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50-369

50-237 et al

NUCLEAR REGULATORY COMMISSION

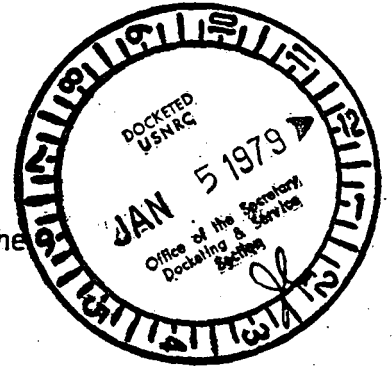
[10 CFR Part 140]

FINANCIAL PROTECTION REQUIREMENTS
AND INDEMNITY AGREEMENTS

12/29/78

Indemnification of Spent Reactor Fuel
Stored at a Reactor Site Different Than the
One Where It Was Generated

Reg files



AGENCY: Nuclear Regulatory Commission

ACTION: Request for public comment on Commission's decision to exercise its discretionary statutory authority and extend government indemnity to storage of spent fuel in two specific situations^{*/} and for public comment on the general policy question raised by such extension.

SUMMARY: The Nuclear Regulatory Commission has decided to exercise its discretionary statutory authority under the Price-Anderson Act and extend government indemnity to spent reactor fuel stored at a reactor site different than the one where it was generated. Absent this action by the Commission, this spent reactor fuel would not have been covered by government indemnity in the event of a nuclear incident at the site where this spent fuel was stored.

^{*/} Duke Power Company, Docket Nos. 50-269, 50-270, 50-287, and 50-369; Commonwealth Edison Company, Docket Nos. 50-237, 50-249, 50-254, and 50-265.

DATES: The public comment period expires

FOR FURTHER INFORMATION CONTACT: Mr. Ira Dinitz, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555; 301-492-8336.

SUPPLEMENTARY INFORMATION:

Most operating reactor licensees have increased, or are planning to increase, the capacity of their onsite spent fuel storage pools. In some instances where the capacity of the storage pools at the reactor site cannot be increased sufficiently to meet the licensees' needs, fuel storage may be sought at another location. One method of storing spent fuel away from the reactor from which it is discharged is to store it in the spent fuel pool at a reactor at another site.

The Commission has received two requests, one from Duke Power Company and the other from Commonwealth Edison Company, to authorize and indemnify this type of fuel storage. The Duke Power request is for Commission authorization permitting Duke to store spent fuel discharged from its Oconee Units 1, 2 and 3 at its McGuire Unit 1. The second request, by Commonwealth Edison, seeks authority to transfer and store spent fuel among Dresden Units 2 and 3 and Quad-Cities Units 1 and 2. Both licensees are seeking Price-Anderson indemnity protection for all such storage of

spent fuel at the distant reactor locations. The Commission considered a similar request by Carolina Power and Light Company in August, 1977. (See notices in the September 6, 1977 daily edition of the FEDERAL REGISTER at 42 F. R. 44615-44617.)

Because the issue of receipt and storage of Oconee spent fuel at McGuire is before the Atomic Safety and Licensing Board, the Commission is not proposing either approval or disapproval of the requests for the described fuel storage at this time. In this notice, the Commission is seeking public comment on both the specific requests for indemnification described above and also the generic issue of indemnification of spent fuel generated at one reactor but stored at another. If indemnification were to be approved as requested by Commonwealth Edison and Duke, it would only be when and if the requested fuel storage were approved pursuant to Commission licensing procedures.

Under the Price-Anderson Act (§ 170 of the Atomic Energy Act of 1954, as amended, (the Act)), financial protection and government indemnity are mandatory for production and utilization facilities, such as reactors, licensed under § 103 and § 104 of the Act. This financial protection and indemnity covers the "licensed activity" which encompasses not only possession and operation of the reactor facility itself but also certain

ancillary activities including (1) possession of the new fuel (containing special nuclear material) being stored on-site for use in the reactor and (2) on-site storage of spent fuel following irradiation at that reactor.

Possession of spent fuel away from the facility where it is generated, i.e., at a location where it is not used in connection with the operation of the facility, is not a part of the ancillary activity of possession and operation of the facility. Hence, possession of such spent fuel must be licensed under other provisions of the Act which authorize licenses for possession and use of the special nuclear and byproduct material. After being transferred from the reactor site where it was generated to some other site, this spent fuel would not be subject to the mandatory indemnity requirements of the Act providing that the Commission require financial protection of and indemnify reactor (and other production and utilization facility) licensees. Accordingly, no indemnity protection automatically would be afforded spent fuel stored away from the facility where it is produced or used. To indemnify this spent fuel, the Commission must require such licensees to maintain financial protection and to be indemnified by exercising its discretionary authority

under § 170 of the Act. This exercise of discretionary authority would result in treating spent fuel produced at one reactor site but stored at a different reactor site the same as spent fuel stored at the site of the reactor where it was produced. Thus, irradiated fuel generated by a reactor at one site whether stored by itself in the spent fuel pool of a reactor at a different site or commingled with the second reactor's irradiated fuel in that reactor's spent fuel pool would be covered by financial protection and indemnity.

Duke Power Company has requested Commission authorization to store spent fuel generated by Oconee reactor Units 1, 2, and 3 at McGuire Unit 1. Pursuant to this request, on July 28, 1978 (43 F. R. 32905), the NRC published a notice of opportunity for public participation with respect to the application for amendment to Materials License No. SNM-1773 (issued pursuant to 10 CFR Part 70) to authorize the receipt and storage of Oconee spent fuel at McGuire. Petitions to intervene and requests for hearing were received.

According to Duke's current projection of the predicted fuel burnup rates at Oconee, the first shipment of spent fuel to McGuire must occur in March 1979 if Duke is to maintain its desired full core discharge capability at the Oconee station. An operating license decision, however,

is expected to be made before that date. In view of these considerations, if indemnification of the storage of Oconee spent fuel at McGuire were to be authorized, it would only be when and if an operating license is issued by the NRC for McGuire Unit 1.

The second request, from Commonwealth Edison Company, seeks amendment of the operating licenses and indemnity agreements for Dresden Units 2 and 3 and Quad-Cities Units 1 and 2 to permit spent fuel transfer and storage between the two sites. This inter-station fuel transfer and storage is stated by Commonwealth to be necessary both to postpone the loss of full core discharge capability at the Dresden site from 1979 to 1981 and to allow expansion of the Dresden fuel storage pool for the storage of Dresden spent fuel and possibly Quad-Cities spent fuel at a later date.

Both proposals to modify operating licenses and indemnity agreements are similar in that the spent fuel proposed to be stored at certain reactors will not have been produced at those reactors. The NRC staff believes that it would not be desirable to have a situation where spent fuel generated by one reactor and stored in the spent fuel pools of a second reactor at a different site would be unindemnified while the spent fuel produced by

the second reactor and stored at the same site would be indemnified. If indemnity coverage were not extended to the spent fuel generated by the first reactor but stored at the site of a second reactor and if an accident occurred involving the fuel storage pool it would be virtually impossible to determine whether indemnified or unindemnified spent fuel caused the damages.

The Commission's decision to exercise, or not to exercise, its discretionary authority (pursuant to section 170 of the Act) to require financial protection and government indemnity to be maintained by Duke Power Company and Commonwealth Edison Company in the situations discussed in this notice involves a policy question. The Commission desires public comment on its proposed action to extend indemnity protection in the two situations discussed in this notice.

In addition, the Commission desires public comment on whether it should exercise its authority on a generic basis to extend indemnity coverage to spent fuel generated at one reactor but stored at the site of a second operating reactor upon the request of reactor licensees. The Commission believes that such a decision would be consistent with the specific actions requested by Duke and Commonwealth. Having established

such a policy, the Commission would delegate authority for making such decisions except when such decisions warrant Commission action because of special circumstances.

Should the Commission decide to exercise its discretionary authority and grant either or both requests for indemnification, it will, pursuant to 10 CFR 140.9, publish a notice in the FEDERAL REGISTER of its intent to modify the indemnity agreements for the facilities involved. (See e.g., 42 F.R. 44617, September 6, 1977.) In response to a notice published pursuant to 10 CFR 140.9, the Commission will only consider comments pertaining to the implementation of the Commission's policy decision through the language proposed to modify the indemnity agreement(s). Comments addressing the policy issue set forth in this notice will not be entertained. Additionally, should the Commission propose to exercise its statutory authority in this area on a generic basis, it will publish a Notice of Proposed Rule Making in the FEDERAL REGISTER.

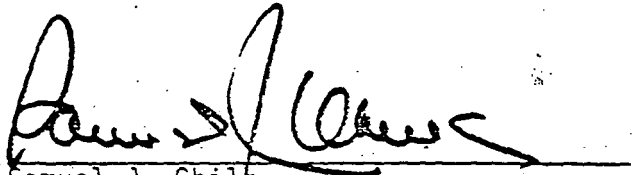
Comments on this notice should be sent to the Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, ATTN: Chief, Antitrust and Indemnity Group. The comment period expires FEB 05, 1979. Copies of all comments received will be

available for examination in the Commission's Public Document Room, 1717
H Street, N.W., Washington, D. C.

(Authority: 5 U.S.C. 552; Pub. L. 83-703, 68 Stat. 919, as amended by
Pub. L. 85-256, 71 Stat. 576, as amended (42 U.S.C. 2210).

Dated at Washington, D.C. this 29th day of December, 1978.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "Samuel J. Chilk", written over a horizontal line.

Samuel J. Chilk
Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
COMMONWEALTH EDISON COMPANY) Docket No. (s) 50-237
) 50-249
(Dresden Nuclear Power Station,) 50-254
Units 2 and 3; Quad Cities) 50-265
Nuclear Power Station, Units 1)
and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) * upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
5th day of Jan 1979.

Deputy T. Downing
Office of the Secretary of the Commission

* Served also on 2 other cases

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMONWEALTH EDISON COMPANY) Docket No.(s) 50-237
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Nuclear Power Station, Units 1)
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