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(45 FR 13739)

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

RE: Proposed rule for Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments.

Gentlemen:

The following comments are submitted on behalf of Commonwealth Edison Company ("Commonwealth") which has a major interest in these proceedings due to its substantial commitment to nuclear power, Commonwealth holds operating licenses for seven nuclear units. In addition, it has six nuclear units that are under construction and two nuclear units that are undergoing NRC review for site suitability. Since all of these may well be affected by this rulemaking, Commonwealth has a substantial stake in the effectiveness of the resulting rules.

The preamble included in this notice of rulemaking states that various sections of the Council on Environmental Quality's (CEQ) procedures for implementing the National Environmental Policy Act (NEPA) (November 29, 1978, 43 FR 55977) are not to be implemented by this rulemaking. Commonwealth wishes to address these sections first:

(1) 40 CFR 1502.14(b)

This section requires that the EIS "devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." With regard to the consideration of alternative sites, however, Commonwealth agrees with the NRC position that the added costs of requiring detailed site-specific investigations and analyses on all candidate sites normally would not be justified by the resultant marginal improvement in environmental protection, and that major adverse environmental impacts can normally be identified using reconnaissance-level information. The NRC's notice of proposed rulemaking (April 9, 1980, 45 FR 24168) to amend 10 CFR Part 51 - Licensing and Regulatory Policy and Procedures for Environmental Protection: Alternative Site Reviews addresses this point specifically and

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is the proper rulemaking in which to address this issue.

(2) 40 CFR 1502.22(a)

The Federal Register notice states "This provision could impact any NRC decision in this circumstance where the costs (in terms of both information gathering cost and project delay costs) of obtaining the information needed for a reasoned choice among the alternatives are large but fall short of exorbitant."

We agree that care is needed in determining when costly information is essential to a reasoned choice among alternatives. Even when costs are large, but not exorbitant, restraint must be used. The NRC, after all, is committed to implement not only NEPA but also Executive Order 12044, (March 24, 1978, 43 FR 12661) and Section 3512 of the Federal Reports Act, 42 U.S.C. 3512.

All requests for data where costs are expected to be large, should have to be justified on the basis that the magnitude of the benefits to be derived from the information clearly exceed the costs associated with obtaining and analyzing this information. Any requester of additional information should specify qualitative and quantitative data requirements, recommended scope of work, and expected benefits to be derived from the data. Obtaining this data may delay the NEPA decision and, hence, the project completion. The cost of obtaining and analyzing this data should be added to the costs associated with project delay which, in cases affecting the operation of nuclear units, would include escalation of construction costs, carrying charges on investment, and the cost of replacement power, if available. With any significant delay, the availability of adequate replacement power is unlikely, and therefore, the socioeconomic impacts associated with power deficiencies should also be considered, such as, lost wages, health and safety of the public, etc.

Therefore, only requirements for data that involve even "large costs" should be limited to matters that speak to the basic license ability of the preferred site/plant combination.

(3) 40 CFR 1502.22(b)

The provision in this section that requires an agency to perform a "worst case analysis" should be rejected unless the probability that it would occur is reasonably likely. For events with remote probabilities, little or no weight should be given in the NEPA balance because concentrating on nightmares distorts decision making. See, for example, Report of the President's Commission on the Accident at Three Mile Island, Recommendation G.3.C. A person who opposes an action often demands that all adverse "what if's" of the action be considered no matter how remote. Often, there is no similar demand or even concession that the "what if's" of the alternatives be addressed on a comparative basis.

Commonwealth Edison recommends that the present NRC practice of only evaluating events that have a realistic probability of occurring should be anlyzed. This practice has been upheld repeatedly as being in compliance with NEPA by the Federal Courts. See, e.g. Hodder v. NRC, Nos. 76-1709 and 78-1649 (D.C. Circuit December 26, 1978), cert. denied 48 U.S.L.W. 3218 (October 2, 1979), Lloyd Harbor Study Group v. NRC, No. 73-2266 (D.C. Circuit November 9, 1976), vacated on other grounds 1435 v.s. 964 (1978), decision on Class 9 accidents reaffirmed. No. 73-2266 (D.C. Circuit November 29, 1978).

(4) 40 CFR 1508. 18

The discussion of the implications of evoking the provisions of this section is not clear. We fully support the concept that failure to act by a responsible federal official should be reviewable by courts or administrative tribunals. However, where the denial in effect allows an activity to continue unchanged which has already been reviewed and approved under NEPA, clearly no further environmental review is necessary or appropriate. Nothing in NEPA requires that the same ground be plowed twice.

Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 262, 266 n.6 (1978). And it is certainly permissible, under NEPA, to require a person claiming significant on-going environmental harm to make some threshhold showing that there is substance to his claim prior to undertaking a ponderous and expensive NEPA review process. Vermont Yankee Nuclear Power Corp. v. NRDC 435 v.s. 519 (1978).

Commonwealth has the following specific comments to make on the proposed rules:

51.12 APPLICATION OF SUBPART TO PROCEEDINGS

This section grandfathers environmental documents completed as of effective date of these regulations but is to apply to those not completed. This may delay the completion of environmental reports and impact statements that are well along in preparation, and may very well delay the project. We recommend that a grandfathering date be set after the effective date of this rulemaking so that it will not cause undo project delays. We offer 180 days as reasonable for an environmental report document (that takes generally two years to prepare) and 90 days for an environmental impact statement.

51.15 TIME SCHEDULES

The time schedule provisions as outlined in this section do not have any teeth. There should be a definite time allocated to certin portions of the NRC review. One such time period should cover the interval from the docketing of an environmental report to the end of scoping process that is intended to delineate any new information that is required. This time schedule should take into account the letter of intent, scoping meetings and site visits. We would offer 3 months as a reasonable time period for this process. There should be another time schedule for the period from when the applicant has furnished the information requested by the reviewers to the publication of a Final Environmental Statement. We would suggest that this process should be readily completed in 9 months, especially if the staff adheres to the CEQ recommendation that the EIS be short (Up to 300 pages) and does not contain voluminous information not needed for a reasoned choice.

51.22 CATEGORICAL EXCLUSIONS

NRC actions under the proposed Emergency Planning Rule (December 19, 1979, 44 FR 75167), requiring licensees to shutdown operating facilities due to lack of NRC/FEMA concurrence in state and local emergency plans, allowing start up following achievement of concurrence, or allowing continued operation despite nonconcurrence should qualify for treatment as categorical exclusions. In the case of orders allowing continued or resumed plant operation, categorical exclusion is appropriate because the environmental effect of station operation have already been reviewed in licensing the facility. Nothing in NEPA requires that this work be redone.

In the case of shutdown orders, categorical exlusion is appropriate as long as it is reasonable to expect that the environmental effects of shutdown will be within the scope of those summarized in the NRC's negative declaration and draft environmental assessment supporting the proposed emergency planning rule (January 21, 1980, 45FR 3913). However, if for example, contrary to the expectations of the drafters of the draft environmental assessment, federal, state, and local emergency planners reach an impasse on emergency preparedness requirements which threatens to result in plant shutdowns lasting months, or in multiple plant shutdown, NEPA may require that a new environmental assessment be prepared taking into account unanticipated impacts.

51.27 NOTICE OF INTENT

The notice of intent that would be issued as a result of this section and 51.26, may be confused with the "notice of intent" that is being put forth in the alternative site review rulemaking. It is recommended that standardized titles be developed to minimize possible misinterpretations. Within the two rulemaking mentioned herein, there are notice of intents for:

1. Early review of sites
2. Early Site Review
3. Balance of CP application
4. Before EIS CP stage
5. Before Supplement to EIS - OL stage

51.28 SCOPING - ENVIRONMENTAL IMPACT STATEMENT

The scoping process as put forth in this section and in 51.27 NOTICE OF INTENT AND 51.29 SCOPING - PARTICIPANTS, is an effective tool for the NRC staff that will prepare the EIS. This process, however, does not aid the applicant who has to make all these same decisions using a multitude of Regulation Guides, NUREGs, Public Laws, Executive Orders, Court decisions, etc., for guidance. After the applicant has committed substantial sums of money and precious time, submitted an environmental report, the scoping participants enumerated in 51.29 can then decide that the applicant has to drop back to square one and do additional studies. Scoping would be more effective if held earlier in the process such as immediately after the letter of intent, which is being proposed by concurrent siting rulemaking, which precedes the applicant's detailed onsite baseline investigations by 90 days. This would allow the NRC reviewers to analyse the merits of requests for data and issue guidance as to the quantitative and qualitative data that must be provided to support the application.

51.29 SCOPING - PARTICIPANTS

In 51.26, there is a statement that - "The scoping process may include a public scoping meeting" and in this section, item 51.29(a)(5) assures that any person who request an opportunity to participate in the scoping process shall be invited to participate in the scoping process. These two statements appear to be redundant since anyone who wants to participate merely has to make a request. If this person(s) is a member of the public, then the meeting is public. It is not clear to Commonwealth whether the intent of the public meeting provision to permit interested members of the public to participate in the scoping process or to provide yet another forum for the expression of viewpoints on nuclear power. This point should be clarified in the final rules.

51.53 SUPPLEMENT TO ENVIRONMENTAL REPORT - OPERATING LICENSE STATE

Commonwealth Edison supports the concept that the operating license stage environmental review should be treated as a supplement to the applicants construction permit environmental report. The need to include information should be based on significance. It does not seem beneficial to put into the supplement large volumes of data collected during the construction period if the data does not show any significant change even though it would qualify as "new" information. The final rule should give guidance as to what kind of significance or other test should be used to determine what information is included in this supplement.

51.95 SUPPLEMENT TO FINAL ENVIRONMENTAL IMPACT STATEMENT - OPERATING LICENSE

In this section it states "The supplement will cover only matters which differ from or which reflect significant new information----". The concept of significance should be explained in 51.53 as well as in 51.95.

51.104 NRC PROCEEDINGS USING PUBLIC HEARINGS; CONSIDERATION OF ENVIRONMENTAL IMPACT STATEMENTS; RECORD OF DECISION

Reference is made to holding hearings after the draft environmental impact statement (DEIS) is issued. The staff, however, will not present their position until after the final environmental impact statement has been issued to the Environmental Protection Agency. It does not seem logical to hold a hearing after the draft is issued and before the staff has taken a position. The final rule should state what the purpose is of holding a hearing after the DEIS and what findings are likely to flow from it.

Commonwealth Edison Company appreciates the Commission's efforts to improve the licensing process and we will participate in future efforts of rulemakings.

Sincerely,

D. L. Peoples

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