

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
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September 26, 1979

Mr. Howard Shapar
Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Dear Mr. Shapar:

Thank you for your letter of August 13, 1979 and the copies of the draft NEPA regulations prepared by the Commission staff. We have reviewed the draft NRC regulations. This letter contains our preliminary views. These comments do not substitute for the Council's final review of the Commission's NEPA regulations. That review will be made after the public review and comment process and before final action by the Commission, in accordance with the procedures announced in our letter of January 19, 1979 to all agencies on this issue.

In general, we believe the staff has done a good job in preparing the draft NRC regulations. The draft regulations appear to address the six requirements for agency NEPA procedures set forth in Section 1507.3(b) with several exceptions noted below.

We continue to stress that the Council's new regulations are sufficiently flexible to avoid any conflict with the Commission's responsibilities as an independent regulatory agency and we reiterate the assurances made to Chairman Hendrie in Chairman Speth's letter of June 25, 1979.

The following are our specific thoughts on the draft regulations:

1. (Draft Proposal, p. 15) The preamble to the draft regulations states that, pending further study, the regulations will not implement 40 C.F.R. § 1502.14(b), which requires "substantial treatment to each alternative considered in detail...." This is justified in part on the "premise that major adverse environmental impacts can normally be identified using reconnaissance-level information."

We urge the Commission to adopt the standard set forth in 40 C.F.R. § 1502.14(b) for the treatment of alternatives. That section of the Council's regulations is a restatement of existing NEPA law, which is binding on the Commission. Moreover, the rule of reason will apply here

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as at other stages of the NEPA process. The Commission will be able to fully assess alternatives without undue burden or excessive costs.

2. (Draft Proposal p. 16, ¶ 2; p. 60). Pending further study, staff proposes that where information, which is essential to a reasoned choice among alternatives, would be costly to obtain but not exorbitant, the information need not be obtained. We strongly disagree with this proposal. We urge the Commission to adopt the standard set forth in 40 C.F.R. § 1502.22(a), which is a restatement of existing NEPA law. This requirement is also subject to the rule of reason and should not impose undue burdens on the Commission.

3. (Draft Proposal, p. 16 ¶ 3). Pending further study, staff proposes not to conduct worst case analyses in connection with any of its licensing functions because of the "impact on the length of time and resources required to complete NRC licensing reviews". We believe that it is appropriate for the Commission to conduct worst case analyses and, for example, consider Class Nine accidents in the course of site specific review. This would be consistent with the recently proposed staff population density guidelines. The Commission's exclusion of Class Nine accident effects from EIS analysis (because of their remote likelihood) can no longer be supported in view of the events at Three Mile Island. There may however be a potential for preparing generic or programmatic EISs for Class Nine accidents, to be supplemented on a site specific basis.

4. (Draft Proposal, p. 60) We believe the draft of 10 C.F.R. § 51.10(b)(2) should be clarified to make EIS preparation discretionary. The Council recognizes the right of the Commission to prepare an independent environmental impact statement for proposals over which it has jurisdiction whenever it determines that an existing statement is inadequate or whenever it determines such EIS is necessary to fulfill NEPA's goals and policies. However, we believe the Commission should avoid unnecessary duplication in preparing an impact statement where a lead agency has prepared an adequate EIS concerning the environmental issues involved in the proposal.

5. (Draft Proposal, pp. 17 and 60) Pending further study, staff is reluctant to prepare an environmental impact statement in cases of inaction, for example, when the Commission denies a petition for rulemaking. However, it would appear that at least certain generic issues, which are the subject of petitions for rulemaking, warrant NEPA review. In view of the draft proposal requiring petitioners to submit environmental reports (p. 100, 10 C.F.R. § 51.65) it should not be unduly burdensome for the Commission to utilize such a report in preparing an environmental impact statement or environmental assessment. For these reasons the Council urges the Commission to adhere to the definition of major federal action in Section 1508.18 of the Council regulations.

6. (Draft Proposal, pp. 35, 73) Staff proposes to categorically exclude all Commission actions relating to safeguards and physical security, which do not involve significant construction impacts, from application of the EIS procedures. The Council cannot endorse this exclusion, which is contrary to Council views dating back to 1975. We strongly believe that such substantive matters should be the subject of review in an EIS.

7. (Draft Proposal, pp. 6, 35a-36, 48 and 73) The staff proposal excludes not only all transportation approvals and actions from EIS review, but package design approvals as well. Moreover, staff proposes that imports (p. 48) of nuclear materials and equipment be excluded from the EIS process. The only review proposed by staff for transportation is a tangential analysis in connection with the Commission's actions regarding the use of the materials and equipment by a license applicant. We believe that there are instances when the Commission's actions regarding transportation are potentially so significant, that full NEPA review is essential.

8. (Draft Proposal, p. 37) It is unclear whether staff proposes to exclude a nuclear reactor at an educational institution from the NEPA process. Such an exclusion would be at odds with the intent of the Act. This provision should be clarified.

9. (Draft Proposal, pp. 68-69, 73) The draft regulations would exclude from NEPA review decontamination and decommissioning, (p. 73) and reuse of facilities, such as Three Mile Island, at less than full power. The Council cannot endorse such an exclusion. Assessments should be required in order to determine if the proposed decontamination or decommissioning plan involves significant effects on the environment. It appears more than likely that most such actions could involve significant effects on the environment.

10. (Draft Proposal, pp. 71-73) The regulations proposed would limit NEPA review to an environmental assessment for Commission decisions to operate reactors, fuel reprocessing plants, etc. at less than full power (item (b)(3)). (See also p. 115). Similarly, staff proposes to so limit certain environmental reviews even where actions involve significant expansion of sites, increases in effluents, increases in occupational exposures, increases in potential for releases etc. (item (b)(5)). The proposal, would apply if the action concerned, for example, a high level waste repository. We believe this proposal is far too broad.

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The Council staff will be pleased to discuss these comments in greater detail with NRC staff and stands ready to assist in completing the consultation process. John Shea in the Council's General Counsel's office is the Council staff contact for the NRC NEPA regulations. His telephone number is 395-4616.

Thank you for considering these views.

Sincerely,



C. Foster Knight
Acting General Counsel

cc: Leonard Bickwit
Peter Crane
Marty Malsch

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY) Docket No. 50-289
) (Restart)
(Three Mile Island Nuclear)
Station, Unit No. 1)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the "UCS Reply Brief on the Application on of the National Environmental Policy Act" was mailed first class postage prepaid this 30th day of November, 1979 to the following parties:

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