



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

March 9, 1994

AE46-2 *col*

MEMORANDUM FOR: **NUDOCS**

FROM: Robert S. Wood, Section Chief
Policy Development and Financial
Evaluation Section
Inspection and Licensing Policy Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: REGULATORY HISTORY -- NOTIFICATION OF SPENT
FUEL MANAGEMENT AND FUNDING PLANS BY
LICENSEES OF PREMATURELY SHUT DOWN POWER
REACTORS (10 CFR PART 50)

As requested in a memorandum from Betty Golden, ADM, dated March 8, 1994, please find enclosed the documents relevant to the regulatory history of the subject final rule. This final rule was published in the Federal Register on March 4, 1994, (59 FR 10267). Please send the completed list of the enclosed documents to me at mail stop 12-E-4, OWFN. I may be reached at 504-1255.

A handwritten signature in cursive script, appearing to read "Robert S. Wood".

Robert S. Wood, Section Chief
Policy Development and Financial
Evaluation Section
Inspection and Licensing Policy Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

Enclosures:
As stated

cc: Anthony Gody, ILPB/NRR
Betty Golden, ADM

9403140090 940309
PDR PR
50 59FR10267 PDR

December 27, 1993

SECY-93-359

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: FINAL RULE, 10 CFR 50.54(bb), "NOTIFICATION OF
SPENT FUEL MANAGEMENT AND FUNDING PLANS BY
LICENSEES OF PREMATURELY SHUT DOWN POWER
REACTORS"

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to publish a final rule amending the requirements contained in 10 CFR 50.54(bb) on the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives.

SUMMARY:

This final rule will amend 10 CFR 50.54(bb) to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely. The current rule requires a licensee to submit such notification no later than 5 years before the operating license expires, regardless of the operating status of the plant. This final rule amends the current rule to require that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Contact:
Robert Wood, NRR
504-1255

NOTE: TO BE MADE PUBLICLY AVAILABLE
IN 10 WORKING DAYS FROM THE
DATE OF THIS PAPER.

CATEGORY:

This is a negative consent item.

DISCUSSION:

On June 30, 1993, the NRC published in the Federal Register a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947). This action was recommended to the Commission in SECY-93-117, May 3, 1993. The Commission approved the staff's recommendation by negative consent on May 24, 1993.

SECY-93-117 also stated that the staff will consider recommending to the Commission a rulemaking to include spent fuel costs as part of decommissioning funding assurance requirements when its information base on spent fuel costs is more fully developed. This information is expected to be available by the end of 1994.

1. Comments

The NRC received four comments on the proposed rule. Licensees or their representatives submitted three of the four comments and supported the rule as proposed. These three agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three commenters recommended that the rule amendments should apply only prospectively; that is, the rule should not apply to licensees whose power reactors have already permanently ceased operating. For these plants, the commenters requested that the NRC allow licensees to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that a statement to this effect be added to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking to include spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR Part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISFSI). The fourth commenter supported

rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. Staff Response

The staff responds as follows to the issues raised by the commenters:

(1) The rule should only apply prospectively.

Response: The staff disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires that each power plant licensee submit its decommissioning plans no later than 2 years after permanently ceasing operations, regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the staff believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.¹

(2) Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.

¹In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an onsite ISFSI. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage facilities. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 1, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

Response: The staff disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

- (3) Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.

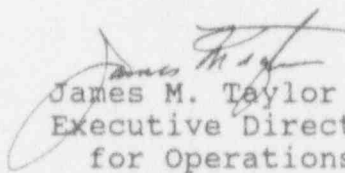
Response: The staff agrees that Part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. The staff will consider whether these provisions are adequate when it evaluates the necessity of including spent fuel management and funding as part of decommissioning costs. The staff also notes that not all licensees use ISFSIs for the storage of their spent fuel.

RECOMMENDATION: That the Commission note:

1. The EDO plans to sign the final rule revising 10 CFR 50.54(bb) as stated in the draft Federal Register notice (Enclosure 1) in 10 working days from the date of this paper, unless otherwise instructed by the Commission.
2. In 10 working days from the date of this paper, unless directed otherwise by the Commission, the EDO will certify that this final rule will not have a significant economic effect on a substantial number of small entities in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 605(b).
3. The Chief Counsel of Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
4. The staff has prepared an environmental assessment as required by the National Environmental Policy Act of 1969, as amended, and, based on that assessment, has determined that this final rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, the preparation of an environmental impact statement is not required. The environmental assessment and finding of no significant impact will be published in the Federal Register as part of the statement of consideration of the final rule. In the assessment, the staff concludes that modifying the timing of the submittal of spent fuel

management and funding plans for prematurely shut down power reactors will not be a major Federal action significantly affecting the quality of the environment.

5. This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).
6. The staff prepared a regulatory analysis and incorporated it into the draft Federal Register notice.
7. The final rule will not constitute a backfit under 10 CFR 50.109; therefore, a backfit analysis is not required.
8. The staff will inform the appropriate Congressional committees.
9. The staff will issue a public announcement.
10. The Office of the General Counsel has reviewed the proposed rule and has no legal objection.
11. No additional NRC resources will be required as a result of this final rule.


James M. Taylor
Executive Director
for Operations

Enclosure:
Draft Federal Register Notice

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Wednesday, January 12, 1994, that the Commission, by negative consent, assents to the action proposed in this paper.

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Enclosure 1

Draft Federal Register Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AE46

Notification of Spent Fuel Management
and Funding Plans By Licensees of
Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives. The final rule requires that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

EFFECTIVE DATE: [30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1255.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1993, the NRC published in the Federal Register a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947).

1. Comments Received

The NRC received four comments on the proposed rule. Three of the four comments came from licensees or their representatives and supported the rule as proposed. These commenters agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three recommended that the rule amendments should apply only prospectively; that is, the rule

should not apply to licensees whose power reactors have already permanently ceased operating. The commenters requested that the NRC allow licensees of these plants to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that the NRC add a statement to this effect to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking on including spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR Part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISFSI). The fourth commenter supported rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. NRC Response to Comments

The NRC responds as follows to the issues raised by the commenters:

(1) The rule should only apply prospectively.

NRC response: The NRC disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires all power plant licensees to submit decommissioning plans no later than 2 years after permanently ceasing operations regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the NRC believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these

licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.¹

- (2) Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.

NRC Response: The NRC disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

- (3) Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.

¹In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an ISFSI onsite. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 4, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

NRC Response: The NRC agrees that Part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. The NRC will consider whether these provisions are adequate when it evaluates whether it is necessary to include spent fuel management and funding as part of decommissioning costs.

Finding of No Significant
Environmental Impact: Availability

This final rule clarifies the timing of the submittal of plans for managing and providing funding for managing all irradiated fuel for those licensees whose power reactors are shut down prematurely. This action is required to coordinate the submittal of spent fuel management and funding plans with the submittal of decommissioning plans for prematurely shut down reactors. Because management and funding of spent fuel can have a significant impact on the method and timing of decommissioning, licensees should submit their plans for spent fuel management and funding to be consistent with the timing provisions for decommissioning plans in §50.82(a) (i.e., no later than 2 years after permanent shutdown).

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Changes in the timing of the submittal of spent fuel management

and funding for prematurely shut down power reactors would not alter the effect on the environment of the licensed activities considered in either the final spent fuel disposition rule (49 FR 34689; August 31, 1984) or the final decommissioning rule (53 FR 24018; June 27, 1988) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988). The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number [3150-0011].

Regulatory Analysis

On August 31, 1984, the NRC published a final rule, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses." (49 FR 34689). As part of this rule, the NRC required power reactor licensees to submit for NRC review and approval, no later than 5 years before expiration of the reactor operating license, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

On June 27, 1988, the Commission promulgated its final decommissioning rule (53 FR 24019). Section 50.82 of this rule provides that licensees of all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Section 50.82(b)(1)(iii) further provides that the proposed decommissioning plan submitted by the licensee should consider such factors as the "unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning safely...." The Commission requires licensees to submit decommissioning plans in a timely manner after they permanently cease operations at their

facilities. The NRC's regulations recognize that a licensee's ability to plan properly and safely for decommissioning depends on a licensee's ability to manage and dispose of its spent fuel. Thus, the timing of requirements for submittal of plans for spent fuel management and storage should be consistent with the timing for submittal of decommissioning plans, including those for power reactors that have been shut down prematurely. Therefore, the NRC is amending 10 CFR 50.54(bb) to require each power reactor licensee to notify the NRC of its program to manage and provide funding for management of the irradiated fuel at its reactor either within 2 years after the licensee permanently ceases operation of its reactor or no later than 5 years before its reactor operating license expires, whichever occurs first. Licensees of nuclear power reactors that have already permanently ceased operations by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Although the timing of preparation and submittal of plans for management and funding of spent fuel would be formally advanced for licensees that shut down their power reactors prematurely, these licensees typically would have already evaluated spent fuel management and funding issues before submitting decommissioning plans required under 10 CFR 50.82. This rule merely makes 10 CFR 50.54(bb) submittal schedular

requirements consistent with 10 CFR 50.82. Thus, there should be no substantive impact on power reactor licensees.

This final rule would not create substantial costs for other licensees. This final rule also will not significantly affect State and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect approximately 115 nuclear power reactor operating licenses. Nuclear power plant licensees do not fall within the definition of small businesses as defined in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR Part 121), or the Commission's Size Standards (56 FR 56671, November 6, 1991).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this final rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50-DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION
FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.54 is amended by revising paragraph (bb) to read as follows: §50.54 Conditions of licenses.

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Licensees of nuclear power reactors that have permanently ceased operation by [insert the effective date of this rule] are required to submit such written notification by [insert a date 2 years after the effective date of this rule]. Final Commission review will be undertaken as part of any proceeding for continued licensing under Part 50 or Part 72. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the

notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

* * * * *

Dated at Rockville, Maryland this _____ day of _____,
1993.

FOR THE NUCLEAR REGULATORY COMMISSION.

James M. Taylor,
Executive Director for Operations.



AE46-2
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(58 FR 34947)
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NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

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Thomas E. Tipton
Vice President & Director
Operations, Management and
Support Services Division

September 13, 1993

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

ATTENTION: Docketing and Service Branch

SUBJECT: U.S. Nuclear Regulatory Commission Proposed Rule, *Notification of Spent Fuel Management and Funding Plans by Licensees of Prematurely Shut Down Power Reactors*
58 Fed.Reg. 34947 (June 30, 1993)
Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the nuclear power industry by the Nuclear Management and Resources Council, Inc. (NUMARC)¹ in response to the U.S. Nuclear Regulatory Commission's (NRC) request for comments (58 Fed.Reg. 34947, June 30, 1993) on proposed rule revisions to clarify the timing and details of notification of spent fuel management and funding plans by power reactor licensees who have shut down prematurely.

The industry agrees that the proposed rule change is administrative in nature and provides consistency between spent fuel management planning (10 CFR 50.54(bb)) and decommissioning plan requirements (10 CFR 50.82(b)(1) and 10 CFR 50.75(f)). The proposed rule would require that a licensee notify the NRC of its program to manage and

¹ NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect/engineering firms and all of the major nuclear steam supply system vendors.

Agree
1. 10/15/93
2. provide comments

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Mr. Samuel J. Chilk
September 13, 1993
Page 2

to fund management of its irradiated fuel within two years after permanently ceasing operation of its power reactor or no later than five years before the operating license expires, whichever occurs first. The proposed revision also provides for specific demonstration, verification and recordkeeping to accompany this notification, in place of the case-by-case approach associated with the current rule.

It is our understanding that this proposed rule does not apply retroactively to licensees that have permanently ceased operation of their power reactors prior to the implementation date of the final rule. Indeed, we believe it would be inappropriate to do otherwise. For those licensees, spent fuel management planning should continue to be handled on a case-by-case basis as provided by the current rule, which was in effect at the time those licensees ceased operation, rather than according to the specific requirements contained in the proposed rule revision. We recommend that a statement be added to the final rule to clearly indicate that the requirements of the revised rule do not apply to reactors that have permanently ceased operation prior to the rule's implementation date.

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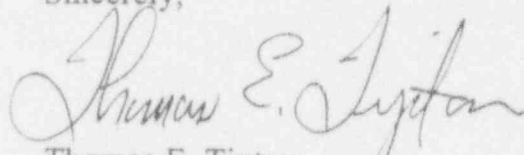
Add
to final
rule

The Discussion section of the proposed rule (Page 34948) states that, "The Commission will consider rulemaking on the inclusion of spent fuel cost as part of decommissioning costs when its information base on spent fuel cost is fully developed." We agree that generic rulemaking on this issue is premature and should only be considered after sufficient data are available to support informed decision making.

rule making
in 5/85.

If there are any questions regarding the comments provided in this letter, please contact Alan Nelson, John Schmitt or me. We are available to meet with the NRC and discuss the issue further if desired.

Sincerely,


Thomas E. Tipton

TET/APN:plg

AE46
50 PDR

WINSTON & STRAWN (58 FR 34947) 004

FREDERICK H. WINSTON (1953-1988)
SILAS H. STRAWN (1891-1946)

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September 13, 1993

(2)

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

ATTN: Docketing and Services Branch

Re: Notification of Spent Fuel Management and Funding Plans
By Licensees of Prematurely Shut Down Power Reactors;
Proposed Rule; 58 Fed. Reg. 34,947 (June 30, 1993)

Dear Mr. Chilk:

On June 30, 1993, the Nuclear Regulatory Commission ("NRC") published in the Federal Register a notice of proposed rulemaking concerning the submission of spent fuel management and funding information by power reactor licensees. 58 Fed. Reg. 34,947 (1993). The proposed rule would revise 10 C.F.R. § 50.54(bb) to provide that the licensee of a prematurely shut down plant must submit a spent fuel management plan within two years following permanent cessation of operations. On behalf of the Utility Decommissioning Group ("Group"),¹ we submit the following comments on the proposed rulemaking.

The Group supports the Commission's proposal to revise 10 C.F.R. § 50.54(bb) to clarify the timing of submission of spent fuel management plans by licensees of prematurely shut down reactors. Under the proposed amendments, a licensee would be required to submit a spent fuel management plan to NRC within two years following permanent cessation of operation of the reactor or five years before expiration of the reactor operating license, whichever occurs first. The proposed revisions add the two-year post-shutdown deadline to address the contingency of premature

support change

¹ The members of the Utility Decommissioning Group are Duke Power Company; Entergy Operations, Inc.; Florida Power and Light Company; Northeast Utilities; Texas Utilities Electric Company; and Virginia Power Company. Each Group member company owns or operates one or more nuclear power plants subject to NRC regulation.

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Samuel J. Chilk
September 13, 1993
Page - 2 -

shutdown. This deadline would be consistent with the deadline established in 10 C.F.R. § 50.82(a) for submission of a proposed Decommissioning Plan^{2/} and would address the need for coordination of plans for spent fuel management with plans for decommissioning.^{3/}

We recommend that the NRC consider the following matters in connection with the promulgation of these proposed regulatory revisions.

1. **The Proposed Revisions Should Apply Prospectively
(i.e., Should Not Be Applied Retroactively)**

The proposed revisions to 10 C.F.R. § 50.54(bb) should specify that they are not applicable to plants that have already permanently shut down. Existing shutdown plants have established, or will soon establish, schedules for submission to NRC of decommissioning and spent fuel management information, and those schedules should not need to be adjusted in response to this rulemaking. To effect this clarification, the regulation could be worded in the same manner as the NRC's decommissioning rule, 10

^{2/} The Group has been following the NRC's ongoing review of its decommissioning regulations, which we understand will include a review of the requirements in 10 C.F.R. Part 50, to clarify their applicability to holders of possession-only licenses for shut down power reactors. As part of that process, the NRC should clarify that 10 C.F.R. § 50.75(f), which governs the submission of Preliminary Decommissioning Plans, is not applicable to a plant that shuts down prematurely and is unable to comply with the five-year pre-shutdown deadline. For prematurely shut down plants, NRC requirements for submission of a proposed Decommissioning Plan (Section 50.82(a)) and these proposed revisions concerning submission of spent fuel management information (Section 50.54(bb)) should be sufficient to inform the NRC of the licensee's pertinent post-shutdown plans.

^{3/} The Group submitted comments in July, 1983 on the proposed rulemaking concerning promulgation of Section 50.54(bb) (formerly 50.54(x)). In those comments, the Group expressed the view that "coordinated planning [between decommissioning and spent fuel management] is essential." Group comments dated July 5, 1983, at 4. The current proposed rulemaking is consistent with the Group's views as stated in those earlier comments.

Samuel J. Chilk
September 13, 1993
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C.F.R. § 50.82, to state that the provision is applicable "For a facility that permanently ceases operation after [the effective date of the rule, . . .]."

2. The NRC Should Carefully Consider the Need For Rulemaking On Funding For Spent Fuel Management

In the Statement of Considerations accompanying this proposed rulemaking, the NRC indicates its intention to consider future rulemaking "on the inclusion of spent fuel costs as part of decommissioning costs." 58 Fed. Reg. at 34,948. We understand that the NRC is currently conducting a study of licensees' spent fuel costs, similar to the decommissioning cost estimate studies performed in connection with the development of the NRC's decommissioning regulations. The Group supports the NRC's intention to await completion and review of these spent fuel cost studies before committing to the development of further regulatory action in this area.

*used
2/2/94
SF cost
study*

The Group encourages the NRC to issue for public comment the results of its spent fuel cost studies when they become available. The NRC could then consider the study results and public comments, along with the existing body of regulatory provisions governing funding for decommissioning and spent fuel management, before deciding whether further regulatory action in this area is warranted.

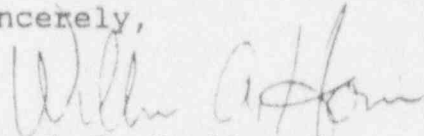
On a related matter, we note that at a June 23, 1993, Commission briefing on the status of review of the NRC's decommissioning cost estimates, the NRC Staff suggested that the costs of an ISFSI, for those licensees employing such fuel storage arrangements, could be significant. However, the NRC's ISFSI licensing regulations already ensure that adequate funds will be available to cover such costs. NRC regulations require that an ISFSI license application include information demonstrating the applicant's financial qualifications, including estimated construction costs, operating costs, and decommissioning costs. 10 C.F.R. § 72.22(e). Specific financial assurance requirements for ISFSI decommissioning are set forth in 10 C.F.R. § 72.30. Before a specific Part 72 ISFSI license is granted, the NRC must find that the applicant is financially qualified to engage in the proposed activities. 10 C.F.R. § 72.40(a)(6). Some licensees with ISFSIs are currently recovering the costs of those operations as fuel costs, and others have included anticipated ISFSI costs in their decommissioning cost estimates and decommissioning funding arrangements.

*ISFSI
11/94*

Samuel J. Chilk
September 13, 1993
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We appreciate the opportunity to comment on these matters of importance to the decommissioning process and encourage the NRC to move forward with promulgation of the proposed regulatory revisions. We look forward to commenting further on the issue of funding for spent fuel management should the NRC consider that subject in the future.

Sincerely,



Joseph B. Knotts, Jr.
William A. Horin
Robert L. Draper

Counsel to the
Utility Decommissioning Group



Commonwealth Edison
 1400 Opus Place
 Downers Grove, Illinois 60515

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 (58 FR 34947)

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September 13, 1993

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

RE: Proposed Rule, Notification of Spent Fuel Management
 and Funding Plans by Licensees of Premature Shut Down
 Reactors (58 Fed. Reg. 34947, June 30, 1993)
 Requests for Comments

Dear Mr. Chilk:

A notice was issued June 30, 1993 in the Federal Register on decommissioning. This notification addressed a proposed rule on the timing of spent fuel management and funding plans by licensees who have shutdown prematurely. The proposed rule would require that a licensee submit such a notification within two years after permanently ceasing operation or no later than five years before the operating license expires whichever occurs first.

The proposed rule appears to provide the necessary clarifications needed for prematurely shutdown plants that will be consistent with the timing provisions contained in the NRC's final decommissioning rule enacted in 1988. Commonwealth Edison sees this activity as merely an administrative change and supports this effort. It appears the proposed rule will have no impact on current licensees.

*support
 impact
 on
 current
 licensees*

We have discussed this proposed rule with NUMARC and agree with their similar conclusions.

Sincerely,

William F. Naughton

William F. Naughton
 Director,
 Strategic Licensing &
 Regulatory Performance

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AE 46-2006
PDR

(4)

MHB Technical Associates

Consultants on Energy & the Environment

10 September 1993

Mr. Robert Wood
 Inspection Policy & Licensing Branch
 Office of Nuclear Reactor Regulation
 Mail Stop 12 E4
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

REL
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Dear Mr. Wood:

This letter documents my comments on the NRC's proposed rule which would amend 10 CFR 50.44(bb) "Notification of Spent Fuel Management and Funding Plans by Licensees of Prematurely Shut Down Power Reactors". I concur in the need for the proposed rule, but I have comments on certain aspects of the proposal. The proposed rule would permit licensees to delay submitting a plan for assuring the funding of spent fuel management for a period of two years after shutdown. This time period is excessively generous, and should be substantially shortened.

MHB
PDR

Premature shutdowns are by definition not planned. Nonetheless, assuring the safety of spent fuel in water storage is and remains important for the long term. It is therefore necessary that funding be assured for long-term spent fuel management following premature plant shutdown. It is important for the NRC to recognize that the rate treatment accorded operating plants by state utility commissions ends when operation is terminated. While there is no case of which I am aware in which a state utility commission have refused to allow rate treatment for costs associated with spent fuel management, there is also no reason to believe that utilities will be able to pass through such costs to ratepayers without limitation. Due to the importance to safety of spent fuel management, assurance of availability of funding for spent fuel management activities must be provided very quickly. I believe that a period of 30-60 days should be sufficient for a utility to describe its capabilities plans for assuring adequate funding for spent fuel management after plant shutdown.

Further, I believe that the NRC should move expeditiously to formulate and issue for public comment a proposed rule which would amend the NRC's regulations concerning decommissioning funding. Such a possibility is noted in SECY-93-117 (page 2). The cost of spent fuel management activities after shutdown are not trivial. My colleagues at MHB have reviewed numerous decommissioning cost estimates, and have noted that such decommissioning cost estimates have included post-shutdown spent fuel management costs estimated as high as \$40 million per year in current (1991) dollars for the first two years after shutdown. I have discussed such costs with several utilities, and I have been told that such costs have been running in the range of \$8 million per year for recently shut down facilities. The significance of this range of costs for spent fuel management after shutdown (\$8 million to \$40 million per year for what is essentially an "O&M" cost) can be seen by comparing it to operating plant O&M budgets which are in the range of \$80 million to \$120 million annually for single-unit plants. While such costs are tolerated for operating plants (as evidenced by their approval in rates by state utility commissions), it is less clear how willing rate commissions will be to permit substantial O&M expenditures for the long term for plants which are no longer producing electricity.

Mr. Robert Wood
10 September 1993
Page 2

Moreover, compared with decommissioning cost estimates in the range of \$200 million under the current NRC rule, it is clear that post-shutdown spent fuel management costs in the range of \$8 million to \$40 million per year will quickly rival decommissioning costs. Inasmuch as NRC requires creation of a decommissioning fund to provide assurance of adequate funding, NRC needs to require similar advance funding arrangements for post-shutdown spent fuel management costs.

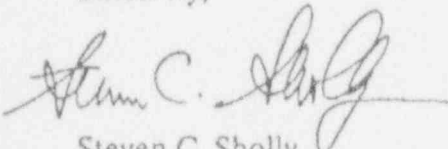
Such costs will ensue over a number of decades for many currently operating plants. Taking Pilgrim as an example, even if DOE begins accepting spent fuel in 1998 (which DOE has already acknowledged that it cannot do using either an MRS or high level repository), spent fuel will remain at Pilgrim until at least 2026 -- thirteen years after the plant is shutdown at the end of its licensed life. Of course, if a more realistic DOE spent fuel acceptance date is used (the NRC staff has acknowledged that the high level repository will not become available until 2010 at the earliest), the time extends well beyond 2026 for Pilgrim.

I do not concur with the suggestion in the SECY paper containing the proposed rule that post-shutdown spent fuel management costs should be included in the Decommissioning Trust Fund (DTF). First, this raises the issue of whether the IRS will allow the DTF to qualify as a tax-deductible expense. Second, a number of utilities and state governments are requesting, or will be requesting, that some of the spent fuel management costs be paid for out of the Nuclear Waste Fund that is managed by DOE. I understand that DOE is actively considering its policy on cost-sharing after 1998 because of its apparent failure of satisfy its contract commitments with utilities. NRC should require by rule that such planning occur now and that appropriate advance funding arrangements be made in a fashion similar to decommissioning funding, but separate from it.

*inclusion
of spent
fuel
in
DTF*

I would be pleased to discuss these matters further with you or your staff should you desire. If you have any questions concerning these comments, please give me a call.

Sincerely,



Steven C. Sholly
Senior Consultant

DOCKET NUMBER
PROPOSED RULE PR 50
(58FR34947)

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OFFICE
NRC

'93 NOV 17 P3:55

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OFFICE OF THE SECRETARY
DOCKET SERVICE
BRANCH

United States Nuclear Regulatory Commission
Washington, D. C. 20555

In the matter of

Exemptions in Accident Insurance for Nuclear Power Plants
prematurely shut down.

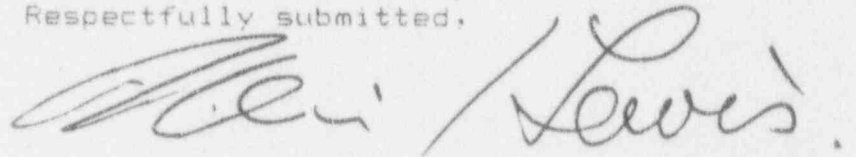
Please accept this letter as my comments upon the above cited
exemption requests from Rancho Seco, Ft St Vrain, Yankee Rowe,
San Onofre, and Shoreham.

The Commissioners would be fools to provide any exemption.

Fuel pool problems are constantly cropping up. The latest is
two engineers at Susquehanna pointing out the possibility of a
fuel pool accident leading to a meltdown. Fuel pools leak.
Reracking has lead to many questions about criticality.

I hope that the Commissioners have enough sense to keep all
insurances in force.

I wish that I could say,
Respectfully submitted,



11-14-93.

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