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PROPOSED RULE
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Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Subject: Revisions to Waste Confidence Decision

Reference: Federal Register Volume 54, No. 187, September 28, 1989,
Proposed Rule: "Consideration of Environmental Impacts
of Temporary Storage of Spent Fuel After Cessation of
Reactor Operation"

This letter provides Commonwealth Edison Company's (CECo's) comments on the Referenced proposed rule and the revisions to the Waste Confidence Decision.

Long-Term Storage of Spent Fuel from Dresden 1

The NRC's discussion of the possible extended storage of spent fuel from Dresden 1 is not clear. The discussion includes three possible deadlines for on-site spent fuel storage; the years 2008, 2029 and 2059.

In the first instance, the NRC has concluded that from a financial and management perspective, spent fuel can be safely maintained for 30 years after the expiration of the facility operating license. For Dresden 1, which was indefinitely shutdown in 1978, the NRC suggest that the expiration date of the operating license could be considered to be the shutdown date. Therefore, if spent fuel is to remain stored on-site beyond 2008, an additional source of confidence would be required in order to assure the safe maintenance of spent fuel. In the case of Dresden 1, CECo's ability to transfer spent fuel from Dresden 1 to Dresden 2/3 would provide this additional level of confidence. For other facilities where such a transfer is not possible, such as Humboldt Bay, the NRC's confidence in the long-term safe storage is provided by the retention of the NRC's authority to require whatever measures are necessary to protect public health and safety.

In the second instance the NRC has concluded that from a safety perspective, spent fuel can be stored on-site for 30 years beyond the full 40 year term of an operating license, for a total of 70 years. For Dresden 1, which was licensed in 1959, this implies that spent fuel can be safely stored on-site until 2029.

In the third instance, the NRC's discussion of this issue appears to support a conclusion that spent fuel can be safely stored on-site for 100 years, for Dresden 1 this would be until 2059. In discussing the aspects of its decision, the NRC addresses several items to support their confidence in

an on-site storage time of 100 years: 1) the finding that spent fuel can be stored safely on-site for 100 years (Reference at pages 39793-39796); 2) the recognition that the NRC will retain regulatory control over the spent fuel, requiring safe handling until it is placed in a repository; and 3) the fact that either the utilities or the DOE, if necessary, will provide the financial and managerial resources to safely maintain the fuel.

CECo recommends that the NRC clarify its discussion regarding what time period constitutes a safe storage time.

Storage of Spent Fuel - Moving Fuel Between Sites

In discussing possible alternatives for storage of spent fuel from retired reactors, the NRC states:

"If the owner of the retired reactor also owned other reactors at other sites, the spent fuel at the retired reactor could be transferred, if necessary, to the storage facilities of other units still under active management." (Reference at page 39786)

In order to enhance the viability of this option, the NRC should reduce, to the maximum extent possible, licensing uncertainties related to such fuel transfers. By pre-determining that spent fuel pool densification and alternate on-site spent fuel storage methods do not raise any significant hazards considerations the NRC's final decision would be strengthened.

Contracts Between Licensees and DOE

The statement of consideration appears to interject the NRC unnecessarily into contracts between DOE and licensees. Every nuclear utility licensee has entered into a contract with the DOE for its acceptance of spent fuel beginning in the year 1998. Since that date is no longer considered attainable, it is possible that contractual disputes may occur. The NRC has stated that its confidence in safe storage is unaffected by any potential contractual disputes between the DOE and the spent fuel generators/owners regarding who has responsibility for spent fuel until it can be placed in a repository (Reference at page 39792). The NRC then weakens this statement of confidence by remarking that it would have more confidence if the DOE and licensees could resolve any contributing uncertainties by reaching an early and amicable resolution as to how and when the DOE will accept responsibility for spent fuel.

CECo believes that it would be appropriate to strike the statement regarding resolution of uncertainties for two reasons. First, it is inconsistent with the statement that the NRC is confident that any such disputes will not affect safe storage of fuel. As the NRC noted, licensees will not be permitted to abandon spent fuel merely because the DOE refuses to accept it. As long as the fuel is in the licensee's possession, the licensee's storage of the fuel will be subjected to the NRC's control and regulation. This should be sufficient to provide the NRC with absolute confidence in the safety of spent fuel storage, independent of any dispute between the DOE and licensees. Second, implied in the statement that the DOE and licensees should reach an early and amicable resolution of any uncertainties regarding ownership of spent fuel, is a request for licensee's

to amend their contracts with the DOE to allow the DOE additional time to perform under the contracts, or to refrain from taking action if the DOE defaults under its contract. It is inappropriate for the NRC to interject itself into any potential contractual dispute between licensees and DOE. Especially since the NRC has clearly stated that any such dispute would not affect its confidence that storage of spent fuel will not endanger the public health and safety. There is no basis for the NRC to suggest that licensees forgo their rights under contracts that were voluntarily entered into by parties that were fully competent to understand their duties under such contracts. The NRC should delete any reference to the resolution of possible future disputes between the DOE and licensees.

Use of Nuclear Waste Fund (NWF) to Aid Bankrupt Licensees

The NRC has hypothesized that a spent fuel storage concern may arise if a licensee becomes insolvent prior to the time a geological repository is ready to accept fuel (Reference at pages 39786 and 39790). The NRC suggests that the DOE could accept responsibility for managing spent fuel until a repository is available, in the event that a licensee becomes insolvent. The NRC states that it would be appropriate for the DOE to use monies from the NWF in fulfilling this responsibility. This would mean that the solvent utilities would be funding the storage of spent fuel generated by bankrupt licensees. It is not clear whether or not the Nuclear Waste Policy Act (NWPA) would allow NWF monies to be used in this manner. Such a decision should be made only after careful evaluation and consideration of its implications. The NRC should seek and analyze comments on this issue before adopting it as a basis for confidence. Until further evaluation/analysis is conducted on this matter, it should be deleted.

Costs Incurred by Licensees as a Result of Extension

Additional costs will be incurred by the licensees as a result of delaying acceptance of spent fuel by the repository. Consideration should be given to address whether or not the monies associated with these costs will come from the NWF or be directly incurred by the licensee.

Low Level Radwaste Generated as a Result of Extension

This proposed rule does not specifically address low-level radwaste concerns during the extension period. If the waste is stored in the spent fuel pool the resins used to maintain water quality will generate low-level radwaste requiring disposal. If CECO implements rod consolidation to conserve pool space during the extension, the end caps spacers, and tie rods may be declared low-level radwaste requiring disposal. The NRC should determine if these parts are to go to a Federal Repository or to a sited compact site for disposal.

Commonwealth Edison Company appreciates this opportunity to comment.



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