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PRM-54-6
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OFFICE OF SECRETARY
RULEMAKINGS AND
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December 13, 2010

Ms. Annette Viette-Cook
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
By E-mail: Rulemaking.Comments@nrc.gov

The Supplemental Comments of Petitioner Beyond Nuclear
Docket No. PRM-54-6; NRC-2010-0291
Re: 10 CFR 54.17(c); Submitting a license renewal application
20-years in advance of expiration of the current license

Ms. Secretary,

Per Federal Register Notice published September 27, 2010 (Volume 75, Number 186)] [Proposed Rules] [Page 59158-59160], Beyond Nuclear submits the following supplemental comments to its joint Petition for Rulemaking 54-6 (PRM 54-6) dated August 17, 2010 and identified as NRC-2010-0291.

Thank you,

----/s/-----

Paul Gunter, Director

Reactor Oversight Project

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BACKGROUND

The Petitioner, Beyond Nuclear, is a not-for-profit organization based in Takoma Park, Maryland with over 6,000 members and a central office located at 6930 Carroll Avenue, Suite 400, Takoma Park, Maryland, 20912, Tel 301-270-2209, www.beyondnuclear.org.

On August 17, 2010, Beyond Nuclear jointly filed the Petition for Rulemaking as docketed PRM-54-6 requesting a change to 10 CFR 54.17(c) affecting the current provision that a relicensing application may be submitted no more than twenty (20) years before the expiration of a current license. The Petitioners have submitted arguments for amending the regulation to be no more than ten (10) years.

The Petitioner argues that the 20-year advance provision is demonstrated to be unreasonable and practically unnecessary for the purpose of regulating the license renewal process.

More importantly, one of the proffered arguments in the petition for rulemaking focuses on the potential adverse environmental impacts arising from the submittal of premature, uninforming and misinforming relicensing applications that in fact undermines and countermands the spirit and intent of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-37.

Separate from PRM-54-6, the Petitioner is pursuing specific relief before the Atomic Safety and Licensing Board specific to the NextEra Seabrook Nuclear LLC relicensing application through a Petition for Leave to Intervene and Request for Public Hearing filed with the NRC on October 20, 2010. The Petitioner is proffering a single contention challenging the adequacy, accuracy and completeness of the Environmental Report evaluation of alternatives to Seabrook relicensing as required by NEPA.

SUPPLEMENTAL MATERIAL TO PRM 54-6 REGARDING IMPACTS ON THE NATIONAL ENVIRONMENTAL PROTECTION ACT (NEPA)

The License Renewal Final Rule published in 1991 makes the principle argument for supporting the provision in 10 CFR 54.17(c) that allows the nuclear industry to submit a license renewal application twenty (20) years in advance of the current license's expiration by stating:

"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 license 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." [Final Rule, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991)]

Since that time, contrary to the Commission's conclusion, Beyond Nuclear submits that the 20-year advance provision is demonstrated to be both unreasonable and practically unnecessary for the purpose of conducting the regulatory review process for license renewal.

Beyond Nuclear submits that eighty-two (82) nuclear power plant units have to date either received a twenty (20) year license extension (60 units) or have currently applied for an extension (22 units). Only two (2) units in the license renewal review process are now in the relicensing process for under 5 years; Vermont Yankee (Received January 27, 2006) and Pilgrim (Received January 27, 2006). Cleary, the agency's own experience demonstrates that the preponderance of the license renewal reviews and approvals conducted to date come nowhere near requiring 18 to 20 years to complete.

Given that industry original estimates and the Commission's conclusion upon which the current rule is based have proven to be grossly inaccurate, the initial and principle reason for adopting the 20-year advance application date has no basis and is therefore arbitrary, capricious and unjustified.

To date, only one unit has filed (June 1, 2010) a relicensing application to the extreme as currently provided by 10 CFR 54.17(c). That nuclear power plant site is for the Seabrook nuclear power station operated by NextEra Seabrook Nuclear LLC (also known as Florida Power & Light). Seabrook's extremely premature filing specifically illustrates many of the Petitioners' concerns. The Petitioner's insight taken from an actual filing is proffered in part here to inform and illuminate the rulemaking process as to specifically why the 20-year advance application provision undermines and seeks to defeat the spirit and intent of NEPA law particularly with regard to the required evaluation of the alternatives.
There exists a number of Letters of Intent for such reactors as the Grand Gulf and Callaway nuclear power plants as well as a number of yet-to-be-announced reactor sites where reapplication is 13 years or more.

Given the preponderance of license renewal review times for submittals and the agency approvals to date, the Petitioner reasserts that no more than 10 years advance application is warranted which will significantly improve the quality and reliability of the agency's Environmental Impact Statements and the Environmental Reports upon which they rely as required by NEPA.

The Rule as Written Effectively Provides and Harbors the Intent to Countermand NEPA Law

As currently provided under 10 CFR 2.309(b)(3), the public must make its

arguments and submit available supporting expert documentation for a Petition to Request for Hearing and Leave to Intervene in a particular license renewal application within the 60-day notice of the Federal Register announcing the NRC acceptance of a license renewal application.

As such, the agency can effectively truncate and close out submittals and challenges to the environmental review process up to approximately 20 years before the requested federal relicensing action is to take place. In fact, an environmental review submitted to such an extreme will likely rely upon data, opinions and conclusions that are arrived at substantially more than 20 years in advance of the requested action.

Such is the example of the Seabrook license extension request where the applicant's Environment Report relies extensively upon the 1996 NRC Generic Environmental Impact Statement (GEIS) for its consideration and evaluation of alternatives to the proposed action as required under NEPA. The fact that a proffered application filed 20 years in advance of a 2030 expiration date effectively relies upon conclusions made 34-years before the requested action stretches the veracity and validity of the Environmental Report to an amassing of outdated and meaningless details for the agency's preparation of an Environmental Impact Statement. As further exemplified by the Seabrook relicense application as filed in 2010, the preponderance of expert documentation in their evaluation as relied upon to dismiss the renewable

alternatives is gathered from 2008, effectively freezing the environmental evaluation for the Region of Interest a remote 22 years from the requested federal action. It is disingenuous to characterize that data 22 to 34 years out from the requested action as "sufficiently complete" as NEPA is established to require. NextEra Seabrook Nuclear LLC relies upon the 20-year advance provision in 10 CFR 54.17(c) to truncate its alternative evaluation and justify the omission of more recent expert and expert agency documents from 2009 and 2010 to include specific plans as outlined by the State of Maine Governor's Ocean Energy Task Force (2009), the federally funded advance studies at the University of Maine for off shore and deepwater wind farm deployment for commercial application, state and federal memorandum of understanding to generate and transmit five (5) Gigawatts of offshore and deepwater wind electricity in the applicant's Region of Interest by the requested relicensing period beginning in 2030. The Petitioner Beyond Nuclear submits that it has proffered 21 expert and expert agency documents as exhibits in its October 20, 2010 Petition in Request of a Public Hearing and Leave to Intervene before the Atomic Safety Licensing Board. Moreover, NextEra's extremely truncated environmental review not only omits this significant documentation on the proffered offshore and deepwater wind alternative but also other renewable energy alternatives including wave and tidal power and solar power in the Region of Interest. Because of this truncated review at the remote view of approximately 20 years out, the NextEra license renewal application's Environmental Report serves more to uninform and misinform the agency in its NEPA obligation.

In fact, NEPA requires and relies upon honesty and completeness in the disclosure of environmental impact assumptions and the basis for agency decisions. The purpose of NEPA is to protect the environment. *See, e.g.*, *Weinberger v. Catholic Action of Hawaii/Peace Educ. Project*, 454 U.S. 139, 143 (1981) (NEPA's "twin aims" are "to inject environmental considerations into the agency's decision-making process" and "to inform the public that the agency has considered environmental concerns"). The Petitioner argues that an application submitted to the extreme of approximately 20 years before a requested license extension provides for and harbors the intent to deliberately or indirectly place the consideration of reasonable alternatives over a horizon of reasonable consideration by the agency.

The Petitioner asserts that as part of the NEPA review process all major federal actions must conduct an Environment Impact Statement that relies upon an applicant's Environmental Report that includes a sufficiently complete evaluation of the alternatives to the requested action.

The issue of the Petitioner's significant concern regards whether or not an honest, accurate, informative and sufficiently complete Environmental Report for environmental consequences from federal actions can be reasonably submitted and concluded as much as 18 to 20 years in advance of the requested action.

While it is established that the courts must not "*substitute their judgment of the environmental impact for the judgment of the agency, once the agency has adequately studied the issue,*" *Crounse Corp. v. Interstate Commerce Comm'n*, 781 F.2d 1176 (6th Cir. 1986), the Petitioner argues that the pivotal words in this case focus on "*adequately studied.*" Beyond Nuclear argues that it is not reasonable to consider that an Environment Report based on data that is 20 years and older can solely constitute the foundation for an "adequately studied" Environmental Impact Statement prepared by the NRC. Beyond Nuclear argues that this in fact constitutes a violation of NEPA principles, as the harm that NEPA seeks to prevent is complete when the agency makes a decision without sufficiently considering information that NEPA requires be placed before the decision-maker and public. *Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989). "*The injury of an increased risk of harm due to an agency's uninformed decision is precisely the type of injury {NEPA} was designed to prevent.*" *Comm. to Save the Rio Hondo v. Lucero,* 102 F.3d 445, 448-49 (10th Cir. 1996).

NEPA requires all federal agencies including the NRC to examine environmental impacts that could be caused by their discretionary actions. NEPA's twin aims are (1) obligating a federal agency to consider every significant aspect of the environmental impact of a proposed action and (2) ensuring that the federal agency will inform the public that it has indeed considered environmental concerns in its decision-making process. *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983); *see also* 42 U.S.C. §

4332(2)(c) (identifying requirements of an EIS).

As a federal agency, the NRC must therefore comply with NEPA. *Calvert Cliffs Coordinating Comm. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971) (NEPA applies to NRC's predecessor).

NEPA imposes continuing obligations on the NRC following completion of an environmental analysis. An agency that receives new and significant information casting doubt upon a previous environmental analysis must reevaluate the prior analysis. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). This requirement is codified in NRC regulations at 10 C.F.R. § 51.92(a)(2) for the Supplement to the final environmental impact statement. If the agency establishes the cut-off date for such new and significant information as much as two decades in advance of the requested action, that agency has established an unnecessary and artificial, arbitrary and capricious exclusionary clause that effectively runs counter-purpose to NEPA aims and the NRC's own codified statutory obligations.

As 10CFR54.17(c) currently provides, a license renewal applicant can file an environmental report that the agency then relies upon in the preparation of an NRC Environmental Impact Statement approximately 20 years in advance of the requested action. This effectively seeks to close out the environmental review by omission from the evaluation of the less harmful alternatives by remotely

truncating the public review period. Similarly, this unreasonably runs counter purpose to the NRC's license renewal review obligation. Under 10 C.F.R. § 51.53(c)(3)(iv) for Post-Construction Environmental Reports, an Environmental Review must contain "any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware." However, under the current provision of 10 CFR 54.17(c), in the apparent interest of promoting a licensee's corporate interest and the licensing agency's own particular technological bias, an applicant and the NRC can seek to circumvent NEPA requirements by the applicant laying claim to simply be unaware of events relating to alternative to occur within the next 20 years even despite the evidence of technological trends and significant and important developments, advanced studies for commercial applications, memorandums of understanding between state and federal government agencies, commercially viable private ventures that reasonably demonstrate the feasible development of less harmful alternatives to the requested action. The applicant merely needs to disingenuously state that the alternative technology as demonstrated "today" is static in time and therefore so speculative as to not feasible as a replacement to the requested action being made as much as 20 years in advance. In fact, significant technological events and achievements can and have occurred well within the extreme of the 20-year window, not the least of which includes President John F. Kennedy's announcement on May 25, 1961 to put the first man on the moon by the end of the decade and the actual moon landing of Apollo 11 on July 20, 1970.

More practically, the challenge to take timely action to abate and mitigate rapid climate change through advancing the most effective technologies and efficient reductions in less environmentally harmful greenhouse gas emissions make more urgent demands to rigorously pursue NEPA evaluations as never before.

The Petitioner argues that the NRC and the industry would significantly benefit by avoiding subsequent adjudicatory challenges if the industry were required to wait to make application no more than ten (10) years in advance of the application, when such trends, studies, agreements and commercial ventures were more distinctly and discretely developed. The 10 year cut off would provide the agency with a more reasonable vantage for assessing consequences and the alternatives for the Environmental Impact Statement in compliance with NEPA and NRC obligations.

In fact, the environmental review process as mandated by NEPA is subject to a rule of reason. While the agency need not include all theoretically possible environmental effects arising out of an action, it draws direct support from the judicial interpretation of the statutory command that the NRC is obliged to make "reasonable" forecasts of the future. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48, 49 (1978); Hydro Res., Inc., LBP-04-23, 60 NRC 441, 447 (2004), *review declined*, CLI-04-39, 60 NRC 657 (2004). Beyond Nuclear submits that the 20 year advance application does not in fact provide a reasonable timeframe for such a

"reasonable forecast" for environmental reports when such evaluations are likely based on a preponderance of information that is in excess of 20 years old. As argued by the Petitioner, the premature submittal excludes the revelations of reasonable significant trends documented by expert, advanced studies for commercial applications, memorandums of understanding between state and federal agencies and commercially viable ventures.

The Petitioner contenda that an Environmental Report submitted on the order of 20 years in advance cannot reliably provide the requisite "reasonable forecast" with sufficiently complete, high quality, accurate scientific analysis, nor can it reliably provide sufficient expert and expert agency comments to rigorously and objectively discuss reasonable alternatives such as rapidly developing offshore wind energy for a particular Region of Interest.

The Petitioner acknowledges that there are only several examples where the NRC has already accepted and approved license extension applications that were filed nearly 15 to17 years in advance of 40-year operating license expiration date. Simply repeating a mistake or a violation over and over however neither justifies each individual error and violation nor does the culmination of mistakes and violation provides justification to commit more. The repetition becomes more egregious particularly when such error and violation can bring repeated and increasing harm to the human environment as is to be regarded by NEPA standards.

Moreover, the requested rule change from 20 years to 10 years would not affect a large number of licensees but would significantly improve the reliability and validity of the remaining environmental reviews.

When an Environmental Report is submitted to the extreme of 18 to 20 years in advance of the license expiration it can offer only vague, superficial and unreliable evaluations of the alternatives as those evaluations will be significantly dated, incomplete and inaccurate. As such, an applicant fails or neglects to undertake the vigorous and substantially complete discussion of the alternative energy resources specific to the Region of Interest to the requested relicensing action as NEPA requires for the Environmental Report.

As for an example, the NextEra Seabrook Nuclear application's Environmental Report proffers in its evaluation of alternatives to the requested federal relicense action at Section 7 the statement *"...The consideration of alternative energy sources in individual license renewal reviews will consider those alternatives that are reasonable for the region, including power purchases from outside the applicant's service area...* (NRC 1996c)" as projected for the requested license renewal period of 2030 to 2050. [NextEra Seabrook Nuclear, LLC, License Renewal Application, Environmental Report, Section 7.0, Alternatives to the Proposed Action, page 7.1]

The NextEra Environmental Report goes on to state at 7.2.1 Alternatives Considered that "*For the purpose of the Environmental Report , alternative generating technologies were evaluated to identify candidate technologies that would be capable of replacing Seabrook Station's nominal net base-load capacity of 1,245 MWe*" during the requested relicensing period of 2030 to 2050. The NextEra Environmental Report then goes on at Section 7.2.1.5 "Other Alternatives" to provide a very brief evaluation of the alternative resource of wind energy. At the outset, NextEra states, "*Wind power, due to its intermittent nature, is not suitable for base-load generation, as discussed in Section 8.3.1 of the GEIS. Wind power systems produce power only when the wind is blowing at a sufficient velocity and duration.* [NextEra ER, Section 7, p 7.12.] The Applicant further asserts "*In the ROI, the primary areas of good wind energy resources are the Atlantic coast and exposed hilltops, ridge crests, and mountain summits. Offshore wind resources are abundant (EERE 2008b) but the technology is not sufficiently demonstrated at this time. Only 1,077 MW of offshore wind capacity has been installed worldwide (EERE 2008a).*" [NextEra Seabrook Nuclear LLC, License Renewal Application, Environmental Report, p. 7-12.]

Because the application relies upon a 1996 GEIS and a 2008 expert document, the applicant has already significantly misrepresented the current status of offshore wind to the agency where the advent of interconnected offshore wind farms in expertly accepted as technologically feasible and economically viable in 2010. NextEra's reliance upon a 2008 document for its 2030 relicensing action

so significantly outdates its research and evaluation as to make the Environmental Report inaccurate and meaningless relative to purpose of preparing an Environmental Impact Statement. The European Wind Energy Association (EWEA) in its report "Oceans of Opportunity: Harnessing Europe"s largest domestic resource," European Wind Energy Association, 09/27/2010, http://www.ewea.org/index.php?id=203] , just one year later, finds that —*"There are currently 830 wind turbines now installed and grid connected, totaling 2,063 MW in 39 wind farms in nine European countries."* nearly doubling the NextEra's inaccurate global figure. This degree of error does not serve to comply with NEPA requirements to provide sufficiently complete and accurate data to the agency.

NextEra's already significant measure of error on evaluating offshore wind becomes even greater again demonstrated by EWEA reporting that —*"In 2010 1,000 MW expected to be installed during 2010, a 71% market growth compared to 2009. Currently there are 16 offshore wind farms under construction, totaling over 3,500 MW and a further 52 wind farms have been fully consented, totaling more than 16,000 MW."* ["Oceans of Opportunity: Harnessing Europe's largest domestic resource," 09/27/2010, http://www.ewea.org/index.php?id=203]

A premature application therefore does not provide a sufficiently complete and scientifically accurate filing to inform the NRC for the purpose of preparing the required Environmental Impact Statement. In fact, a premature application

serves to uninform and misinform the agency with already dated and grossly inaccurate information. Given the application is premature in the extreme of 18 to 20 years and misinforms the agency on trends, technological advances and commercial developments, the Environmental Report and the subsequent Environmental Impact Statement will only compound the error and misinformation before the requested federal action18 to 20 years hence. This does not constitute an effort to "reasonably foresee" the alternatives. As such, as currently written, 10 CFR 54.17(c) serves to promote and harbor misleading, false and inaccurate information for the purpose of preparing an Environmental Impact Statement.

As stated, this is contrary to the NEPA challenge to the Applicant and the federal agency to "reasonably foresee" beyond the present time in formulating its evaluation of alternatives in the Environmental Report for the projected federal relicensing action. The NRC is well aware that the environmental review as mandated by NEPA is the product of judicial interpretation of the statutory command that the NRC is obliged to make reasonable forecasts of the future. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48, 49 (1978); *Hydro Res., Inc.*, LBP-04-23, 60 NRC 441, 447 (2004), *review declined*, CLI-04-39, 60 NRC 657 (2004).

Furthermore, as written, 10 CFR 54.17(c) causes an unnecessary and uninformative speculation on the availability of alternatives by projecting the

review of the requested federal action for as much as 20 years into the future.

The very real possibility that an improved technology may be developed during the 40-year life span of a reactor does not render consideration of environmental issues too speculative. NEPA's requirement for forecasting environmental consequences into the future implies the need for predictions is based on existing technology and those developments which can be extrapolated from it. *NRDC v. NRC*, 547 F.2d 633 (1976). It logically follows as suggested by the Petitioner's rule change that it is more reasonable that such predictions and extrapolations can be made far more accurately and informative from a ten (10) year vantage point than the extreme of 20 years out.

Where NEPA seeks to "force action" through a rigorous and objective discussion backed by expert document and expert agency comment, the rigor and objectivity based upon the availability of information, expert documentation is made far more inaccurate and unreliable by allowing an extremely premature submittal. As such, an applicant's approach to completing an Environmental Report and the agency's subsequent preparation of an Environmental Impact Statement becomes more of an avoidance of a sufficiently complete and accurate evaluation than providing the requisite objective "hard look." The Petitioner submits that this is an abuse of the legal standard by setting the environmental evaluation and review to an extreme of 20 years out from the requested federal action.

Beyond Nuclear cautions NRC that this unnecessary and premature submittal effectively promotes a manipulative agenda for corporate self interest and shields a potential technological bias of the licensing agency over the environmental protection aim and spirit of NEPA.

The Petitioner further cautions the NRC that while some element of speculation is implicit in NEPA, the NRC is not allowed "to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry,'" *Scientists' Institute for Public Information, Inc. v. AEC (SIPI),* 156 U.S.App.D.C. 395, 408, 481 F.2d 1079, 1092 (1973). Placing environmental evaluations and review 20-years in advance of requested federal actions effectively renders the Environmental Impact Statement to just such a "crystal ball inquiry."

The Petitioner asserts that contrary to the aim of NEPA to force an agency to reasonably foreseeable action, 10 CFR54.17(c) as currently written unreasonably enfeebles the environmental review process by codifying the unreasonably premature assessment point to the remote and extreme period of 20 years away from the federal action. An informed prediction is only possible after an agency has been provided with sufficient and qualified documentation to conduct a thorough inquiry into all aspects of the contemplated project and the area to be affected. The Petitioner asserts that the 20-year advance provision cannot

reasonably be argued to adequately inform prediction with sufficient and qualified documentation with any reasonable assurance.

NEPA case law requires consideration of "reasonably foreseeable" impacts, and not resolution of all unresolved scientific issues. *Jicarilla Apache Tribe v. Morton*, 471 F.2d 1275, 1280 (9th Cir. 1973). An environmental effect is interpreted to be "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003). Establishing the environmental review period as much as 20 years in advance of the requested federal action is to be considered well beyond "ordinary prudence" to make such decisions.

The Petitioner further cautions that the NRC and its licensees cannot be allowed to game or rig the license renewal process by establishing the environmental review process so remotely as to on the one hand to claim the alternative technologies can be excluded from a complete review as infeasible for fully a generation to come. This is particularly more egregious if one considers where renewable energy generation was in terms of technology and commercial deployment only 20 years in the past.

NEPA's "rule of reason" is further supported by precedent. While an agency is not required to consider all possible alternatives for each aspect of a proposed action, the agency does need to consider "a reasonable number of examples, covering the full spectrum of alternatives." *Natural Resources Defense Council v. Morton*, 458 F.2d 827 (D.C Cir. 1972). In *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 197-98 (D.C.Cir.1991), then Circuit Judge Clarence Thomas warned that outcome-controlled "rigging" of purpose and need violates NEPA, which "does not give agencies license to fulfill their own prophecies," *id.* at 195. Justice Thomas continued, "an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action. . . ." *Id.*

The Petitioner asserts that by remotely and narrowly setting the environmental review process to be conducted to an extreme of as much as 20 years in advance, the NRC in fact sets up the very "rigging" of purpose and need to violate NEPA that Justice Thomas has warned against.

It is clearly established that NEPA requires: (1) that alternatives be presented in comparative form to provide meaningful choices to decision-makers and the public (40 C.F.R. §1502.14); (2) that "substantial treatment" be devoted to each alternative considered in detail, to enable reviewers to evaluate the comparative merits of each alternative (40 C.F.R. § 1502.14 (b)); and (3) that during the

course of the NEPA process, no actions go forward that have adverse environmental impacts or would limit the choice of reasonable alternatives (40 C.F.R. § 1506.1).

As is so interpreted, Beyond Nuclear argues that the time frame for comparative review be reasonably equated for the requested federal action and the alternative being reviewed. It is not reasonable to game or rig an environmental review for the requested federal action so far off into the future as to make otherwise reasonable alternatives appear remote and overly speculative. Therefore, the Petitioner argues that the time frames need to be more reasonably equated in proximity to one another so that the NEPA process can be reasonably informed. The Petitioner asserts that a change to ten years would accomplish that. Similarly, it is not reasonable to game or rig a requested federal action so as to disallow the "substantial treatment" of the alternatives to requested action and avoid the purpose of NEPA to protect the environment through the evaluation of alternatives less harmful to the human environment. The Petitioner asserts that a change to ten years would provide for and promote the "substantial treatment" of the alternatives as required by NEPA. Furthermore, it is not reasonable to hasten the advancement of a requested federal action by unreasonably omitting the evaluation of the alternative through the establishment of an extremely remote review process 20 years out.

The Petitioner asserts that this could be remedied by the requested rule change

from making application 20 years in advance to no more than 10 years in advance.

The Petitioner further argues that the NRC must, to the fullest extent possible, "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal. . . . " 42 U.S.C. § 4322(2)(E); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519-20 (9th Cir. 1992). Beyond Nuclear interprets this to mean the examination of every alternative within the "nature and scope of the proposed action," *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982), "sufficient to permit a reasoned choice." *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815 (9th Cir. 1987). Beyond Nuclear asserts that to establish a remote review process to the extreme of 20 years in advance does not make allowance for a "reasoned choice." To the contrary, the Petitioner asserts that it closes out a "reasoned choice." Again, such a "reasoned choice" would allow for the consideration and evaluation of the development of technological trends in alternatives, advanced studies for commercial applications, memorandums of understanding between state and federal government and private contracts for commercial ventures. It is therefore not reasonable to remotely place the environmental review process so as to game or rig review to omit alternatives as overly speculative and undeveloped 20 years in advance.

Beyond Nuclear argues that it is in the best interest of the agency and the

industry not to promote and harbor premature and substantially inadequate and flawed license renewal applications. Inaccurate, uninforming, misleading and misinforming environmental reviews are not in the best interest of the agency, the industry or in the best interest of environmental protection as is to be regarded by NEPA law and precedent.

In fact, Beyond Nuclear asserts that NEPA is to be interpreted to guard against and prevent such misinformed and misleading actions. "The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate." *Idaho Conservation League, supra*. Agencies must therefore "study. . . significant alternatives suggested by other agencies or the public. . . ." *DuBois v. U.S. Dept. of Agric.*, 102 F.3d 1273, 1286 (1st Cir. 1996), cert. denied, 117 S.Ct. 1567 (1997).

Beyond Nuclear argues that it is disingenuous to put forth such an environmental review process established so remote to be in compliance with NEPA and NRC obligations to conduct an Environmental Impact Statement. It is interpreted that even an alternative which would only partially satisfy the need and purpose of the proposed project must be considered by the agency if it is "reasonable," *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 93 (2nd Cir. 1975), because it might convince the decision-maker to meet part of the goal with less impact, *North Buckhead Civic Ass'n v. Skinner*, 903 F.2d 1533, 1542 (11th Cir. 1990). When developing reasonable alternatives for NEPA purposes, the scope

of alternatives must include the alternatives noted above and those reasonable alternatives outside the agency's jurisdiction. (40 CFR § 1502.14(c). Consequently, these alternatives, "...include those [alternatives] that are practical or feasible ways from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." CEQ's *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, Question 2a. Therefore, to avoid the gaming and rigging of the environmental review process such to arrive at premature and meaningless conclusions that the simply reflect a desirable outcome from the standpoint of the licensee at the expense of environmental quality, Beyond Nuclear argues that the rule should be changed from application of no more than 20 to no more than10 years in advance of license expiration. As previously stated, the proposed change will significantly strengthen, promote and uphold the intent of NEPA while at the same time not placing any undue regulatory burden upon the agency or the industry.

The Petitioner further points out that contrary to the aim and intent of NEPA to thoroughly discuss and evaluate the alternatives to the requested federal action "to the fullest extent possible" as set forth at Sec.102 [42 USC § 4332](C)(iii) the current rule as written undermines an applicant's Environmental Report so as to promote the failure to provide any specificity and a sufficiently complete evaluation for the Region of Interest. Simply stating that an alternative is not fully developed today 18 to 20 years in advance of a requested federal action will not

be viable as an alternative for the requested action does not constitute an evaluation "to the fullest extent possible." By lack of fact, it lends as much or more to speculation on the dismissive conclusions of the applicant than conclusions founded in expert fact. The current rule thus becomes a convenient but arbitrary and capricious vehicle for the industry to dismiss insufficiently examined alternatives and to promote and shield the agency's relicensing bias. It is no more reasonable to suggest that an Environmental Report conducted at 25 years, 30 years or 50 years that such the alternatives can be fairly and sufficiently evaluated "to the fullest extent possible."

CONCLUSION

Beyond Nuclear sets forth that as currently written the provision within 10 CFR 54.17(c) to allow for the advance filing of a license renewal application to be as much as 20 years before the current license expiration is unreasonable and unnecessary from the point of efficiently regulating the relicensing of US nuclear power stations. More egregiously, the current rule undercuts the aim, intent and spirit of the National Environmental Policy Act (NEPA) by so remotely establishing the environmental review process that a licensee seeking to promote a self serving and promotional agenda as to uninform, misinform and mislead the NRC in its preparation of the Environmental Impact Statement as required by NEPA.

The Petitioner concludes that the rule should be amended to read that a license renewal application shall be submitted no more than 10 years in advance of the license expiration date to conform to NEPA requirements and NRC obligations.

----/s/---

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Rulemaking Comments

From: Paul Gunter [paul@beyondnuclear.org]
Sent: Monday, December 13, 2010 11:19 PM
To: Rulemaking Comments
Subject: PRM 56-4 NRC-2010-0291
Attachments: prm_54-06_12132010_bn_cmt_final.pdf

Hello,

Attached please find the supplemental comments of Beyond Nucleear to PRM 56-4, NRC-2010-0291.

Thank you,
Paul Gunter, Director
Reactor Oversight Project
Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, MD 20912
Tel. 301 270 2209
www.beyondnuclear.org

Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.2.247.2; Mon, 13 Dec 2010
23:18:38 -0500
X-Ironport-ID: mail2
X-SBRS: 4.7
X-MID: 31233536
X-fn: prm_54-06_12132010_bn_cmt_final.pdf
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d="pdf'?scan'208";a="31233536"
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with ESMTP; 13 Dec 2010 23:18:34 -0500
Received: by fxm9 with SMTP id 9so226470fxm.31 for
<Rulemaking.Comments@nrc.gov>; Mon, 13 Dec 2010 20:18:33 -0800 (PST)
MIME-Version: 1.0
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Received: by 10.223.124.14 with HTTP; Mon, 13 Dec 2010 20:18:33 -0800 (PST)
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Subject: PRM 56-4 NRC-2010-0291
From: Paul Gunter <paul@beyondnuclear.org>
To: Rulemaking.Comments@nrc.gov
Content-Type: multipart/mixed; boundary="20cf3054a5d71d07ea0497571d0b"
Return-Path: paul@beyondnuclear.org

Rulemaking Comments

From: Paul Gunter [paul@beyondnuclear.org]
Sent: Monday, December 13, 2010 11:24 PM
To: Rulemaking Comments
Subject: Correction_ PRM 54-06 NRC 2010-0291

Hello,

I mistakenly labled the subject line for the attached PRM 54-06 NRC-2010-0219.
The attachment is correctly labled as PRM 54-06

--
Paul Gunter, Director
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Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov
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with ESMTP; 13 Dec 2010 23:24:09 -0500
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Subject: Correction_ PRM 54-06 NRC 2010-0291
From: Paul Gunter <paul@beyondnuclear.org>
To: Rulemaking.Comments@nrc.gov
Content-Type: multipart/alternative; boundary="90e6ba3090da25f6990497573132"
Return-Path: paul@beyondnuclear.org