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STATE OF ILLINOIS

Illinois Commerce Commission

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March 9, 1994

Mr. Donald P. Cleary
Division of Regulatory Applications
Office of Nuclear Regulatory Research
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Cleary:

Attached is the response of the Illinois Commerce Commission to the NRC request for comments concerning the 10 CFR Part 51, RIH 3150-AD94, "Environmental Review For Renewal of Operating Licenses."

We appreciate the opportunity to respond to the NRC Proposed Rule and request that our comments be given due consideration in developing the final Rule. We regret that we were unable to file our comments by March 4, 1994, however, we did not receive the public meeting transcripts until March 4, 1994. The Illinois Commerce Commission believes that the best interests of all parties would be served by inclusion of the attached comments in the record and hope that they will be of assistance in the NRC deliberations.

Thank you.

Sincerely,

Ellen C. Craig

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CHAIRMAN

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RESPONSE TO NRC RULEMAKING

The Illinois Commerce Commission submits these comments in response to the Nuclear Regulatory Commission's (NRC) letter of January 11, 1994 inviting States to participate in regional meetings addressing the NRC's Proposed Rule to establish new requirements for the environmental review of applications to renew operating licenses for nuclear generating plants. The NRC also requested comments regarding the staff discussion paper, "Addressing the Concerns of States and others Regarding the Role of Need for Generating Capacity, Alternative Energy Sources, Utility Costs, and Cost-Benefit Analysis in NRC Environmental reviews for Relicensing Nuclear Power Plants, An NRC Staff Discussion Paper" (January 1994).

The Staff discussion paper reflects its assessment of NRC negotiations with the Council on Environmental Quality ("CEQ")and the United States Environmental Protection Agency ("EPA") regarding the Proposed Rule's obstruction of public and state participation under the National Environmental Policy Act ("NEPA"). It also summarizes concerns expressed by the State of Illinois and other States at three public hearings. The State of Illinois participated in the February 15, 1994 hearing at Rosemont, Illinois.

The Illinois Commerce Commission (ICC) continues to be concerned that the Proposed Rule would make generic conclusions for two of the most controversial aspects of the Environmental Impact Statement (EIS); those being a finding of "need for" and "economic benefit" of the relicensed nuclear capacity; decades early, for all 109 commercial nuclear generating stations eligible for license extension.

Site-specific EIS' only address issues not previously "resolved" by the Proposed Rule and associated Generic Environmental Impact Statement (GEIS). Only two of the one hundred

four environmental impacts are clearly identified as "not resolved". Proposed conclusions are final for 80 issues and for another 22 except under special circumstances. Once the generic determinations are made those issues cannot be reopened without encountering problematic rulemaking procedures or an evidentiary demonstration of new and significant information. This situation shifts the NRC's burden of environmental disclosure to the States and the public. Even though the state commissions may be able to meet this burden it requires a significant investment in resources by the states.

The proposed rule also encroaches on, or at a minimum erodes, the States' authority over the determination of the need, and economic efficacy of future capacity acquisition decisions as required under Sections 8.402 of 83 Illinois Public Utility Act (Least Cost Planning Law). Designation of need and evaluation of alternatives to meet that need as a Category 1 (needing no site specific review or findings) issue completely disregards many of the states' traditional role and the Illinois Commerce Commission's specific statutory requirements in the determination of need for new resources. This situation creates two problems. First, the NRC's generic determinations in this rulemaking may become presumptive findings in subsequent utility or State Least Cost Planning (LCP) or Integrated Resource Planning (IRP) proceedings. The NRC staff acknowledged this potential consequence in their briefing of the NRC Commissioners on February 19, 1993. Second, states may be forced to intervene in the NRC proceedings at the time of each individual nuclear power plant relicensing application if the GEIS determination regarding need and alternatives differ from those approved by the state public utility commission. The resolution of key differences between findings in state proceedings and prior NRC determinations, would impose significant administrative burdens on the state commissions in both federal and state court proceedings. The NRC's stated intention not to preempt state authority is of little solace to states who must fund

intervention in federal proceedings or appeal orders in state or federal courts even if the state should ultimately prevail. In short, the existence of findings in two different forums concerning substantially similar issues will only serve to generate confusion and litigation where the findings in one forum are either inconsistent or at odds with parties' interests. This situation will neither reduce contention nor increase efficiency, which this commission believes was the goal of the NRC in establishing its GEIS rules.

Furthermore, the proposed Rule is lacking in full environmental disclosure to NRC Commissioners and the public which the NEPA requires. Failure to rely on State Least Cost Planning, IRP or similar proceedings neglects the most timely and complete information available regarding need and selection of capacity alternatives. Information from states environmental reviews under their "mini NEPAs" or other states' existing environmental policies are also excluded. In addition to full disclosure of environmental information NEPA requires public participation in the development of the information itself. The Proposed Rule fails to encourage public input and participation in the NRC's environmental review process by incorporating the state Least Cost Planning, IRP or similar processes which were largely developed to improve public participation in the review of utility resource acquisition decisions. In short, we believe that states who have implemented IRP processes and those which will do so under the EPAC requirements should be given deference by the NRC as having fulfilled the public review process of the NEPA.

RECOMMENDATIONS

As the NRC concludes this rulemaking, the Illinois Commerce Commission recommends that the following modification to the Proposed Rule be adopted:

- Redesignation of need and alternatives selection as Category 3 (site specific evaluation and findings required) issues to be considered fully by the NRC in its environmental review of individual nuclear power plant relicensing application;

- Implementation of an environmental review process whereby the NRC fully considers the evidentiary record developed in state Least Cost Planning or Integrated Resource Planning or similar proceedings, including supporting data and analysis, as the most complete and timely information available regarding need for and alternatives to new resources, and the NRC accords substantial weight to State determinations in those proceedings; and

- Inclusion of an explicit statement in the body of the Proposed Rule that the rule in no way preempts State jurisdiction over the determination of the continued need for specific nuclear power plant capacity, and that NRC consideration of need for and alternatives to capacity does not constitute a "rebuttable presumption" that the capacity is required and can be considered to be the most economical of alterative capacity options available. The NRC's consideration of need and alternatives would only be intended to fulfill their environmental review duties as required under the National Energy Policy Act.

The Illinois Commerce Commission also wishes to assuage any concerns that parties may have regarding the State Least Cost

Planning or Integrated Resource Planning Process being de facto anti-nuclear. This is certainly not true in Illinois. Although Illinois law requires that all initial sources of new supply come from conservation, demand-side management, renewables or purchased power the law also requires that the selected options be least cost, efficient, reliable, and environmentally safe. Under the ICC least cost planning rules, utilities are also required to demonstrate that capacity recovered from existing generating units would not be least cost before any new supply side options could be selected.

A. M. Visnesky, Jr.
Manager, Energy Programs
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