 (3rd Cir. 2009).

## Rulemaking Comments

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**From:** BENJAMIN, Melissa [mb@nei.org]  
**Sent:** Monday, December 13, 2010 4:15 PM  
**To:** Rulemaking Comments  
**Subject:** FW: NEI Comments in Response to PRM-54-6; NRC-2010-0291  
**Attachments:** NEI Comments PRM 54-6 FINAL 12 13 10.pdf

Second attempt.

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**From:** BENJAMIN, Melissa **On Behalf Of** GINSBERG, Ellen  
**Sent:** Monday, December 13, 2010 4:15 PM  
**To:** 'Rulemaking.Comments@nrc.gov.'  
**Cc:** 'stephen.burns@nrc.gov'; GINSBERG, Ellen; COTTINGHAM, Anne  
**Subject:** NEI Comments in Response to PRM-54-6; NRC-2010-0291

Dear Sir or Madam:

Attached are the comments of the Nuclear Energy Institute in response to PRM-54-6, NRC-2010-0291.

Please acknowledge receipt of these comments by reply email.

Sincerely,

*Ellen C. Ginsberg*

Ellen Ginsberg  
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