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PROPOSED RULE PR-2, 30, 40, 50, 51, 70 + 110 (45 FR 13739) (11)

May 1, 1980

Hon. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Comments of the County of Suffolk on Proposed Revision to Part 51 Regulations to Implement Section 102(2) of the National Environmental Policy Act of 1969 (NEPA)

Dear Secretary Chilk:

The County of Suffolk is an intervenor both in NRC construction license proceedings involving the Long Island Lighting Company's application to site two 1150 MW nuclear power stations at Jamesport, New York (Docket Nos. 50-516 and 50-517), and in operating license proceedings involving that same utility's application to operate an 820 MW nuclear power station at Shoreham, New York (Docket No. 50-322). By reason of its continuing participation in these cases, the County is vitally concerned with the manner in which the NRC responds to and implements NEPA's mandates and the recently-finalized CEQ Guidelines which further define those mandates.

A number of preliminary points should be addressed. The NRC is the agency responsible for regulating, in the public interest, what has now been explicitly recognized as an inherently dangerous technology. In these circumstances, faithful, painstaking adherence to the procedures deemed necessary to realize the benefits of the protections afforded by NEPA, would seem to be particularly appropriate. The NRC's past record in this regard, however, does not inspire confidence that implementation of a new set of procedures, ostensibly designed to assure agency consideration of environmental concerns and values, will result a fortiorari in a beneficial change in the substantive approach or attitude brought by the agency to the discharge of its day-to-day licensing responsibilities.

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Let me illustrate. In the Jamesport construction license proceedings, the NRC, through its licensing board and staff, time and again took the most restrictive view possible of the duties and responsibilities conferred on it by NEPA and then extant CEQ guidelines. Thus the NRC failed to require consideration of the Class 9 accident in the Jamesport EIS, and to insist that the costs of such an accident - health, economic, social and psychological - be factored into the NEPA-required analysis of a project's relative costs and benefits. It failed to require EIS consideration and evaluation of responsible adverse scientific and technical opinions. It failed to require EIS evaluation of the project's impact on proposed federal, state and local land use plans, policies and controls for the site location. And finally, the NRC refused to require preparation and circulation of a new or supplemental EIS for the project despite drastically changed circumstances affecting issues related to need, alternatives, economics, and health and environmental impacts, issues at the very heart of the NEPA process.

Similarly, the hearing board in the Shoreham operating license proceedings has thus far declined to require preparation and circulation of a supplemental EIS in which the costs and impacts of a Class 9-type accident are considered. Instead, it has shifted its decisionmaking responsibility on this issue to the NRC staff, deferring any decision on the need for a supplemental EIS pending formulation of a staff position. The Board thus misperceives its responsibilities under NEPA. The Act imposes a duty upon the responsible decisionmaker to ensure consideration of relevant environmental costs and impacts. If Class 9's are no longer considered by the NRC to be "improbable" events, as now must be the case following the TMI-2 accident, it is impossible to conceive of any other single issue that would have a more profound impact on a project's "costs" than would analysis of a worst case nuclear accident. Yet, the NRC, in ongoing licensing proceedings, still ponders the relevancy under NEPA of such events while incremental investments in ongoing nuclear construction projects proceeds apace.

The point of this history is to demonstrate that establishment of uniform procedures designed to ensure consideration of environmental values and concerns cannot, by themselves, guarantee that this will be done. Rather, the key element of responsible regulation, as was made clear by both the Kemeny Commission and Rogovin Reports, is to be found in the regulatory attitude of the agency. If NEPA is to "...help public officials make decisions that are based on an understanding of environmental consequences and take action that will protect, restore and

enhance the environment", there must first be an agency commitment to those goals. In the County's experience, the NRC's prime commitment has been to the expansion of the nuclear technology first, with health, safety and environmental concerns running a poor second.

The NRC's attempt to reach "a sound accommodation" between its independent regulatory responsibilities and CEQ's objective of establishing uniform NEPA procedures leaves one to wonder whether the NRC's regulatory priorities remain unchanged even in the aftermath of the near disastrous accident at TMI-2. The NRC's proposed regulations take no position on several of the most critical of CEQ's NEPA regulations, leaving the issue of their implementation to additional study.

Most notably, the NRC defers taking a position on 40 CFR 1502.22(b) which requires an agency to perform a "worst case analysis" and indicate the probability or improbability of its occurrence whenever the agency is unable to obtain information relevant to adverse impacts important in making a reasoned choice among alternatives and the agency has decided, despite this uncertainty, to proceed with the action. The NRC's hesitation in implementing this guideline is based on the following considerations: (1) impact on the length of time and resources required to complete NRC licensing reviews; (2) a requirement that the agency perform a worst case analysis for both radiological and non-radiological impacts in situations where such analyses are not normally conducted; and (3) an impliedly adverse impact on NRC's regulatory activities if interpreted to require in-depth analysis of the consequences of a "worst case" accident in addition to an analysis of the likelihood that such an accident would occur. All of these justifications appear to stem from agency concerns about increased administrative burdens and have no relation to the nub of the issue, which is: "Are there any legally justifiable grounds for excusing the NRC from compliance with the CEQ's "worst case analysis" requirement?" The County believes not.

There is no longer any basis to argue, if there ever was, that a worst case, Class 9-type accident is such an improbable event that it need not be considered in the licensing process. The NRC's repudiation of the central findings of the Reactor Safety Study - the report previously used to support the argument that occurrence of a catastrophic nuclear accident is a remote possibility - strips away any theoretical justification for such assumption. In addition, the TMI-2 accident, during which a far greater portion of the reactor core was destroyed or damaged by heat than was thought possible, has been declared a Class 9 event. The NRC's own Siting Policy

Task Force (in NUREG-0625) made recommendations to accomplish the following goal, among others:

> "To take into consideration in siting the risk associated with accidents beyond the design basis (Class 9) by establishing population density and distribution criteria".

The Commission's proposed amendments to emergency planning regulations (10 CFR, Part 50), explicitly recognize that Class 9 accidents are events that now must be considered in state and local emergency plans.

It is clearly contradictory and inappropriate for the NRC to selectively recognize the need to evaluate "worst case" accidents with regard to certain aspects of its licensing review function, and then to evade and/or equivocate on that duty when it comes to implementing the mandates of NEPA. In the view of the County, this duty to consider and evaluate the full health, environmental, economic and social costs and consequences of a Class 9 event extends not only to construction license cases but to operating license cases as well.

A second area of CEQ guidance that troubles the NRC concerns the scope of an agency's NEPA duty to comprehensively evaluate and compare alternatives to a proposed project. 40 CFR 1502.14(b) provides that the environmental impact statement "...(d)evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits". 40 CFR 1502.22(a) requires an agency to obtain information relevant to adverse environmental impacts which is not known and which is essential to a reasoned choice among alternatives if the overall costs of so doing are not exorbitant.

The NRC's reservations again seem to be based upon a concern that the costs of compliance, while they might fall short of being exorbitant, will nevertheless be substantial. This concern should be measured against the rationale for the strong directives contained in these CEQ guidelines - that if there is one overriding imperative called for by NEPA, it is the duty of the reviewing agency to consider and evaluate alternatives. Indeed, one of the prime purposes of the NEPA cost/benefit analysis is to permit a rigorous comparison of a proposal to available alternatives. Similarly, the concepts of "scoping" and of early EIS preparation help to assure that alternatives to a proposed major federal action are not foreclosed by incremental decisionmaking and investments of resources.

In the case of nuclear power projects, the substantial health, safety, environmental and economic uncertainties which plague that energy option, and which daily grow more pronounced, make reasoned, rigorous consideration of alternatives all the more critical.

40 CFR 1502.9(c) provides:

> "Agencies: (1) shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." (Emphasis supplied).

The NRC's proposed regulations only make preparation of a supplemental draft EIS mandatory upon occurrence of the conditions specified in the above-quoted guideline (See, 10 CFR, §51.72). The NRC leaves the issue of the need to prepare supplements to final environmental impact statements to agency discretion and fails to specify the criteria that govern the exercise of this discretion. (See, 10 CFR, §51.92). The County maintains that the NRC should not depart from the strict letter of CEQ guidance in the manner just described. The Shoreham operating license proceeding provides a good example of why.

The Shoreham final EIS issued in October, 1977. Since that time the following has occurred: (1) NRC repudiation of the Reactor Safety Study; (2) occurrence of a Class 9 accident at TMI-2; (3) a catalogue of technical, economic, health, social and psychological impacts, problems, and uncertainties related to the clean-up of the TMI-2 plant; (4) issuance of an NRC Siting Study which, if applied to the Shoreham site, in all likelihood would eliminate it as an appropriate place to construct a nuclear power plant; (5) an admission in court proceedings by the Shoreham project manager that the plant was not designed to withstand a Class 9 accident and that it sits in several feet of groundwater; (6) a dramatic decline in the rate of increase of electrical usage on Long Island, prompting applicant to recently state that the Shoreham plant will not be needed until at least 1985; and (7) a dramatic increase in the construction costs of Shoreham, which have risen by some 37.5% in the last year alone, from $1.56 to $2.2 billion. Only a little more than half of this $2.2 billion has been spent by the applicant.

It could be argued that any one of the above items constitutes a sufficient "substantial change" or "significant new circumstance" as to require preparation of a supplemental EIS for Shoreham in which the costs and benefits of the project, and the alternatives thereto, could be reevaluated. Taken collectively, they represent an astonishing array of developments that suggest the need for swift and serious reappraisal of the wisdom of going forward with the project. The decision of whether to require preparation of a supplemental EIS under circumstances such as those just described should not be left to NRC discretion. As was found by both the Kemeny Commission and the Rogovin Report, the agency has demonstrably failed to exhibit the kind of the regulatory zeal necessary for the responsible exercise of such discretion.

Very truly yours,

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