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(59FR 2542)
Public Service Commission of Wisconsin

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Cheryl L. Parrino, Chairman
John T. Coughlin, Commissioner
Scott A. Nertzel, Commissioner

March 3, 1994

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

RE: Proposed Rule 10 CFR Part 51, Environmental Review
for Renewal of Operating Licenses and the Draft
Generic Environmental Impact Statement, NUREG-
1437, and Related Documents

Dear Mr. Cleary:

Enclosed please find the original and two copies (2) of
Comments of the Public Service Commission of Wisconsin in the
above-referenced matter.

Sincerely,

Barbara E. James

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Chief Counsel
Electric Division

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

RE: Proposed Rule 10 CFR Part 51,
Environmental Review for Renewal of
Operating Licenses and the Draft
Generic Environmental Impact Statement,
NUREG-1437, and Related Documents

COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF WISCONSIN

The Public Service Commission of Wisconsin (PSCW) provided its initial comments to the Commission in its letter of February 10, 1994, to Mr. Donald Cleary, in connection with its participation in the meeting with state regulators held in Chicago on February 14, 1994. In light of the information exchanged at that meeting, the PSCW has the following further clarification of its comments:

1. The PSCW continues to be deeply concerned about any sort of generic approach to the assessment of need for electric capacity. Need for power is absolutely dependent on individual factors such as level and shape of load, configuration of the existing electric system, effect of interconnections and efficiency of use in the area

considered. These are not only local and variable from place to place, they also vary significantly from time to time. No generic consideration can possibly be adequate to be the basis for a significant capacity decision such as the decision to relicense a nuclear generating facility.

2. The PSCW also continues to be seriously concerned about the potential for inadvertent preemption of state need and alternative decisions. After participating in the February meeting, we have developed a modification of the "Option 2" approach which we believe will meet both our needs and those of the Commission and the Environmental Protection Agency (EPA.)

Our proposal is based on our understanding that of the Environmental Impact Statement (EIS) is fundamentally an informational document and our understanding that EPA requires the Commission to both "take a hard look" at the need and alternatives questions and reflect the results of that "hard look" in its substantive decision.

It is also based on our belief that the analysis of need and alternatives performed by a state which has developed comprehensive integrated resource planning (IRP) is the best source of information on the subject that is

likely to exist anywhere, and that the federal agency would be wise to rely on it.¹

3. The three elements of our proposed modified Option 2 approach would be:

A. The Commission would adopt some criteria which delineate the attributes of adequate state IRP for the purpose of meeting Commission's NEPA requirements. The PSCW suggests that suitable criteria which have been endorsed by Congress can be found in the Energy Policy Act of 1992, §111 (a)(7). Many states are analyzing and planning their electric systems consistently with these criteria. Some, like the PSCW, meet and exceed these criteria in the depth of their analysis.²

¹ It might be well to note here that the PSCW is the only agency that we know has actually rejected a proposed nuclear plant for lack of need after the Commission had licensed it. The license was based on Commission staff's need analysis, in its EIS. The PSCW's comments on the draft EIS, which disputed the Commission staff's findings, were apparently not reflected in the final document or the decision.

The PSCW's order was challenged in court on the basis of preemption, among other issues, but the challenge was dropped because two weeks after the order issued the Three Mile Island accident occurred. There was no litigated resolution to the preemption question. Tyrone Energy Park, Commission Docket number STN 50-484, 1977, PSCW Docket number CA-5447, order issued March 6, 1979.

² For reference as to the scope of the PSCW's planning, its last two Advance Plan orders are reported at 102 PUR 4th 245 and 135 PUR 4th 153.

B. The appropriate agency in an affected state would provide the Commission with its analysis of need and alternatives, along with a reviewable "audit trail" of the procedure the state agency followed to arrive at its conclusions. The Commission would satisfy its "hard look" requirement by reviewing the process the state agency used for the analysis and determining whether that process meets the specified criteria adopted under §3A above.

C. If the Commission finds that the state agency's analysis meets the established criteria, Commission staff will incorporate the analysis into its EIS. Presumably, to the extent that a substantive decision is made on these points, the Commission will base it on the EIS.³ The inadvertent preemption problem will be avoided, because the state and federal determinations will never be inconsistent.

³ There may be some uneasiness about this adoption of the state's analysis, if it is thought of as a delegation of authority. If one looks at the way the staff would actually address the question on its own, the concept of relying on the state agency becomes less threatening. Staff has to get its information from somewhere. It may use the utility's analysis, information from other agencies that perform forecasting or data collection, hire consultants, or use a combination of these sources.

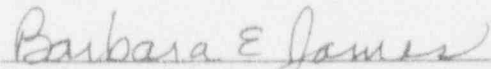
The concept that is being proposed here is not really fundamentally different. It merely recognizes that a state agency that performs integrated planning analysis of a suitable scope and depth is the best source of information available.

If a state does not have an agency which performs IRP or other analysis which the Commission requires (i.e. the state cannot meet the criteria), the Commission would be forced to fall back on taking its own "hard look" in some other way that would satisfy its NEPA responsibilities.

The PSCW believes that the adoption of the process outlined above at Section 3 will satisfy both the Commission's NEPA responsibilities and the state's right to autonomy on the questions of needs and system alternatives. The PSCW also believes that none of the alternatives as described in the original Staff Discussion Document is capable of addressing both needs satisfactorily.

Dated March 3, 1994, in Madison, Wisconsin.

Respectfully submitted,



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