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STATE OF MINNESOTA

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March 4, 1994

Secretary Samuel Chilk
Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

VIA AIRBORNE EXPRESS

Re: Proposed Rule 10 C.F.R. Part 51, Environmental Review for Renewal of Operating Licenses, and the Draft Generic Environmental Impact Statement, NUREG-1437, and Related Documents

Dear Mr. Chilk:

Enclosed for filing with your office is an original bound copy of the Comments and Recommendations of the State of Minnesota for docketing in connection with the above-mentioned proceeding. Also enclosed for your convenience is an unbound copy for reproduction.

Please substitute these copies for the ones previously filed one day earlier. Unfortunately, the originally filed copies contained inadvertent errors including incorrect page numbers and citations in the table of contents.

I apologize for any inconvenience this may have caused the Commission.

Sincerely,

Mark A.R. Chalfant

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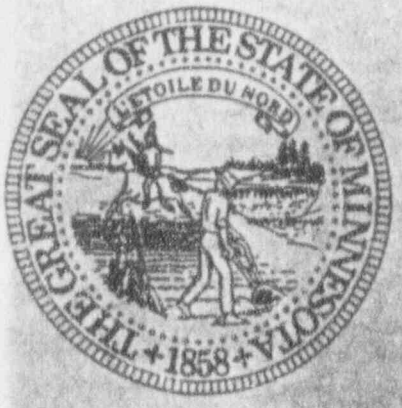
STATE OF MINNESOTA

COMMENTS AND RECOMMENDATIONS

RE: PROPOSED RULE 10 C.F.R. PART 51, ENVIRONMENTAL REVIEW FOR RENEWAL OF OPERATING LICENSES, AND THE DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT, NUREG-1437, AND RELATED DOCUMENTS

BEFORE THE
NUCLEAR REGULATORY COMMISSION

MARCH 4, 1994



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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

RE: PROPOSED RULE 10 C.F.R. PART 51,
ENVIRONMENTAL REVIEW FOR RENEWAL OF
OPERATING LICENSES, AND THE DRAFT GENERIC
ENVIRONMENTAL IMPACT STATEMENT,
NUREG-1437, AND RELATED DOCUMENTS

COMMENTS AND RECOMMENDATIONS

by the

STATE OF MINNESOTA

The State of Minnesota, pursuant to notice,
hereby submits to the Nuclear Regulatory Commission
Comments and Recommendations
in the above-captioned proceeding.

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EXECUTIVE SUMMARY

Background

The State of Minnesota submits these comments and recommendations in response to the Nuclear Regulatory Commission's ("NRC" or "Commission") 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 power plants. The Commission also invited States to file subsequent written comments on March 4, 1994, regarding those meetings and the recent NRC 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 NRC staff discussion paper reflects the staff's 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 Minnesota and other States. The discussion paper concludes with various options which were discussed by the NRC staff and various States at 3 public hearings. The State of Minnesota participated in the February 15, 1994, hearing at Rosemont, Illinois.

The State of Minnesota would prefer the NRC withdraw its Proposed Rule and associated GEIS, and close this four-year old proceeding. The NRC's proposal suffers from multiple errors and inadequacies. Contrary to the NRC's stated

intent, it creates the specter of unnecessary legal and administrative burdens on the States and industry as well as duplication with State procedures. By the NRC's own analysis, it fails to provide significant cost savings, and those small savings are being overwhelmed by the continuing costs of this proceeding.

CEQ/EPA Comments

The State of Minnesota remains concerned that the Proposed Rule still obstructs public participation and encroaches on State authority. Changes proposed in response to the CEQ's and EPA's comments do not in themselves significantly allow discussion of issues at the time a license renewal application is filed. The Proposed Rule still would make generic conclusions for most controversial aspects of the EIS ahead of time (even decades early) for all 109 commercial nuclear power reactors eligible for license extension.

A site-specific EIS only addresses issues not previously "resolved" by the Proposed Rule and associated GEIS. Only 2 of the 104 environmental impacts are clearly identified as not resolved under the Proposed Rule. Proposed conclusions are final for 80 issues and for another 22 except under special circumstances. Once generic determinations are made (i.e., now) those issues cannot be reopened later without overcoming difficult and cumbersome rulemaking procedures or demonstration of new and significant information. This impermissibly shifts the NRC's burden of environmental disclosure to the States and the public.

Federal Encroachment

The Proposed Rule encroaches on the States' traditional authority over the determination of the need for generating capacity and alternatives available to

meet that need. Designation of need and alternatives as Category 1 issues wholly disregards the States' traditional role.

This has two broad implications. First, the Commission's generic determinations in this rulemaking may become presumptive findings in subsequent State integrated resource planning ("IRP") or similar proceedings. The NRC's staff acknowledged this practical effect 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 individual nuclear power plant relicensing applications if the CEIS's generic determinations regarding need and alternatives differ from State IRP or similar proceedings. Resolving key differences between State findings and prior NRC determinations, perhaps even decades old at the time of relicensing application, would impose additional administrative and legal burdens on the States and industry in federal and State proceedings.

Inadequate Disclosure

The Proposal Rule also falls far short of full environmental disclosure to the NRC Commissioners and the public. The National Environmental Policy Act ("NEPA") requires full environmental disclosure to both the NRC Commissioners and to the public. The Proposed Rule fails to provide required information in three critical ways. Each technical inadequacy identified in the State of Minnesota's previous filing indicates incomplete or unavailable information. Failure to rely on State IRP or similar proceedings neglects the most timely and complete information available regarding need and alternatives. Information from States' environmental reviews under State's "little NEPAs" and other States' existing environmental policies and standards are excluded. In addition to full disclosure of environmental information to the public, NEPA requires adequate public participation in the

development of the information itself. The Proposed Rule fails to encourage adequate public input to the NRC's environmental review process.

Recommendations

If the NRC persists in this rulemaking the Commission must adopt all of the following modifications to the Proposed Rule and the draft GEIS to address the State of Minnesota's concerns:

* Redesignation of need and alternatives as Category 3 issues to be considered fully by the NRC in its environmental review of individual nuclear power plant relicensing applications; and

* Implementation of an environmental review process whereby the NRC considers to the maximum extent possible the record developed in State IRP or similar proceedings, including underlying data and analysis, as the most complete and timely information available regarding need and alternatives, and the NRC accords substantial weight to State determinations in those proceedings; and

* Inclusion of an explicit statement in the text of the Proposed Rule itself that the rule in no way preempts State jurisdiction over the determination of the continued need for nuclear power plant capacity and that the NRC's consideration of need and alternatives is only intended to fulfill the NRC's environmental review duties; and

* Revision of the draft GEIS to address the numerous technical inadequacies cited in the Minnesota Agencies' March 13, 1992, filing.

I. INTRODUCTION

The State of Minnesota submits these comments and recommendations in response to the Commission's letter of January 11, 1994, inviting States to participate in regional meetings and to file subsequent written comments regarding the NRC 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). These comments are intended to supplement those filed by the Minnesota Agencies on March 13, 1993, regarding the NRC's proposed rule on the environmental review required for renewal of nuclear power plant operating licenses ("Proposed Rule"). 56 Fed. Reg. 47,016 (1991) (to be codified at 10 C.F.R. Part 51) (proposed Sept. 17, 1991).

The NRC staff discussion paper reflects the NRC's assessment of negotiations with the Council on Environmental Quality ("CEQ") and the United States Environmental Protection Agency ("EPA") regarding the Proposed Rule's obstruction of public participation under the National Environmental Policy Act ("NEPA"). It also summarizes concerns expressed by the State of Minnesota and other States regarding the treatment of need and alternatives. The staff discussion paper concludes with various options which were discussed by the NRC staff and various States at three (3) public hearings. The State of Minnesota participated in the February 15, 1994, hearing at Rosemont, Illinois.

The State of Minnesota remains concerned over the multiple errors and inadequacies remaining to be addressed in the Proposed Rule and the draft Generic Environmental Impact Statement ("draft GEIS"). The Minnesota Agencies' 1992

filing provided thirty-eight (38) pages of specific comments and recommendations regarding numerous technical inadequacies of the draft GEIS. The Commission has yet to address these technical inadequacies.

The State of Minnesota continues to object to the Proposed Rule and the draft GEIS on two fundamental grounds. The Proposed Rule encroaches on the States' traditional authority over the determination of the need for generating capacity. Furthermore, the draft GEIS falls far short of full environmental disclosure to the NRC Commissioners and the public. The State of Minnesota offers four key recommendations to address the most serious pitfalls of the Proposed Rule. Each proposed modification is necessary but not sufficient to address the State of Minnesota's concerns. All are required.

II. LEGAL ARGUMENT

A. THE STATE OF MINNESOTA RENEWS ITS OBJECTION TO THE NRC'S RULEMAKING ON THE ENVIRONMENTAL REVIEW FOR RENEWAL OF NUCLEAR POWER PLANT OPERATING LICENSES.

The State of Minnesota renews its objection to the NRC's rulemaking to amend its environmental regulations, 10 C.F.R. Part 51, which would establish new requirements for the environmental review of applications to renew operating licenses for nuclear power plants and the draft GEIS that contains the analyses which the NRC proposes to adopt in Part 51.

1. The State of Minnesota Objects To The Proposed Rule And The Draft GEIS On Two Fundamental Grounds.

The State of Minnesota objects to the Proposed Rule and the draft GEIS on two fundamental grounds:

- The Proposed Rule encroaches on the States' traditional authority over the determination of the need for generating capacity; and

- The draft GEIS falls far short of full environmental disclosure to the NRC Commissioners and the public.

At the heart of the State of Minnesota's concerns is the NRC's extensive reliance on generic determinations that foreclose meaningful State and public input. In this rulemaking, the NRC proposes to *predetermine* that every one of the nation's nuclear power plants is needed without obtaining adequate input from the States

and without regard to the record developed in State integrated resource planning ("IRP") or similar proceedings, including underlying data and analyses, and State determinations in those proceedings. The Proposed Rule's classification of need and alternatives as Category 1 determinations[1] means that these issues of critical importance to the States would not be considered further at the time of individual nuclear power plant relicensing applications. 56 Fed. Reg. 47,016, 47,029 (1991). Only the designation of need and alternatives as Category 3 issues[2] would afford these issues the level of scrutiny that they deserve during license renewal. In addition, the Proposed Rule's classification of virtually all (102 of 104) environmental impacts identified in the draft GEIS as Category 1 determinations or Category 2 impacts[3] would not be subject to further consideration with few exceptions. Id. at 47,017 ("By assessing and codifying certain potential environmental impacts on a generic basis, no need exists to address these impacts for each future license renewal."), 47,030-47,035. Many of these environmental impacts should be designated as Category 3 issues because they also deserve to be considered fully at the time of individual nuclear power plant relicensing applications in light of material information from State proceedings.

The NRC's misplaced reliance on Category 1 and 2 determinations, including the classification of need and alternatives as Category 1 issues and virtually all environmental impacts as Category 1 or 2 issues, is inconsistent with the Commission's charge to reduce duplication with State and local requirements. The

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1. For a Category 1 impact, the NRC in the draft GEIS reached a conclusion about this impact that applies to all affected nuclear power plants. 56 Fed. Reg. 47,019 (1991).

2. For a Category 3 impact, the NRC in the draft GEIS reached a conclusion about this impact that the licensee shall evaluate this impact for each plant for which it applies to renew a license. Id.

3. For a Category 2 impact, the NRC in the draft GEIS reached a conclusion about this impact that applies to all affected nuclear power plants plants that are within certain bounds. Id.

CEQ's NEPA regulations require as follows, "To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed plan with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2 (1992). The NRC's use of generic determinations, principally Categories 1 and 2, circumscribes the Commission's ability to reconcile inconsistencies between its determinations made now and future State or local laws or plans, including State determinations in "integrated resource planning" (IRP) or similar proceedings and environmental reviews.

As will be shown below, the NRC's designation of need and alternatives as Category 1 issues conflicts with the traditional authority of the States over the determination of the need for generating capacity. As also will be shown below, the NRC's treatment of need and alternatives as well as the categorization of environmental impacts as Category 1 and 2 issues harms the quality of the NRC's environmental review process itself. As a result, the Proposed Rule's incorporation of generic determinations in the NRC's environmental review process not only encroaches on the States' traditional authority but it also thwarts full environmental disclosure to the NRC Commissioners and the public.

B. THE NRC STAFF'S PROPOSED CHANGES TO CERTAIN PROCEDURAL ASPECTS OF THE PROPOSED RULE DO NOT ADDRESS SUBSTANTIVELY THE STATE OF MINNESOTA'S CONCERNS.

The NRC staff's proposed changes to certain procedural aspects of the Proposed Rule in response to comments of the CEQ and the EPA do not address

substantively the State of Minnesota's objections to the Commission's rulemaking. Major features of the modifications to the Proposed Rule include the following: (1) A site-specific supplemental environmental impact statement ("EIS") will be published in draft for public comment (rather than a final environmental assessment ("EA")); (2) conclusions on the overall cumulative impacts will be left entirely to each site-specific supplemental EIS and no conditional conclusion will be made in the final rule; and (3) procedures will exist whereby public comments will be accepted on any issue regardless of its categorization as Category 1 or 2 or 3 and if the NRC staff determines that the comments contain new and significant information, the staff will then determine whether that information substantively alters the results of previous analyses. While these proposed changes may remove certain procedural impediments to public participation, the only notable change proposed by the NRC staff is the preparation of a supplemental site-specific EIS for each license renewal proceeding.

The significance of the NRC staff's proposed site-specific supplemental EIS is negated, however, to the extent that the Commission decides in this rulemaking to foreclose meaningful public participation by the States and others in advance of individual nuclear power plant relicensing applications. A decision now by the NRC to treat need and alternatives as Category 1 issues not subject to further review effectively bars timely participation by the States and the public during individual nuclear power plant relicensing proceedings, notwithstanding the preparation of a site-specific statement. Likewise, a decision now to categorize eighty (80) environmental impacts as Category 1 issues and twenty-two (22) as Category 2 issues out of 104 environmental impacts identified in the draft GEIS limits timely participation by the States and the public.

As currently drafted, the Proposed Rule adopts generic conclusions for the most controversial aspects of the EIS years or even decades before all 109 commercial nuclear power reactors nationally are eligible for license extensions. A site-specific statement only addresses issues not previously resolved by the GEIS adopted in the final rule. Since the draft GEIS classifies need as a Category 1 issue it will receive no further consideration during license renewal. In addition only two (2) of the 104 environmental impacts are clearly identified as not resolved under the Proposed Rule and draft GEIS. Proposed determinations are final for eighty (80) of these impacts (Category 1) and for another twenty-two (22) except under special circumstances (Category 2). These environmental impacts will also not receive further consideration during license renewal. If the NRC proceeds now to adopt these generic determinations, the public cannot participate adequately in the development of information regarding environmental impacts at the time of individual relicensing applications without resort to difficult and cumbersome rulemaking procedures or the demonstration of new and significant information. Neither process is acceptable.

While the NRC staff's proposal permits public comments on any issue regardless of its categorization, the States and others still would have to satisfy Commission staff that those comments contain new and significant information (and staff would then determine whether that information substantively changes the results of previous analyses). This procedure does little to allay the State of Minnesota's concerns. The categorization of need and alternatives as Category 1 issues as well as virtually all environmental impacts as Category 1 or 2 issues means that information submitted by the States and others, at the time the NRC prepares a supplemental site-specific EIS, would be required to meet the threshold of "new and significant" information.

This litmus test impermissibly shifts the NRC's burden of environmental disclosure to the States and the public. Shifting this burden is contrary to the Commission's affirmative obligation to seek out information concerning the environmental consequences of relicensing individual nuclear power plants. Moreover, if the NRC declines now to fix the numerous technical inadequacies in the draft GEIS identified by the Minnesota Agencies in the State's March 13, 1992, filing, it may not be possible for the State of Minnesota, other States and the public to raise substantially similar issues in the future in that related information was considered and dismissed as part of this rulemaking. In this regard, information critical to the NRC's environmental review process for individual nuclear power plants may be rejected by the NRC (or its staff) solely because it is deemed not to constitute "new" information.

As a result, the NRC staff's proposed changes do not address substantively the State of Minnesota's concern that the Proposed Rule relies too heavily on the use of generic determinations for need and alternatives as well as environmental impacts in the draft GEIS. The NRC staff's procedural changes are not a substitute in any way for changes to the final rule that address the Proposed Rule's substantive defects which result in federal encroachment on State authority and thwart full environmental disclosure to the NRC Commissioners and the public. The State of Minnesota's modifications are intended to address these substantive shortcomings in the Proposed Rule.

C. THE PROPOSED RULE ENCROACHES ON THE STATES' TRADITIONAL AUTHORITY OVER THE DETERMINATION OF THE NEED FOR GENERATING CAPACITY.

The NRC's proposed treatment of need and alternatives as Category 1 issues clearly conflicts with the States' traditional authority over the determination of the need for generating capacity.[4] In spite of the States' historic authority to regulate electric utilities with respect to non-safety aspects of nuclear power generation, including questions of need, reliability, cost, and resource options, the NRC has determined in this rulemaking to amend its environmental review procedures that nuclear power will be needed for decades to come. On the basis

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[4] In a landmark case concerning federal preemption of nuclear matters, the U.S. Supreme Court delineated the areas preempted by the Federal Government and those left to the States in the area of nuclear regulation: "The Federal Government maintains complete control of the radiological health and safety aspects of nuclear energy generation and the States exercise their traditional authority over economic questions such as the need for additional generating capacity, the type of generating facilities to be licensed, land use, and ratemaking. Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission, 461 U.S. 190, 191 (1983) (holding that a California statute conditioning the construction of additional nuclear power plants on a state agency finding that adequate storage facilities and means of disposal are available for nuclear waste lies outside the federally occupied field of nuclear safety regulation).

In Pacific Gas and Electric Company, supra, the Supreme Court recognized that need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States. Id. at 205. "With the exception of the broad authority of the Federal Energy Regulatory Commission over the need for and pricing of electrical power transmitted in interstate commerce these economic aspects of electrical generation have been regulated for many years and in great detail by the States. Id. at 206. The Supreme Court noted an earlier decision in which the Court concluded, "There is little doubt that under the Atomic Energy Act of 1954, state public utility commissions or similar bodies are empowered to make the initial decision regarding the need for power." Id. at 206, citing Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 550 (1978).

On the other hand, the Supreme Court observed that the Atomic Energy Commission ("AEC"), now the NRC, was given the exclusive jurisdiction under the AEA to license the transfer, delivery, receipt, acquisition, possession, and use of nuclear materials. Id. at 207, citing 42 U.S.C. §§ 2014(e), (z), (aa), 2061-2064, 2071-2078, 2091-2099, 2111-2114 (1976 ed. and Supp. VI). The Supreme Court noted that no role was left for the States on these subjects. Id. at 207. But the Supreme Court also concluded that the AEC was not given authority over the generation of electricity itself, or over the economic question whether a particular plant should be built. Id. The Supreme Court drew this important inference: "It is almost inconceivable that Congress would have left a regulatory vacuum; the only reasonable inference is that Congress intended the States to continue to make these judgments." Id. at 208. In the Supreme Court's view, § 271 of the AEA removed any doubt that questions regarding ratemaking and the need for a plant were to remain in State hands. Id.

of its assessment of need, including faulty assumptions of gradual and predictable change in technology, energy law and regulation, and faulty assertions of the predictability of world oil prices, gross national product and other economic variables decades in advance,[5] the Commission classified need as a Category 1 issue, requiring no further consideration during license renewal. 56 Fed. Reg. 47,016, 47,029 (1991). Thus, the NRC has proposed to *predetermine* that every one of the nation's nuclear power plants is needed without obtaining adequate input from the States and without regard to the record developed in State IRP or similar proceedings, including underlying data and analyses, and State determinations in those proceedings.

To the extent that NEPA requires the NRC to consider need and alternatives, the NRC should discharge its environmental review duties in such a way that it does not encroach on the States' traditional authority over the determination of the need for additional generating capacity. This potential for federal encroachment on State authority stems from the regulatory overlap between two key statutory provisions: § 102 (2) of NEPA which requires the NRC to prepare a detailed statement on alternatives[6] and § 271 of the Atomic Energy Act of 1954 ("AEA") which preserves the States' historic authority over need and alternatives.[7] The encroachment by the Federal Government on State authority

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5. See generally "Comments and Recommendations of the Minnesota Agencies" (March 13, 1992), pp. 30-50 (detailed comments on the draft GEIS' sections addressing need for generation capacity and alternatives to relicensing of individual nuclear power plants).

6. Section 102 (2) of NEPA requires all federal agencies to issue a "detailed statement" on the environmental impact of all "major federal actions significantly affecting the quality of the human environment . . ." This statutory provision also requires that the detailed statement include "alternatives to the proposed action." 42 U.S.C.A. § 4332(2)(C)(iii) (West Supp. 1993); 40 C.F.R. § 1502.14 (1992).

7. Section 271 of the AEA provides, "Nothing in this chapter shall be construed to affect the authority or regulations of any Federal, State or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission . . ." 42 U.S.C.A. § 2018 (West Supp. 1993).

over the determination of the continued need for nuclear power plant capacity is a major concern to the State of Minnesota as well as other States, and it is incumbent on the NRC to directly address the States' concern.

The NRC's designation of need and alternatives as Category 1 issues exasperates the States' concern because it wholly disregards the States' traditional regulatory role in analyzing the need for generating capacity, a role recently bolstered by Congress' mandate to States to implement IRP in the Energy Policy Act of 1992 ("EPAct").[8] See 16 U.S.C.A. § 2601 (West Supp. 1993). Federal law now requires all electric utilities to employ IRP and that all plans or filings before a State regulatory authority must be updated on a regular basis, must provide the opportunity for public participation and comment, and must contain a requirement that the plan be implemented. 16 U.S.C.A. § 2601 (West Supp. 1993). The Minnesota Public Utilities Commission adopted IRP rules in 1990.[9] 15 SR 336. Numerous other States also have promulgated IRP rules.[10] Others will follow suit in the wake of the recent federal legislation.

1. **The NRC's Proposed Treatment Of Need And Alternatives As Category 1 Issues Imposes Unnecessary Legal And Administrative Burdens On The States And Industry.**

Significantly, the NRC's proposal has two broad implications for State determinations of the need for generating capacity in State IRP or similar proceedings. First, the Commission's generic determinations in this rulemaking

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8. Appendix 1 contains Section 111 of EPAct which amends the Public Utility Regulatory Policies Act to encourage investments in conservation and energy efficiency by electric utilities through IRP processes. 16 U.S.C.A. § 2601 (West Supp. 1993).

9. Appendix 2 contains the IRP rules adopted by the Minnesota Public Utilities Commission.

10. Eric Hirst, Bruce Driver and Eric Blank, "Integrated Resource Planning: A Model Rule," Public Utilities Fortnightly (March 15, 1993).

may become presumptive findings in subsequent State IRP or similar proceedings, even though the U.S. Supreme Court has concluded that state public utility commissions or similar bodies have the authority to make the decision regarding the need for power. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 425 U.S. 519, 550 (1978). Second, States may be forced to intervene in NRC proceedings at the time of individual nuclear power plant relicensing applications if the GEIS' generic determinations regarding need and alternatives differ markedly from State determinations in State IRP or similar proceedings. As a result, resolving key differences between State findings and prior NRC determinations, perhaps decades old at the time of relicensing applications, would impose additional administrative and legal burdens on the States and industry in State and federal proceedings.

The Commission Chairman's inquiry about federal preemption and response of the Deputy General Counsel, Mr. Malsch, at the NRC's February 19, 1993, briefing illustrates the State of Minnesota's concern:

> CHAIRMAN SELIN: Do state agencies such as public utility commissions lose their options to do their review independently or completely in either case?
>
> MR. MALSCH: Nothing in NEPA has any affect (sic) at all and nothing we would do under NEPA can have any affect (sic) on the jurisdiction of authority of state and local agencies to either environmental evaluations, issue environmental permits or do economic evaluations, set rates or make need for quality determinations. The two operate in parallel. Our actions can have no effect whatsoever on their actions as a legal matter. So, to the extent that there were comments suggesting that we were preempting or precluding them from doing their -- exercising their own judgment, those comments are misplaced.
>
> Now they do have a practical effect in the sense that here is the federal government speaking to an issue which they must also speak to. So, what we do may have an influence on what they do, but it certainly has no preclusive effect.

NRC Briefing (February 19, 1993), Unofficial Transcript at 17-18 (emphasis added). The following exchange between Commissioner Curtis, the Senior Task Manager, Mr. Cleary, and the Deputy General Counsel at the Commission's briefing is also illustrative:

> COMMISSIONER CURTIS: [I] just don't grasp at this point what the preemption concern is.
>
> MR. CLEARY: Well, I think it's very closely tied in with our attempt to make this area a category 1 in the GEIS at this point in time.
>
> MR. MALSCH: And that would be now.
>
> COMMISSIONER CURTIS: Category 1 binds the federal government, it doesn't bind the state PUC.
>
> MR. MALSCH: No, but the comment that it has a practical significance in terms of the federal government has spoken and has said, "All plants are needed," has a practical impact in then future proceedings.

NRC Briefing (February 19, 1993), Unofficial Transcript at 43 (emphasis added). While the Commissioner's point may be correct as a legal matter, the practical effect of the NRC's rulemaking is to encroach on State authority over the determination of need and alternatives. For a State to preserve its traditional authority it would be required to intervene in NRC proceedings and challenge the Commission's generic determinations at the time of individual nuclear power plant relicensing proceedings to convince federal decision makers that the State had considered more timely and complete information regarding need and alternatives. The result is still the creation of unnecessary legal and administrative burdens on the States and industry in State and federal proceedings.

D. THE DRAFT GEIS FALLS FAR SHORT OF FULL ENVIRONMENTAL DISCLOSURE TO THE NRC COMMISSIONERS AND THE PUBLIC AND FACILITATING PUBLIC PARTICIPATION.

The draft GEIS falls far short of full environmental disclosure to the NRC Commissioners and the public and facilitating public participation. Chiefly, the draft GEIS does not provide the NRC Commissioners with an environmental disclosure sufficiently detailed to aid in the substantive decisions whether to relicense individual nuclear power plants in light of the environmental consequences. 40 C.F.R. § 1500.1 (c) (1992) ("The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences . . ."). Moreover, the draft GEIS fails to disclose adequate information to the public regarding the environmental consequences of relicensing individual nuclear power plants, and it does not encourage adequate public participation in the development of that information. 40 C.F.R. § 1500.1 (b) ("Accurate scientific analysis, expert agency decisions, and public scrutiny are essential to implementing NEPA.") (emphasis added).

A properly drafted statement should compel federal agencies to give serious weight to environmental factors in making discretionary choices. Sierra Club v. Morton, 510 F.2d 813, 819 (5th Cir. 1975); Monroe County Conservation Council v. Volpe, 472 F.2d 693, 697 (2nd Cir. 1972). NEPA is, at the very least, "an environmental full disclosure law," for agency decision makers and the public. Monroe County Conservation Council, supra, 472 F.2d at 697. In that connection, the EIS should provide decision makers with an environmental disclosure sufficiently detailed to aid in the substantive decision whether to proceed with the project in light of its environmental consequences. Trout Unlimited v. Morton, 509 F.2d 1276, 1282 (9th Cir. 1974). It should also act as

an environmental full disclosure tool by providing the public with information on the environmental impact of the proposed project as well as encouraging public participation in the development of that information. Trout Unlimited, supra, 509 F.2d at 1282. The NRC's Proposed Rule fails on both accounts.

1. NEPA Requires Full Environmental Disclosure To The NRC Commissioners And The Public.

NEPA requires full environmental disclosure to the NRC Commissioners and the public. 40 C.F.R. § 1500.1 (b) (1992) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."). The draft GEIS is not sufficiently detailed to aid the NRC Commissioners and it does not disclose adequate information to the public for three key reasons. First, the EIS contains numerous technical inadequacies. Second, the statement omits the most complete and timely information available regarding need and alternatives. Third, the document excludes material information from States' existing environmental policies and criteria and States' environmental reviews under "little NEPA" ("SNEPAs") statutes. As a result, the NRC should not adopt the draft GEIS' analyses in the Commission's environmental regulations for the environmental review of applications to renew operating licenses for nuclear power plants at 10 C.F.R. Part 51 because the EIS contains numerous defects.

a. The draft GEIS contains numerous technical inadequacies.

The draft GEIS is not sufficiently detailed to aid the NRC Commissioners and it does not disclose adequate information to the public because the EIS contains numerous technical inadequacies. As the Minnesota Agencies demonstrated in

their March 13, 1992, filing, the draft GEIS is long on unsupported assumptions and conclusory statements and short on empirical data and scientific authorities. The State of Minnesota's energy, environmental quality, pollution control, natural resources, health, and public safety agencies provided extensive comments on the draft GEIS' flawed analyses in these key areas: (1) need for generating capacity; (2) alternatives to relicensing of individual nuclear power plants; (3) human health; (4) hydrology, terrestrial and aquatic ecology, and land use; (5) solid waste management; and (6) postulated accidents. "Comments and Recommendations of the Minnesota Agencies" (March 13, 1992), pp. 29-67. The Proposed Rule and draft GEIS have yet to be revised to provide missing information, fix technical flaws, and correct unsupported assumptions cited in the Minnesota Agencies' previous filing.

b. The EIS omits the most complete and timely information available regarding need and alternatives.

The draft GEIS is not sufficiently detailed to aid the NRC Commissioners and it does not disclose adequate information to the public because the EIS omits the most complete and timely information available regarding need and alternatives. Principally, the statement does not reflect the key role that State IRP or similar proceedings play in generating the most accurate and current data available regarding need and alternatives at the time of the NRC's environmental review. As discussed above, Federal law requires electric utilities to update their IRP filings at least every five years. 16 U.S.C.A. § 2601 (West Supp. 1993). This continuing process of collecting and analyzing the most current data about resource planning options, including the cost and availability of alternative energy sources, by industry and State regulators will produce information that is more

complete and timely at the time of individual nuclear power plant relicensing applications than the NRC's adoption of a GEIS that is an essentially static document which does not reflect ongoing industry, regulatory, and technological changes. As a result, the draft GEIS does not make adequate information available to the NRC Commissioners and the public to constitute full environmental disclosure. To the extent that NEPA requires the NRC to consider alternatives as part of its environmental review duties, the NRC would be deficient in meeting its NEPA responsibilities if it adopted an EIS, particularly the draft GEIS, that fails to consider State IRP or similar proceedings, including underlying data and analysis, and State determinations in those proceedings.

c. **The draft GEIS excludes material information from existing State environmental policies and standards and States' environmental reviews under SNEPAs.**

The draft GEIS is not sufficiently detailed to aid the NRC Commissioners and the public because the EIS excludes material information from existing State environmental policies and standards and States' environmental reviews under SNEPAs. The NRC's draft GEIS does not reflect existing State environmental policies and standards. Importantly, it may not be possible to consider existing State policies and standards as "new and significant" information in a supplemental site-specific EIS to the extent similar issues were considered and dismissed in this generic rulemaking. Moreover, the categorization of 102 out of 104 environmental impacts as Category 1 or 2 issues not subject to further review except under limited circumstances fails to take into account critical information from States' environmental reviews under SNEPAs. To ensure that the NRC's environmental review process considers such information States would be forced

to resort to difficult and cumbersome rulemaking procedures or the demonstration of new and significant information.

This result is clearly inconsistent with the CEQ's regulations governing the NRC's compliance with NEPA. Specifically, the CEQ's regulations provide that where State laws or local ordinances have EIS requirements in addition to, but not in conflict with those in NEPA, the NRC is required to cooperate in fulfilling these requirements as well as those of Federal laws. 40 C.F.R. § 1506.5 (1992). Compliance with this provision is virtually impossible if the NRC's adoption of the GEIS in the final rule does not reflect existing State environmental policies and standards applicable to each nuclear power plant, and there is no viable mechanism for such policies and standards to be considered in the NRC's environmental review process. In addition, the NRC's compliance with the CEQ's directive is diminished significantly to the extent that the Commission imposes difficult rulemaking and administrative burdens on the States in seeking consideration of material information from States' environmental reviews under SNEPAs.

2. NEPA Requires Adequate Public Participation In The Development Of Information Concerning Environmental Impacts.

The draft GEIS does not encourage adequate public participation in the development of information concerning the environmental consequences of substantive decisions to relicense individual nuclear power plants. The NRC's heavy reliance on Category 1 and 2 determinations in the Proposed Rule eviscerates the States' and others' abilities to participate meaningfully in the NRC's environmental review process. If the NRC proceeds now to adopt generic determinations for need and alternatives as well as virtually all environmental

impacts, the States and the public cannot participate adequately in the development of information regarding environmental impacts at the time of individual nuclear power plant relicensing applications without the demonstration of new and significant information or resort to difficult and cumbersome rulemaking procedures.

III. CONCLUSION

While the State of Minnesota acknowledges the NRC staff's efforts to remedy the States' concerns, serious deficiencies remain. The Proposed Rule and draft GEIS continue to suffer from multiple errors and inadequacies. Many of these defects are beyond the explicit scope of the January 1994 NRC staff discussion paper and the related public hearings. In the most recent discussion paper, the NRC staff set forth several possible changes to address the States' concerns. While the NRC staff's options facilitated discussion at the recent public hearings, they are inadequate as presented.

The NRC staff's proposals to address procedural defects in the Proposed Rule in response to CEQ and EPA comments fail to advance significantly the merits of the Proposed Rule unless coupled with substantive modifications. Additional NRC staff options to address State concerns over the determination of need and alternatives to meet that need are simply inadequate, and in some cases unclear. "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), pp. 7-11.

A. THE NRC MUST ADOPT FOUR KEY MODIFICATIONS TO THE PROPOSED RULE AND THE DRAFT GEIS TO ADDRESS THE STATE OF MINNESOTA'S CONCERNS.

If the NRC persists in this rulemaking, it is imperative that the Commission adopt all of the following modifications to the Proposed Rule and the draft GEIS to address the State of Minnesota's concerns:

1. **Redesignation Of Need And Alternatives As Category 3 Issues To Be Considered Fully By The NRC In Its Environmental Review Of Individual Nuclear Power Plant Relicensing Applications.**

The NRC must redesignate need and alternatives as Category 3 issues to be considered fully by the NRC in its environmental review of individual nuclear power plant relicensing applications. It is unacceptable to determine need and alternatives decades in advance of individual license renewal applications as Category 1 issues. This modification will accomplish three key objectives. First, it minimizes conflicts between the States' traditional authority over the determination of the need for additional generating capacity and the NRC's treatment of need and alternatives for purposes of satisfying its environmental review duties. Second, the modification facilitates State and public participation because need and alternatives would be considered fully during the NRC's environmental review of individual nuclear power plant relicensing applications. Third, it ensures that the Commission will be able to consider the most complete and timely information available regarding need and alternatives during its environmental review process.

2. **Implementation Of An Environmental Review Process Whereby The NRC Considers To The Maximum Extent Possible The Record Developed In State IRP Or Similar Proceedings, Including Underlying Data And Analyses, As The Most Complete And Timely Information Available Regarding Need And Alternatives, And The NRC Accords Substantial Weight To State Determinations In Those Proceedings.**

In reviewing individual relicensing applications, the NRC must implement an environmental review process whereby the NRC considers to the maximum extent possible the record developed in State IRP or similar proceedings, including underlying data and analyses, as the most complete and timely information

available regarding need and alternatives, and the NRC accords substantial weight to State determinations in those proceedings. According "substantial weight" to State determinations means that the NRC must justify and explain significant differences between its treatment of need and alternatives for purposes of environmental review and the State's determination of the need for generating capacity. This modification to the Proposed Rule is necessary to secure the Commission's full consideration of the record developed in State IRP or similar proceedings, including underlying data and analyses, as the most complete and timely information available regarding need and alternatives, and to accord substantial weight to State determinations in those proceedings. In addition, the modification is needed to reduce duplication with State processes.

The modification of the Proposed Rule in the above manner is essential to the NRC's compliance with the Council on Environmental Quality's ("CEQ") requirement that federal agencies cooperate with State agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. 40 C.F.R. § 1506.2(b) (1992). Reduction of duplication with State requirements will be achieved if the NRC uses the record developed in State IRP or similar proceedings, including the underlying data and analyses, and State determinations in those proceedings to the maximum possible extent as the reference point for its own analysis at the time of individual nuclear power plant relicensing applications. See Citizens Environmental Council v. Volpe, 487 F.2d 845, 854 (8th Cir. 1973), cert. denied 416 U.S. 936 (1974) (holding that federal agency did not abdicate a significant part of its responsibility to a State agency since it did not "rubber stamp" or adopt an unaltered or incompletely reviewed EIS).

Moreover, this modification is required to ensure the Commission's compliance with the CEQ's directive to reduce paperwork, 40 C.F.R. § 1500.4 (k) (1992) ("Agencies shall reduce excessive paperwork by . . . [e]liminating duplication with State and local procedures . . ." (emphasis added)) and the federal Paperwork Reduction Act's mandate to minimize the Federal paperwork burden, 44 U.S.C.A. § 3501 et seq (West Supp. 1993) (The purpose of this [law] is "(1) to minimize the Federal paperwork burden for . . . State and local governments . . .; (2) to minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information; (3) to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government . . ."). This change reduces unnecessary paperwork and minimizes costs to the Federal Government, States and industry. It also fosters the usefulness of the information collected because it will no longer be necessary for the NRC to reconcile generic Category 1 or 2 determinations with the record developed in State IRP or similar proceedings, including data and analyses, and State determinations in those proceedings to the extent such determinations differ significantly. As a result, the NRC's environmental review will be streamlined in a way that reduces duplication with State processes and strengthens the decision making process. See 40 C.F.R. § 1500.1 (1992) ("NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action.").

3. **Inclusion Of An Explicit Statement In The Text Of The Proposed Rule Itself That The Rule In No Way Preempts State Jurisdiction Over The Determination Of The Continued Need For Nuclear Power Plant Capacity And That The NRC's Consideration Of Need And Alternatives Is Only Intended To Fulfill The Commission's Environmental Review Duties.**

The NRC must include an explicit statement in the text of the Proposed Rule itself that the rule in no way preempts State jurisdiction over the determination of the continued need for nuclear power plant capacity and that the NRC's consideration of need and alternatives is only intended to fulfill the Commission's environmental review duties. While the State of Minnesota acknowledges the NRC staff's recent efforts to address this concern, the Commission staff's proposal to include an explanation in the Federal Register Notice is not sufficient. "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), p. 7. Such a statement must be included in the text of the final rule itself to ensure that there is no ambiguity about the extent of the NRC's authority.

If the NRC adopts the Proposed Rule, the NRC must amend 10 C.F.R. § 51.1 (1992) to read:

> These regulations do not preempt a State's right and responsibility to determine need for continued nuclear power generation based on non-safety considerations including its own State and local environmental reviews.

In addition, the NRC must add the following provision to the Proposed Rule:

> The supplemental report must contain the State's decision on the need for that applicant's nuclear power generation. Where the State has found no need for continuing power generation by the applicant plant, the findings documented in Table B-1 of Appendix B of Subpart A of this part no longer demonstrate that renewal of the applicant's operating license will have accrued benefits that outweigh the economic, environmental and social cost of license renewal.

This provision could be placed in proposed § 51.53(c) as a new provision "(5)" or as part of "(4)."

4. **Revision Of The Draft GEIS To Address The Numerous Technical Inadequacies Cited In The Minnesota Agencies' March 13, 1992, Filing.**

The NRC must revise the draft GEIS to address the numerous technical inadequacies cited in the Minnesota Agencies' March 13, 1992, filing. The NRC's Proposed Rule wrongly assumes gradual and predictable change for factors throughout the draft GEIS. The Proposed Rule adopts many conclusions that are too general or poorly supported to apply to individual nuclear power plant relicensing decisions. In 1992, the Minnesota Agencies provided thirty-eight (38) pages of specific comments and recommendations on technical inadequacies of the Proposed Rule. These specific comments have yet to be addressed by the Commission.

It is vitally important that technical errors and omissions already recognized be corrected at this time. Failure to correct these technical inadequacies would undermine required environmental disclosure to the NRC Commissioners and the public. Failure to do so may preclude raising them later since they might not

constitute "new" information. Alternatively, it would require the administrative burden and expense of petitioning for a new rulemaking or rule waiver at that time. This would undermine public and State participation. Importantly, failure to address the numerous technical inadequacies unfairly shifts the burden of ensuring the Proposed Rule's completeness and accuracy from the NRC to the States and industry.

In summary, each of the modifications to the Proposed Rule discussed above is necessary but not sufficient to address the State of Minnesota's concerns. All are required.

APPENDIX 1

ENERGY POLICY ACT OF 1992 ("EPAct")
IRP PROVISIONS

SEC. 111. ENCOURAGEMENT OF INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY BY ELECTRIC UTILITIES.

(a) AMENDMENT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT.--The Public Utility Regulatory Policies Act of 1978 (P.L. 95-617; 92 Stat. 3117; 16 U.S.C. 2601 and following) is amended by adding the following at the end of section 111(d):

"(7) INTEGRATED RESOURCE PLANNING.--Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

"(8) INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT.--The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency

resources and other demand side management measures shall be appropriately monitored and evaluated.

"(9) ENERGY EFFICIENCY INVESTMENTS IN POWER GENERATION AND SUPPLY.--The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment.".

(b) PROTECTION FOR SMALL BUSINESS.--The Public Utility Regulatory Policies Act of 1978 (P.L. 95-617; 92 Stat. 3117; 16 U.S.C. 2601 and following) is amended by inserting the following new paragraph at the end of subsection 111(d):

"(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall--

"(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

"(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.".

(c) EFFECTIVE DATE.--Section 112(b) of such Act is amended by inserting "(or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)" after "Act" in both places such word appears in paragraphs (1) and (2).

(d) DEFINITIONS.--Section 3 of such Act is amended by adding the following new paragraphs at the end thereof:

"(19) The term 'integrated resource planning' means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

"(20) The term 'system cost' means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.

"(21) The term 'demand side management' includes load management techniques."

(3) REPORT.--Not later than 2 years after the date of the enactment of this Act, the Secretary shall transmit a report to the President and to the Congress containing--

(1) a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (7), (8), and (9) of section 111(d) of the Public Utility Regulatory Policies Act of 1978;

(2) an evaluation by the Secretary of whether and to what extent, integrated resource planning is likely to result in--

(A) higher or lower electricity costs to an electric utility's ultimate consumers or to classes or groups of such consumers;

(B) enhanced or reduced reliability of electric service; and

(C) increased or decreased dependence on particular energy resources; and

(3) a survey of practices and policies under which electric cooperatives prepare integrated resource plans, submit such plans to the Rural Electrification Administration and the extent to which such integrated resource planning is reflected in rates charged to customers.

The report shall include an analysis prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand side management measures and whether any unfair, deceptive, or predatory acts exist, or are likely to exist, from implementation of such programs.

APPENDIX 2

MINNESOTA PUBLIC UTILITIES COMMISSION
IRP RULES

7843.0300 FILING REQUIREMENTS AND PROCEDURES.

Subpart 1. **Procedural rules.** Except as otherwise shown in parts 7843.0100 to 7843.0600, the procedures prescribed by parts 7830.0100 to 7830.4400 apply to resource plan filings.

Subp. 2. **Filing date.** Beginning July 1, 1991, and July 1, 1992, and every two years afterward, an electric utility shall submit a proposed resource plan covering the forecast period. The commission shall designate by order those utilities who shall make their initial filings in 1991 and those who shall make their initial filings in 1992. In deciding between the years for a given utility, the commission shall consider the size of the utility and its likely need for additional resources, including large energy facilities, defined in Minnesota Statutes, section 216B.2421, subdivision 2, and major utility facilities.

Subp. 3. **Completeness of filing.** The resource plan filing must contain the information required by part 7843.0400, unless an exemption has been granted under subpart 4. If the commission determines before September 1 of the filing year that the filed information is incomplete or unclear, it may order the utility to augment or clarify the filing.

This subpart does not limit the right of process participants to submit information requests under subpart 8.

Subp. 4. **Exemptions from data requirements.** Before submitting a proposed resource plan, the utility may be exempted from a data requirement of parts 7834.0100 to 7843.0600 if the utility (1) submits a written request for an

exemption from specified rules and (2) shows that the data requirement is unnecessary or may be satisfied by submitting another document. A request for exemption must be filed at least 90 days before the resource plan is due. Interested persons or parties may submit comments on the request within 30 days of the date the request is filed. As soon as practicable, the commission shall provide a written response to the request and include the reasons for its decision.

Subp. 5. **Copies of filings.** A covered utility shall submit 15 copies of its resource plan filing to the commission. The commission may request up to ten additional copies of combined and common filings. A utility shall also provide copies to the Minnesota Department of Public Service, the Residential and Small Business Utilities Division of the Office of the Attorney General, the Minnesota Environmental Quality Board and member agencies, and other interested persons or parties who request copies. A utility shall maintain a distribution list. The list must include the names and addresses of the persons or organizations receiving copies and the number of copies provided. A utility is not required to distribute more than 100 copies. However, a utility shall honor reasonable requests for copies of the nontechnical summary identified in part 7843.0400, subpart 4.

Subp. 6. **Changes to filings.** After the resource plan filing is submitted, each page of a change or correction to a previously filed page must be marked with the word "REVISED" and with the date the revision was made. The utility shall send to persons receiving copies of the resource plan filing a like number of copies of changed or corrected pages.

Subp. 7. **Intervention.** Interested persons may become, or may petition to become parties under parts 7830.0100 to 7830.4400. The Minnesota Department of Public Service, the Residential and Small Business Utilities Division

of the Office of the Attorney General, and the Minnesota Environmental Quality Board may petition as of right in a resource plan proceeding.

"Petition as of right" means a petition for intervention that confers party status upon the petitioner without formal approval from either the commission or an administrative law judge.

The deadline for intervention is November 1 of the year the utility's proposed resource plan is filed. The commission may allow late intervention, upon good cause.

Subp. 8. **Information requests.** The parties shall comply with reasonable requests for information by the commission, other parties, and other interested persons. A copy of an information request must be provided to the commission and to known parties. Parties shall reply to information requests within ten days of receipt, unless this would place an extreme hardship upon the replying party. At least one copy of information provided to a party or other interested person must be filed with the commission. The replying party must also provide a copy of the information to any other party or interested person upon request. Disputes regarding information requests may be taken to the commission or, if a contested case proceeding has been ordered, to the assigned administrative law judge.

Subp. 9. **Uncontested proceeding.** The commission shall conduct the resource planning process as an uncontested proceeding, unless a contested case proceeding is required by statute or constitutional right.

"Uncontested proceeding" means a proceeding before the commission that has not been referred to the Office of Administrative Hearings for proceedings under Minnesota Statutes, sections 14.57 to 14.62.

Subp. 10. **Written comments.** Parties and other interested persons have until November 1 of the filing year to review and comment upon the resource plan

filings. The comments may include proposed alternative resource plans described in subpart 11.

Subp. 11. **Proposed alternative resource plans.** Parties and other interested persons may express support for the proposed resource plan filed by a utility. Alternatively, parties and other interested persons may file proposed resource plans different from the plan proposed by the utility. When a plan differs from that submitted by the utility, the plan must be accompanied by a narrative and quantitative discussion of why the proposed changes would be in the public interest, considering the factors listed in part 7843.0500, subpart 3.

Subp. 12. **Response comment period.** Parties and other interested persons may file responses to the comments and to the proposed alternative resource plans of other parties or interested persons from November 1 to December 31 of the filing year.

Subp. 13. **Official service list.** The commission shall maintain an official service list for a resource plan proceeding. The preparer of a filing shall serve copies on persons on the official service list at the time of service, except as provided in subpart 8.

Statutory Authority: MS s 216B.03; 216B.08, 216B.09; 216B.13; 216B.16; 216B.24; 216B.33; 216C.05

History: 15 SR 336

7843.0400 CONTENTS OF RESOURCE PLAN FILINGS.

Subpart 1. **Advance forecasts.** A utility shall include in the filing identified in subpart 2 its most recent annual submission to the Minnesota Department of Public Service and the Minnesota Environmental Quality Board under Minnesota Statutes, sections 116C.54 and 216.17, and parts 7610.0100 to 7610.0600.

Subp. 2. **Resource plan.** A utility shall file a proposed plan for meeting the service needs of its customers over the forecast period. The plan must show the resource options the utility believes it might use to meet those needs. The plan must also specify how the implementation and use of those resource options would vary with changes in supply and demand circumstances. The utility is only required to identify a resource option generically, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss plans to reduce existing resources through sales, leases, deratings, or retirements.

"Derating" means a temporary or permanent reduction in the expected power output of a generating facility.

Subp. 3. **Supporting information.** A utility shall include in its resource plan filing information supporting selection of the proposed resource plan.

A. When a utility's existing resources are inadequate to meet the projected level of service needs, the supporting information must contain a complete list of resource options considered for addition to the existing resources. At a minimum, the list must include new generating facilities of various types and sizes and with various fuel types, cogeneration, new transmission facilities of various types and sizes, upgrading of existing generation and transmission equipment, life extensions of existing generation and transmission equipment, load-control equipment, utility-sponsored conversation programs, purchases from nonutilities, and purchases from other utilities. The utility may seek additional input from the commission regarding the resource options to be included in the list. For a resource option that could meet a significant part of the need identified by the forecast, the supporting information must include a general evaluation of the option, including its availability, reliability, cost, socioeconomic effects, and environmental effects.

B. The supporting information must include descriptions of the overall process and of the analytical techniques used by the utility to create its proposed resource plan from the available options.

C. The supporting information must include an action plan, a description of the activities the utility intends to undertake to develop or obtain noncurrent resources identified in its proposed plan. The action plan must cover a five-year period beginning with the filing date. The action plan must include a schedule of key activities, including construction and regulatory filings.

D. For the proposed resource plan as a whole, the supporting information must include a narrative and quantitative discussion of why the plan would be in the public interest, considering the factors listed in part 7843.0500, subpart 3.

Subp. 4. **Nontechnical summary.** A utility shall include in its resource plan filing a nontechnical summary, not exceeding 25 pages in length and describing the utility's resource needs, the resource plan created by the utility to meet those needs, the process and analytical techniques used to create the plan, activities required over the next five years to implement the plan, and the likely effect of plan implementation on electric rates and bills.

Subp. 5. **Combined and common filings.** Utilities may combine their individual filings into a single larger filing, as long as the action does not lead to a loss of information. Information common to two or more of the utilities need only be submitted once, as long as the filing clearly shows the utilities to which the information applies.

Statutory Authority: MS s 216B.03; 216B.08; 216B.09; 216B.13; 216B.16; 216B.24; 216B.33; 216C.05

History: 15 SR 336

7843.0500 COMMISSION REVIEW OF RESOURCE PLANS.

Subpart 1. **Decision.** Based upon the record, which is the information filed with the commission in the resource plan proceeding of a utility, including responses to information requests, the commission shall issue a decision consisting of findings of fact and conclusions on the utility's proposed resource plan and the alternative resource plans. If the commission determines there is insufficient information upon which to issue findings and conclusions, it may delay issuing its decision to permit production of the desired type and level of information.

Subp. 2. **Preferred plan.** If the commission concludes that a set of resource options would be optimal, considering the desirable attributes listed in subpart 3, it may identify that set of resource options as a preferred resource plan. A preferred resource plan need not have been specifically proposed or advocated by the utility, an intervening party, or other interested person.

Subp. 3. **Factors to consider.** In issuing its findings of fact and conclusions, the commission shall consider the characteristics of the available resource options and of the proposed plan as a whole. Resource options and resource plans must be evaluated on their ability to:

A. maintain or improve the adequacy and reliability of utility service;

B. keep the customers' bills and the utility's rates as low as practicable, given regulatory and other constraints;

C. minimize adverse socioeconomic effects and adverse effects upon the environment;

D. enhance the utility's ability to respond to changes in the financial, social, and technological factors affecting its operations; and

E. limit the risk of adverse effects on the utility and its customers from financial, social, and technological factors that the utility cannot control.

Subp. 4. **Issues requiring further consideration.** In its decision, the commission may direct the utility to provide in its next resource plan filing a discussion of specified issues. The issues may include those not totally resolved in the current proceeding and those for which the state of knowledge is changing substantially between resource plan filings.

Subp. 5. **Changed circumstances affecting resource plans.** The utility shall inform the commission and other parties to the last resource plan proceeding of changed circumstances that may significantly influence the selection of resource plans. Upon receiving notice of changed circumstances, the commission shall consider whether additional administrative proceedings are necessary before the utility's next regularly scheduled resource plan proceeding.

Subp. 6. **Authority of other agencies.** Issuance of a resource plan decision by the commission does not limit the statutory authority of other agencies in their regulatory responsibilities.

Statutory Authority: MS s 216B.03; 216B.08; 216B.09; 216B.13; 216B.16; 216B.24; 216B.33; 216C.05

History: 15 SR 336

7843.0600 RELATIONSHIP TO OTHER COMMISSION PROCESSES.

Subp. 1. **Other proceedings begun before plan proceeding completed.** The commission shall not use the resource planning process as a reason to delay unduly the completion of a proceeding begun under other law.

Subp. 2. **Resource plan findings of fact and conclusions.** The findings of fact and conclusions from the commission's decision in a resource plan proceeding may be officially noticed or introduced into evidence in related commission

proceedings, including, for example, rate reviews, conservation improvement program appeals, depreciation certifications, security issuances, property transfer requests, cogeneration and small power production filings, and certificate of need cases. In those proceedings the commission's resource plan decision constitutes prima facie evidence of the facts stated in the decision. This subpart does not prevent an interested person from submitting substantial evidence to rebut the findings and conclusions in another proceeding.

Subp. 3. **Construction of major utility facilities.** A utility submitting a proposed resource plan is exempt from the requirements of other rules covering construction of major utility facilities and adopted under Minnesota Statutes, section 216B.24. The exemption does not constitute a waiver of the commission's right to review the prudence of the construction or planning in later resource plan and general rate case proceedings.

Subp. 4. **Exemption from resource plan filing requirements when certificate of need proceedings are initiated.** The commission shall grant an exemption from the filing requirements of parts 7843.0100 to 7843.0600 if the conditions in items A to E are met:

A. The utility plans to submit a certificate of need application under Minnesota Statutes, section 216B.243.

B. The utility submits a written request for an exemption that indicates the utility's intent to apply for a certificate of need, the size and type of facility for which certification will be sought, the projected application date, and the utility's willingness to submit all the information required by part 7843.0400 subparts 1 to 4, with the certificate of need application. The request must be filed by April 1 of the filing year and at least 90 days before the projected filing date for the certificate of need application.

C. The utility agrees that, if the exemption is granted and it fails to submit the certificate of need application by the projected application date, it will submit either the certificate of need application or a resource plan filing within 60 days of the projected application date or by July 1, whichever is later.

D. The commission determines that the utility's filings in the anticipated certificate of need proceeding will provide the information needed to issue a decision and select a preferred resource plan under part 7843.0500. In deciding whether the certificate of need filings will provide the necessary information, the commission shall consider factors such as the size and type of facility for which the certificate of need is sought.

E. The commission determines that the exemption will foster administrative efficiency, considering:

(1) the extent and consequences of any delay in the receipt of information that will result from the exemption; and

(2) the likelihood and extent of administrative cost savings that may result from the exemption.

Statutory Authority: MS s 216B.03; 216B.08, 216B.09; 216B.13; 216B.16; 216B.24; 216B.33; 216C.05

History: 15 SR 336