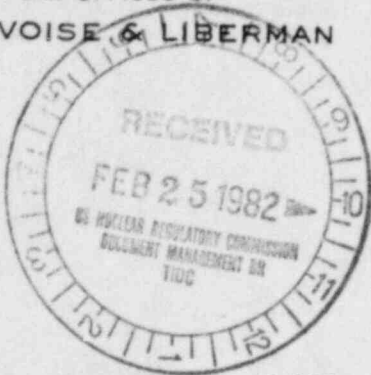


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February 16, 1982

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

DOCKET NUMBER
PETITION RULE PRM-50-30

(52)
(46 FR 61484)

Re: Petition for Rulemaking by Council
on Energy Independence; 46 Fed. Reg.
61484 (December 17, 1981)

Dear Mr. Chilk:

On December 17, 1981, the Commission published in the Federal Register a notice of receipt of a petition for rulemaking from the Council on Energy Independence. 46 Fed. Reg. 61484. The Petitioner requested that the Commission amend its Regulations to extend to 40 years the period of operating licenses for nuclear power reactors. The Commission invited comments on the petition to be filed by February 16, 1982.

On behalf of the Utility Decommissioning Group, */ we submit the following comments on the petition for rulemaking. The Utility Decommissioning Group consists of utilities which are holders of NRC licenses to construct and/or operate nuclear power reactors. The Group was formed in 1977 to participate in the NRC rulemaking on decommissioning. 42 Fed. Reg. 40063 (August 8, 1977); 43 Fed. Reg. 10370 (March 13, 1978).

*/ The Group consists of the Edison Electric Institute and the following 16 power reactor licensees: Arkansas Power & Light Company, Carolina Power & Light Company, Dallas Power & Light Company, Duke Power Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Northeast Utilities Service Company, Pacific Gas & Electric Company, Pennsylvania Electric Company, South Carolina Electric & Gas Company, Southern California Edison Company, Texas Electric Services Company, Texas Power & Light Company, Texas Utilities Generating Company, Virginia Electric & Power Company and Yankee Atomic Electric Company.

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Acknowledged by card...

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COMMENTS

The petition for rulemaking requests that the Commission amend its Regulations to provide either for 50-year licenses (from the date of issuance of the construction permit) or for a 40-year operating license to run from the date the license is issued. The Commission invited comments only on the second proposal since 50-year licenses may not be issued by the Commission under the terms of the Atomic Energy Act.

The Utility Decommissioning Group supports a change in Commission practice regarding issuance of construction permits and operating licenses so as to permit the issuance of operating licenses for a period of up to 40 years, at the option of the applicant. The Group does not believe that an amendment to Commission Regulations is necessary to effect that change.

A. Commission Authority to Issue
40-Year Operating Licenses

The Commission possesses the authority to issue forty-year operating licenses. Section 103(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2133(c), authorizes the Commission to issue a license for up to forty years. That section provides as follows:

Each . . . license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period. [42 U.S.C. §2133(c).]

In addition, Section 185 of the Act, 42 U.S.C. §2235, provides for the Commission initially to issue construction permits for nuclear power reactors and then, upon making certain findings, "the Commission shall thereupon issue a license to the applicant." Read in conjunction with Section 103(c), it is clear that Section 185 authorizes the Commission to issue a license to operate the facility for any period not exceeding forty years.

To implement this statutory authority, NRC Regulations contemplate issuance of an operating license for the period requested by the applicant (up to 40 years). 10 C.F.R. §50.51. NRC Regulations also provide that a construction permit will be issued "prior to the issuance of a license," and that upon completion of construction in accordance with

the terms of the construction permit, the Commission will convert the permit into a license of the class for which the construction permit was issued. 10 C.F.R. §§50.23 and 50.56. This conversion process is compatible with the issuance of 40-year operating licenses. In fact, the Regulations expressly provide that the Commission may issue an operating license up to the full term authorized by 10 C.F.R. §50.51 (i.e., 40 years). 10 C.F.R. §50.57.

In sum, the Commission possesses the legal authority to issue operating licenses for periods up to 40 years, and the Commission already has regulations which provide, upon completion of construction, for the issuance of a separate license to operate a facility and to permit an applicant to request that operating license for any period up to 40 years. 10 C.F.R. §§50.51 and 50.57. Accordingly, the issue here is simply whether the Commission should alter its present policy and practice of issuing operating licenses for forty years less the period during which the construction permit was in effect.

B. Commission Policy and Practice Should Be Revised

We submit that the Commission as a matter of policy and practice should issue operating licenses for the full term authorized by the Act (40 years), if the Applicant so requests, in accordance with 10 C.F.R. §50.51. The time it takes to license and construct power reactors has grown significantly over the past several years. It is now common for the licensing and construction efforts to consume ten years or more. Under the Commission's current practice of commencing the 40-year license period from the date the construction permit is issued, plants now are receiving operating licenses effective for less than 30 years. Issuance of such a short-lived license is neither consistent with law (see Section A, supra) nor mandated for technical reasons.

C. Summary and Recommendation

There is no need to amend NRC Regulations to accomplish the result sought in the petition for rulemaking, a result which we agree is generally desirable. As discussed above, the Regulations already contemplate issuance of a 40-year operating license.

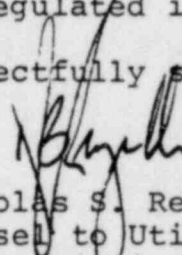
However, there is some confusion that has been occasioned by the present NRC Staff policy and practice of issuing operating licenses of 40 years less the time taken

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for construction. The Commission should revise that policy for the full 40-year term authorized by the Atomic Energy Act, 42 U.S.C. §2133, if the applicant so requests, in accordance with 10 C.F.R. §50.51.

In order to assure that its new policy and practice is clear and understood, the Commission should issue a general statement of policy providing the appropriate guidance to the Staff and to the regulated industry.

Respectfully submitted,



Nicholas S. Reynolds
Counsel to Utility
Decommissioning Group