



(59 FR 2542) 51
Public Service Commission of Wisconsin

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February 10, 1994

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

RE: 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

Dear Mr. Cleary:

These comments are submitted by the Public Service Commission of Wisconsin (PSCW) in response to the Nuclear Regulatory Commission (NRC) staff discussion paper on the treatment of need for generation capacity and availability of alternative sources published in January 1994. The PSCW staff previously submitted comments on the draft Generic Environmental Impact Statement (GEIS) and the Federal Register notice by letter dated March 16, 1992. We appreciate the opportunity to respond to the focus questions raised in the NRC staff discussion paper, but we would also like to briefly outline the planning processes currently used in Wisconsin to assess need for generating capacity and alternative sources of meeting those needs.

Wisconsin has had a fully-developed process for conducting integrated resource planning (IRP) for over eight years. The PSCW has had explicit statutory authority to determine need for electric generation since 1931 (see s. 196.49, Wis. Stats.). It has had explicit authority to plan generation on a long range basis since 1975 (see s. 196.491, Wis. Stats.). It has had a "little NEPA" since 1971 (see s. 1.11, Wis. Stats.). The process continues to evolve and improve, but its important components include:

- 1) A large, concerted effort to involve the public at all phases of the process, including both public information meetings and substantial public hearings;
- 2) A requirement that all the utilities in the state file their plans simultaneously so that the PSCW can review the

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generation capacity needs for the entire state at one time, as well as all alternatives for satisfying any need for capacity and energy. This review includes a thorough examination of various future scenarios which include variations in forecasted load growth, variations in fuel price escalation, variations in numerous capital and operating cost components and so forth;

- 3) A thorough review of environmental factors and other information (system reliability, fuel diversity, etc.) beyond overall direct economic costs and benefits;
- 4) A review of the overall direct economic costs and benefits to insure that the plan is optimal on a long-term system cost basis. Both the utilities and the PSCW use sophisticated computer modeling techniques that fairly balance conventional supply-side resources, new supply-side technologies (renewables) and demand-side resources (like energy conservation) to develop and review the plans; and
- 5) A final order of the PSCW approving or modifying the plans proposed by the utilities. No generation capacity of 12 MW and more and no transmission line of 100 kV and more than a mile long can be built in Wisconsin without its need being included in an approved IRP plan.

Recently, the PSCW has also adopted a new process on a three-year trial basis to address the increasingly competitive nature of the generation supply market. The first stage of this process, known as the Two-Stage Certificate of Public Convenience and Necessity (CPCN), is a detailed assessment of need for capacity and available alternatives based on the competitive bids received from various potential suppliers, including the utility. As established by PSCW order, this process assumes that, as long as the utility or an affiliate is one of the bidders, no project can proceed to the second stage of the CPCN process and receive construction authority unless it is selected by the PSCW as the "winner" of the competitive bidding generation expansion plan analysis. The first stage procedures also include consideration by the PSCW of environmental and other factors in a manner similar to, but not as detailed as, the IRP process.

The PSCW's IRP process (known as the Advance Plan) is conducted about every two to three years. The Two-Stage CPCN process is conducted for a capacity need identified in an IRP proceeding and takes place approximately every other year, as necessary, for each of the major utilities in Wisconsin. Together, these two processes insure that the PSCW's assessment of need for generation capacity and exploration of alternatives for meeting

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any capacity need are almost conducted continuously. As we indicated in our earlier comments, we find that this continuous evaluation and analysis allows the Wisconsin utilities and the PSCW to respond to rapidly changing conditions in the economy, economics of various alternatives, new technologies that become available and so forth.

With this as background, we would now like to turn to the focus questions raised in the discussion paper. This discussion presents a unique opportunity for unprecedented cooperation between federal and state governmental agencies.

The PSCW depends on the considerable technical expertise of the NRC and its staff on issues of safety related to the construction and continued operation of nuclear power plants. However, we would agree with and support the position outlined in Option 4 that state regulatory agencies are responsible for the economic regulation of their utilities and many have statutory responsibility (as is the case in Wisconsin) to conduct energy policy planning.

We would amend Option 4 to include the caveat outlined in Option 2 that, if state analyses of need for capacity and availability of alternatives are not available for a license renewal application, the responsibility for conducting such analysis would ultimately fall back on the NRC. However, even in this instance, states should be willing to assist the NRC to the maximum extent feasible to carry out the case-specific analysis required by National Energy Policy Act (NEPA).¹

Our responses to the specific focus questions are as follows:

1. Is the characterization of State concerns in Section III of this paper complete and accurate? What, if anything, should be added or changed?

The PSCW would generally agree with the concerns that are expressed in Section III of the discussion paper as fairly representing the views of various states. We commend the NRC staff for listening closely to the concerns of the state

¹ We do not believe that an attempt to establish need for power on a generic basis is compatible with the scope and complexity with which Wisconsin (or many other states) evaluates need in its planning and certification processes.

regulatory agencies and others who may have commented at this stage.

2. To what extent are the concerns of the States resolved by the changes to the GEIS and rule that are being made in response to CEQ and EPA comments?

The primary concern of the states, with which the PSCW is in agreement, is that the NRC's treatment of need for generating capacity and availability of alternative energy sources is in direct conflict with state regulatory authority over these matters. We believe that only by taking the step of designating these items as Category 3 and adopting state determinations of need and evaluation of alternative energy sources can these concerns be laid to rest. We also recognize that in taking this step, there is implicit agreement on the part of states to thoroughly and expeditiously carry out our responsibilities to assess the need for capacity and the alternatives available to address that need and to cooperate in any way possible with the NRC on its relicensing activities and responsibility.

3. To what extent are the concerns of the States resolved if the GEIS and the rule are modified to include statements that the NRC's findings with respect to need for generating capacity and alternative energy sources are only intended to assist the NRC in meeting its NEPA obligations and do not preclude the States from making their own determinations with respect to these issues?

The primary concern expressed above is not resolved by simply stating that NRC's findings do not preclude the states from making their own determinations with respect to these issues. The states have "been down this road before" with respect to statements of non-preemption in such areas as the Federal Power Act and have ended up losing many battles in court, even though the intentions may not have been to preclude the states from taking action. From our point of view, any doubt as to regulatory responsibility would be removed if the NRC chose to pursue Option 4.

4. What problems, if any, do the States have with NRC using for license renewal reviews the decision method explained in Option 1 rather than the traditional cost-benefit balancing?

The decision method in Option 1 is not entirely clear, but it is certain that any determination on these issues in a generic manner will have a significant timing problem. Changes to local forecasts of energy or capacity need can and will occur. Other alternative energy sources can and

will be developed over fairly short time frames. Further, there are a number of other factors that can and will change that would make it reasonable to reassess any generic finding of need for generation capacity at a "snapshot in time" that neither we nor the NRC could anticipate. Even if these timing problems could be addressed in a supplemental Environmental Impact Statement, it is not clear to us that the NRC's supplemental analysis would be as integrated or detailed as the continuous analysis performed by the PSCW as part of its IRP process. The refinements made in Option 1 do not resolve the primary problem of overlap and possible preemption of state authority.

5. Do the States have legal concerns or see other problems if the NRC accepts a State's conclusions with respect to the issues of need for generating capacity and alternative energy sources as discussed in Option 2? What are the practical considerations in developing and applying guidelines that would be met by the States?

The PSCW does not see any major legal problems with the NRC's accepting a state's analysis and determination of need for generating capacity and consideration of alternative energy sources, particularly if such determinations are made as a result of an extensive IRP process, as they are in Wisconsin. The practical considerations of developing and applying guidelines to be met by states has already been addressed for the NRC. The Energy Policy Act of 1992 (EPACT) in 111(a)(7) requires each state regulatory authority to consider adopting integrated resource planning as a process for each of its electric utilities. These guidelines require such plans to be updated on a regular basis, provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented. In addition, EPACT defines IRP in 111(d)(19) as the following:

The term 'integrated resource planning' means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates a 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.

It is our belief that EPACT provides almost all of the practical guidelines that the NRC would need to establish whether it could readily accept a state's conclusions on these issues.

6. Do the States have legal concerns or see other problems if the NRC adopts the position that need for generating capacity need not be analyzed in a license renewal review as discussed in Option 3?

While the PSCW would agree with the NRC that the situation at license renewal is somewhat different from at the construction permit phase, we do believe that there are some similarities, particularly if some substantial capital cost additions are required to make an existing plant safe to operate for the long term. Also, while it is reasonable to assume that retirement of an existing plant would likely necessitate some form of replacement, it is possible that licensees might seek license renewal for an existing plant either before a state has assessed whether its continued operation is economical or, perhaps, even in spite of the fact that the state regulatory agency has indicated that it might not be economical. We agree that this latter circumstance is not likely, given that the practical cost considerations are already having an impact on the continued need for certain existing plants, but it is still possible. Assessment by NRC of alternatives would overlap with the evaluations that will certainly be carried out by those states that conduct IRP processes.

7. Do the States have legal concerns or see other problems if the NRC treats the issues of need for power and alternative energy sources for disclosure purposes only and excludes them from its decision whether to renew an operating license as discussed in Option 4?

As indicated at the outset of this discussion, the PSCW prefers that the NRC treat the issue of need for power and alternative energy sources for disclosure purposes only and exclude them from NRC's decision on whether to renew an operating license as discussed in Option 4. We believe that not only is there no grounds for any legal concerns, but that such action would actually make clear that the legal

responsibility to deal with these issues lies with the states. Clearly, the state in which the existing plant was located would be obligated to cooperate with the NRC in any relicensing process, but if the NRC chooses Option 4, we believe the states would be more than willing to provide the kind of information necessary for the NRC to meet its NEPA obligations.

8. Are there any other options that should be considered in addition to those presented in Section V?

The only option the PSCW could suggest that is not covered in Section V would be a slight modification of Option 4 to include the aspect of Option 2 which would recognize that if state analyses of need for capacity and availability of alternatives are not available for a license renewal application, the responsibility for conducting such analysis would ultimately fall back on the NRC. Even in this instance, the states could assist the NRC to carry out the case-specific analysis required by NEPA.

9. From a State perspective what are the strengths and weaknesses of each option? What problems, if any would a State have with its responsibilities under each option?

The basic strength of Option 4 that distinguishes it from the weaknesses of the other options is that Option 4 clearly delineates that the responsibility for assessing need for generation capacity and availability of alternative sources of energy lies with the states. By implication, it also clearly recognizes the NRC's responsibility for ensuring that nuclear power plants can and will be operated safely and that environmental impacts of license renewal and continued operation are properly considered. The PSCW would have no problems with carrying out its responsibilities for determining need for generation capacity and availability of alternative energy sources if Option 4 is adopted by the NRC.

10. What is the State's preferred option?

In conclusion, the PSCW urges the NRC to adopt Option 4, to particularly recognize that states are responsible for making assessments of need for generation capacity and availability of alternative sources of power, and that states conducting fully-developed IRP processes would meet any guidelines for such assessments of need and alternatives that the NRC might need to consider in carrying out its NEPA responsibilities.

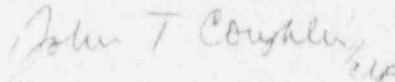
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We thank you for this opportunity to comment on these important issues and we hope the NRC will find our comments useful in reaching a final decision in this matter.


Sincerely,



Cheryl L. Parrino
Chairman



John T. Coughlin
Commissioner



Scott A. Neitzel
Commissioner

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