

In the Matter of:

Entergy Nuclear Operations, Inc.
(Indian Point Nuclear Generating Units 2 and 3)

ASLBP #: 07-858-03-LR-BD01
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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-AD94

Environmental Review for Renewal of Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing a supplement to the proposed rule concerning the environmental review for renewal of operating licenses. The supplement would revise the definition of purpose and need for the proposed Federal action that will be used in the environmental review of applications for renewal of nuclear power plant operating licenses. This action was developed in response to public comments on the proposed rule. The redefinition presented in the supplement to the proposed rule would also affect the identification of alternatives to the proposed action that will be considered in environmental reviews for license renewal.

DATES: Submit comments by September 8, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments received on the proposed rule as well as other documents relevant to this rulemaking are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 415-6263.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1991 (56 FR 47016), the NRC published in the Federal Register proposed amendments to its environmental protection regulations, 10 CFR Part 51, that would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants. Concurrently, the NRC published NUREG-1437¹ a draft Generic Environmental Impact Statement (GEIS) that contained the analysis which NRC proposed to codify in 10 CFR Part 51. In commenting on the proposed rule and the draft GEIS, a number of States expressed dissatisfaction with the treatment of need for generating capacity, alternative energy sources, and certain other issues. They expressed strong concerns that the proposed rule would intrude adversely on traditional State regulatory authority over these matters. They expressed concern that designation of need for generating capacity and alternative energy sources as Category 1² issues would substantially eliminate public participation, would adversely affect independent State consideration of these matters, and would inadequately provide for use of current, project specific information.

The Commission instructed the NRC staff to develop an options paper for responding to these State concerns, to solicit State views on the options, and to present these options to the Commission. To facilitate discussion of

¹ Copies of NUREG-1437 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20555-0001.

² Category definitions:

Category 1—A generic conclusion on the impact has been reached for all affected nuclear power plants.

Category 2—A generic conclusion on the impact has been reached for all nuclear power plants that fall within defined bounds.

Category 3—A generic conclusion on the impact was not reached for any nuclear power plant.

these matters the NRC staff developed an options paper entitled "Addressing The Concerns Of States And Others Regarding The Role Of Need For Generating Capacity, Alternative Energy Sources, Utility Costs, And Cost-Benefit Analysis In NRC Environmental Reviews For Relicensing Nuclear Power Plants: An NRC Staff Discussion Paper." A Federal Register notice (January 18, 1994; 59 FR 2542) announced the scheduling of three regional workshops and the availability of the options paper.

The workshops were held during the month of February 1994, in Rockville, MD (February 9, 1994), Rosemont, IL (February 15, 1994), and Chicopee, MA (February 17, 1994). Discussants represented seven States, the National Association of Utility Regulatory Commissioners, three public advocacy groups, the Nuclear Utility Management and Resources Council (now known as the Nuclear Energy Institute (NEI)) and the NRC. Representatives of several other States, public advocacy groups, and industry actively participated from the floor. A transcript of each workshop was taken. Subsequent to the workshops, written comments were filed by eight States, three public advocacy groups, the Nuclear Energy Institute (NEI) and two utilities. In addition, subsequent to the workshops and receipt of most of the written comments, the NRC staff met with the Environmental Protection Agency (EPA) and the Council on Environmental Quality to discuss the staff's proposed options and the comments and options offered by the States. EPA submitted written comments on May 11, 1994.

In their written submittal, NEI and Yankee Atomic Electric Company (YAEC) each presented an approach to the handling of need and alternatives in the rule that they believe would resolve the concerns expressed by the States.

These proposals had not been adequately developed for discussion at the time of the regional workshops. Because the NRC staff needed to better understand these proposals before reporting to the Commission on a recommended approach, a public meeting with NEI and YAEC was held on May 16, 1994. The meeting was announced in the Federal Register (May 4, 1994; 59 FR 23030). Participants in the regional workshops were notified of the meeting in advance and later furnished with the meeting transcript.

After considering the range of options, the NRC staff has narrowed its consideration to two basic approaches to the treatment of "purpose and need" and "alternatives" that will best satisfy the concerns of the States and meet the requirements of the National Environmental Policy Act of 1969 (NEPA). One approach has been proposed by the State of New York and was endorsed by several other States. The other approach, recommended in this document, was developed by the NRC staff after consideration of the meeting transcripts and written comments. Borrowing from some of the elements of the YAEC and NEI proposals, the NRC staff has developed its own approach which it believes would contribute substantially to resolving the concerns raised by the States. Both approaches are discussed below.

The State Approach

The approach proposed by the State of New York is a modification of the Option 2 as discussed in the NRC staff options paper. There are three major elements to the State option. Quoting from the written submittal of the State of New York:

i. the text of the actual rule should be modified to include, and each individual relicensing decision should include, statements that the NRC's findings with respect to need for generating capacity and alternative energy sources are only intended to assist the NRC in meeting its NEPA obligations and do not preclude the States from making their own determinations with respect to these issues;

ii. determinations regarding the issues of need for generating capacity and alternative energy sources should be designated "Category 3" conclusions requiring site-specific review, rather than "Category 1" generic conclusions; and

iii. all NRC project specific EIS and relicensing decisions should make reference to State determinations on the issues of need for generating capacity and alternative energy sources, and should defer to and be guided by those State determinations to the maximum degree possible pursuant to NEPA.

The purpose and need for the proposed Federal action (renewal of an operating license) continues to be defined in terms of the need for power. This approach would address some of the State concerns because the NRC would no longer perform the alternatives and need for power analyses unless State analyses of these issues were inadequate or non-existent.

The NRC staff does not recommend this option, however, for several reasons. First of all, the NRC would have to develop guidelines for determining the acceptability of State analyses. Some States may view the application of these guidelines as an intrusion on their planning process. In addition, some States may not be prepared to submit the required information to the NRC in a timely fashion given the differing time-tables used by States in their energy planning process. Finally, some States may not be capable of submitting the required information to the NRC.

Recommended Approach

Based on the information gathered at the various public meetings and from written comments, the NRC staff has developed the following recommended approach. The major features of the recommended approach are:

- Redefine the purpose and need for the proposed action (renewal of an operating license) as preserving continued operation of a nuclear power plant as a safe option that State regulators and utility officials may consider in their future energy planning decisions.

- Consider a range of alternatives to the proposed action to identify any action that may reasonably serve the stated purpose and need. Review the environmental impacts of any such alternatives.

Consider the environmental consequences of the "no action" alternative to license renewal, which the NRC is required to do by NEPA, i.e., the environmental impact of a range of energy sources that might be used if NRC should preclude the option of continued operation (license renewal).

Change NRC's NEPA decision standard for license renewal so that renewal does not depend on an NRC conclusion that operation is the preferred NEPA option. Instead, license renewal would depend on an NRC conclusion that continued operation of a nuclear power plant is within the reasonable range of alternatives considered and should not be rejected as an option for future consideration.

Under the NRC staff's recommended approach, the definition of the purpose and need of the Federal action in the GEIS would read:

The purpose and need of the proposed action is to preserve the option of continued operation of the nuclear power plant for State regulators and utility officials in their future energy planning decisions.

In formulating this proposed purpose and need statement, the NRC staff has attempted to consider the perspective of

State regulators, the needs of license renewal applicants, the nature of the applications at issue, and the function that the NRC plays in the decisional process. This proposed definition does not indicate an endorsement by the NRC of nuclear power operation as a preferred energy source. Instead, the proposed definition is intended to convey that, absent findings in the Atomic Energy Act safety review or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, the NRC will not interfere with the energy planning decisions of state regulators and utility officials. It would also be explained in the GEIS that a renewed license is not a mandate nor a commitment to operate but is simply documentation that the licensee can meet the NRC's public health and safety requirements.

The GEIS would continue to include a full discussion of the environmental impacts of license renewal, the purpose and need for license renewal, alternatives that can serve that purpose and need, the no action alternative, and the environmental consequences of the no action alternative. In doing so, the NRC would fulfill its obligations under NEPA to consider alternatives to the proposed action. The GEIS would contain no discussion of need for power, the economic competitiveness of nuclear power, or other economic considerations related to these issues.

In applying the proposed definition of purpose and need to the GEIS, the NRC staff has identified only two basic alternatives which reasonably flow from the proposed approach: renewing an operating license, which would preserve the option, and not renewing the operating license (the no action alternative), which would not preserve the option but is nevertheless required under NEPA. The NRC staff will give further consideration to identifying additional alternatives and is soliciting public comment by means of this document. If any other reasonable alternatives are identified, the environmental impacts associated with them will be assessed.

However, the NRC staff will examine the environmental impacts of alternative sources of energy in its analysis of the no action alternative. The implementation of the no action alternative, i.e., NRC's rejection of a license renewal application, would create a range of potential environmental impacts including those impacts which would result from the possible replacement of the nuclear plant's power by some other source of energy. Accordingly, under the NRC staff's proposed approach, the NRC staff

will examine in the GEIS the full range of environmental impacts of other sources of energy in order to ensure a full consideration of the no action alternative.

The NRC would use the statement of purpose and need as a basis for its decision standard in weighing the differences between license renewal and the various alternatives involved. Final determinations concerning alternatives in the GEIS would involve the following decision criterion: NRC would use the information on environmental impacts to reject the license renewal option only if the data concerning environmental impacts and alternatives, including the no action alternative, indicates that it would be unreasonable for the NRC to preserve the option of nuclear power generation for future decision makers.

For the no action alternative, the NRC would reject the license renewal option only if the environmental impacts of license renewal were so much worse than those of other sources of energy that the NRC would be justified in eliminating the nuclear power plant as a tool for future energy planners. It would not be necessary for the NRC to find in the GEIS that existing nuclear power plants will be the preferred source of energy. The NRC would only have to find that the environmental impacts of nuclear plants place them within a "reasonable range" of future energy options viewed from the perspective of environmental impacts. If, in an individual relicensing action, new and significant information created a doubt concerning previous conclusions in the GEIS, the NRC would consider that information to determine if the previous determinations in the GEIS were no longer valid for that particular plant.

This decision method used in the recommended approach would allow the NRC to take a hard look at the environmental impacts of the proposed action and, at the same time, demonstrate an appreciation of the primacy and expertise of the States in the area of energy planning. This proposed standard for decision making in the GEIS would differ from current NRC practice for application of NEPA at the construction permit and the operating license stages and in the proposed amendments to 10 CFR Part 51 for license renewal. Currently at the construction permit stage, the NRC compares the proposed action and the alternatives using a cost-benefit analysis which includes consideration of the need for power and other economic considerations related to power generation. Under the current approach, the NRC rejects the licensing action if

the NEPA analysis demonstrates that an alternative is "obviously superior."

The recommended approach would avoid NRC determinations on such economic issues and, instead, focus NRC's analysis in the GEIS on the environmental impacts of license renewal and the associated alternatives. For the purposes of the license renewal GEIS, the proposed approach would replace the obviously superior standard with a standard which requires the environmental impacts of the alternatives considered to be so superior to the impacts of nuclear power as to justify the preclusion of nuclear plant operation as an option for future decision makers. In other words, based on the analysis of environmental impacts, the proposed action must be in the "reasonable range" of alternatives in order to justify NRC approval. Whether the definition of purpose and need proposed for the license renewal stage should also be applied at the construction permit and operating license stage is under review by the NRC staff. That determination will be made separately from the license renewal rulemaking.

The NRC staff believes that of the options considered, the recommended approach will resolve concerns expressed by the States and meet the original objectives of the rulemaking, i.e., to increase regulatory efficiency and stability. The NRC notes that the primary elements of this approach are a departure from past NRC practice as applied at the construction permit and operating license stage. However, the proposed purpose and need statement and the reasonable range decision standard represent an approach to this issue which reflects the differing set of circumstances pertinent to decisions about continued operation of existing nuclear power plants. The NRC staff believes that the definition and explanation of purpose and need and the identification and consideration of alternatives is consistent with the trend of current NEPA case law which allows an agency to consider an applicant's wants when the agency formulates the goals of its own proposed action (see e.g., *Citizens Against Burlington, Inc. v. Busey* 938 F.2d 190 (D.C. Cir. 1991); *City of Grapevine, Tex. v. Dept. of Transportation*, 17 F.3d 1502 (D.C. Cir. 1994)). Therefore, the staff believes that its approach will address the concerns of the States and meet the requirements of NEPA at the same time.

Within 30 days from the close of the public comment period the NRC staff will report on the comments received. If the public comments indicate opposition to this approach or the

desirability of making significant modifications to the approach, the NRC staff will seek Commission guidance. Otherwise the NRC staff intends to proceed with incorporation of the recommended approach in the final GEIS and the final rule.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335).

Dated at Rockville, Maryland, this 8th day of July, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94-17985 Filed 7-22-94; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB42

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend its risk-based capital standards to recognize the risk reducing benefits of netting arrangements. Under the proposal, state nonmember banks would be permitted to net, for risk-based capital purposes, interest and exchange rate contracts (rate contracts) subject to legally enforceable bilateral netting contracts that meet certain criteria. The FDIC is proposing these amendments on the basis of proposed revisions to the Basle Accord which would permit the recognition of such netting arrangements. The effect of the proposed amendments would be to allow state nonmember banks to net positive and negative mark-to-market values of rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk weighted assets.

DATES: Comments must be received by the FDIC on or before August 24, 1994.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5:00 p.m. [Fax