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March 3, 1994

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

Re: State Concerns Regarding the Treatment of the Need for Generating Capacity and Alternative Energy Sources in the Context of Nuclear Plant Relicensing

Dear Mr. Cleary:

We appreciate the opportunity to comment on the NRC's proposed resolution of state concerns as to the treatment of need for generating capacity and alternative energy sources in the context of environmental reviews to be considered by the Nuclear Regulatory Commission ("NRC") for nuclear plant relicensing. At the outset, we would like to state that we continue to adhere to the views set forth in our comments dated March 13, 1992. We still strongly believe that the proposed rule and the generic analysis that it encompasses should not be adopted by the NRC. Nevertheless, if the NRC proceeds to adopt the rule, we recommend that it make significant changes in the manner that the issues of need for generating capacity and alternative energy sources are treated under the rule and the Generic Environmental Impact Statement ("GEIS"). We propose the following changes.

The proposed GEIS treats the issues of energy needs and energy alternatives as generic Category One issues rather than as Category Three issues requiring an environmental analysis on an individual plant basis at the time of relicensure. The questions of whether there is a need for the generating capacity of nuclear power plants seeking relicensure and whether there are alternative energy sources that are environmentally

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preferable to meet that need cannot possibly be properly addressed on a generic basis. The issues call for plant specific analyses that can appropriately address the energy needs of and available alternative energy sources in the region at the time an application for relicensure is submitted.

As we observed in our earlier comments, forecasting energy needs has historically been very problematic over even exceedingly short periods of time. To attempt to forecast the energy needs of all regions of the country for the next fifty-plus years on a generic basis appears to us to be nothing short of impossible. Similarly, consideration of alternative energy sources should be left until the time of relicensure and undertaken on a plant specific basis. That will allow for consideration of inevitable technological advances in alternative energy sources, as well as of the particular features of the region that may make alternative energy sources environmentally preferable. Therefore, both the issues of energy needs and alternatives should be designated as Category Three issues to be considered on a plant specific basis at the time an application for relicensure is submitted.

Furthermore, the rule itself should contain a specific statement that any NRC findings with respect to need for generating capacity and alternative energy sources are intended only to assist the NRC in meeting its NEPA obligations and do not preclude, control or preempt the states from making their own determinations with respect to those issues. The case law developed under the Atomic Energy Act makes clear that despite the broad preemptive authority given to the NRC, states are clearly authorized to make decisions regarding the need for power. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 550 (1978). While the NRC has authority to regulate safety in nuclear power production, the states retain their historical authority concerning matters such as rate making and the type of generating facility, if any, that should be put on line. Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm., 461 U.S. 190, 212 (1983). The states are entitled to set their own energy policy and to make their own determinations, for example, as to whether there is a need for a particular power source, whether that need can be met by demand side management, and to determine an appropriate energy mix given state policy objectives.

Since the states are authorized to make their own determinations on energy needs and alternatives, the NRC should defer to the states' decisions on those issues. NEPA poses no bar to the NRC relying on states' determinations concerning energy needs and alternatives. Carolina Power and Light Company

(Shearon Harris Nuclear Power Plant, Units 1 and 4), ALAB-490, 8 NRC 234, 241 (1978). Under 40 CFR §1506.2(b) and (d) the NRC is required to cooperate with states to avoid duplication and inconsistency between the proposed federal action and state planning processes. Option 2 in the NRC discussion paper appears to approximate this result most closely. Careful consideration, of course, will have to be given to the guidelines that will be adopted to implement Option 2.

We feel strongly, however, that Option 2 should be amended to include a requirement that an environmental impact statement prepared at the time of relicensure must contain a statement that it does not preclude, control or preempt different decisions by the states in the future, closer to the time of the current license's expiration. Since relicensure may occur up to 20 years prior to the expiration of a current operating license, the energy situation of the region served by the nuclear plant at issue will undoubtedly change substantially by the time the current operating license expires.

Again, we greatly appreciate your willingness to consider the views of the states in dealing with this complex and important set of issues. We would be happy to continue to be available for input and comment.

Sincerely,

Ann G. Berwick

Ann G. Berwick, Chief
Environmental Protection Division