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OFFICE OF SECRETARY
DOCKETING BRANCH

Mr. Samuel J. Chilk
Secretary
U S Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Comments on the Proposed Rule - 10 CFR Parts 2, 50, and 54
Nuclear Power Plant License Renewal
55 Federal Register 29043 (July 17, 1990) Request for Comments

These comments are submitted by Northern States Power Company in response to the request of the U S Nuclear Regulatory Commission for comments on the subject NRC proposed rule relative to nuclear power plant license renewal (55 Federal Register 29043).

Northern States Power's Monticello Nuclear Generating Plant is serving as the lead Boiling Water Reactor plant in the industry Lead Plant License Renewal Program. As such, we have participated extensively in the development of the comments on the proposed rule and its supporting documents; NUREG-1412, "Foundation for the Adequacy of the Licensing Basis"; NUREG-1398, "Environmental Assessment for Proposed Rule on Nuclear Power Plant License Renewal"; and NUREG-1362, "Regulatory Analysis for Proposed Rule on Nuclear Power Plant License Renewal" provided by the Nuclear Management and Resources Council (NUMARC) on this subject. We fully endorse the response forwarded by NUMARC in response to the subject request. In addition, we would like to offer the following comments and perspectives.

Although, the NRC has appropriately not based its proposed rule on economic considerations, we wish to add our own perspective that the proposed rule is of considerable public and national interest. By providing for a focused and predictable licensing process, yet one that fully satisfies the NRC's mandate to protect the public health and safety, the proposed rule will assist utilities in their long-range planning so that existing nuclear generating capacity is not needlessly and prematurely lost. Similarly, by permitting license renewal on the basis of existing design and practices deemed adequate to protect the public health and safety, rather than requiring complete redesign to state-of-the-art criteria, the proposed rule avoids imposing undue capital barriers to renewal. The proposed rule therefore contributes to the energy security and competitiveness of the nation. This contribution, both to utility planning and to energy security, is vitally important.

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The purpose of the License Renewal Rulemaking is to establish a process which will ensure that aging will not compromise the ability of the engineered safety features of a plant to perform their safety functions during the period of extended operation. With regard to the overall process contained in the proposed rule, a seemingly simple process has been made more difficult than is necessary to provide reasonable assurance of the public health and safety. The process should consist of the following steps: 1) Identify the systems, structures, and components which perform safety functions required by NRC regulatory requirements; 2) Assess the effectiveness of existing plant programs in managing aging which might effect the ability of a component to perform its required safety function; and 3) Identify any additional actions necessary to ensure that aging is being managed during the renewal term. The necessary actions to manage aging can be accomplished in various ways including, detection, monitoring and trending, periodic replacement, repair, preventative maintenance, etc. The justification for the necessary actions can range from engineering judgement based on operational history and experience to detailed assessments of the aging mechanisms. The currently proposed rule does not allow the varying degrees of evaluation which are adequate for demonstrating the management of aging during the renewal term. It requires the same level of extensive justification and analysis for every system, structure and component without regard to that actually necessary to demonstrate satisfactory performance during the renewal term.

In support of establishing this simpler process we agree with NUMARC's conclusion that a corrected version of the Regulatory Analysis would support the selection of Alternative A and that the approach submitted by the industry in its markup of the proposed rule establishes an acceptable process. Acceptance of the NUMARC proposal would provide the staff with the information necessary to provide reasonable assurance that the health and safety of the public are being protected while allowing licensees the needed flexibility in managing their operations in a responsible and economic manner. To reject this proposal and still require the extensive evaluation currently proposed in the rule may prove to be too costly to utilities, driving them away from the license renewal option.

Further general comments are contained in Attachment 1 to this letter. In particular, we would like to call your attention to the option of allowing license renewal by amendment as opposed to a new license and urge your consideration on this issue.

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We appreciate the opportunity to comment on the proposed rule. Please contact us if you have any questions or further information is required on this issue.



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Attachment 1 - General Comments on the Proposed License Renewal Rule

Attachment 1
October 17, 1990

General Comments on the Proposed License Renewal Rule

License Renewal by Amendment vs New License

The NRC proposes that extended operation of a nuclear plant be accomplished through the issuance of a new license rather than through an amendment to the existing license. The proposed rule takes this "new license" approach based on a reading of section 103 (c) of the Atomic Energy Act, which is characterized as containing an "explicit prohibition of license terms in excess of 40 years." The proposed rule indicates that the Commission is not free to ignore this "statutory mandate" (55 Federal Register 29,050.

Section 103 of the Atomic Energy Act does not prohibit a renewed license from extending authorized operation beyond forty years; nor does it prohibit renewal by amendment, as discussed below. Further, extending licenses by amendment is a more logical procedure in that it lends itself to; 1) the concept of limiting the proceeding to the pertinent issues (i.e., the effects of age-related degradation) and 2) the concept that prior requirements and commitments from the current licensing basis will continue in effect during the renewal term.

Section 103(c) of the Atomic Energy Act states that "Each such license shall be issued for a specified term, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon the expiration of such period." 42 U.S.C. @ 2133(c) (emphasis added). This provision only prohibits issuing a license for more than forty years. The obvious purpose is to prevent licenses from being open-ended or perpetual. Section 103 does not prohibit extending the term of a license by subsequent amendment in a renewal proceeding. There is no limitation on the total term of operation that may be authorized by a license and subsequent renewal amendments.

Thus, the NRC complies with section 103, literally and completely, when it first issues an initial license for a forty-year term. The NRC would violate no "statutory mandate" if it later renewed the term by amendment. At no point in time is the license being "issued" for a "specified term . . . exceeding forty years." Moreover, because the Atomic Energy Act expressly permits renewal and does not dictate any particular procedure, the NRC has complete latitude to determine the appropriated procedure.^{1/}

^{1/} The Supreme Court has held that absent Constitutional constraints or extremely compelling circumstances, administrative agencies including the NRC should be free to fashion their own procedures and methods of discharging their duties. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U. S. 519, 524-25, 543-44 (1978). See also Duke Power Co. v. NRC, 770 F.2d 386, 390 (4th Cir. 1985) (because of the unique nature of nuclear safety, broad responsibility is imposed in the NRC, free of close prescription in its charter as to how it shall proceed in achieving its statutory objectives). Accord North Anna Environmental Coalition v. NRC, 533 F.2d 655, 659 (D.C. Cir. 1976); Siegel v. AEC, 400 F.2d 778, 783 (D.C. Cir. 1968).

The adoption of a license amendment approach has several advantages. First, it is consistent with the current licensing basis continuing in effect. Since the existing license is being amended, all prior requirements and commitments automatically continue, unless the amendment provides otherwise. Thus, the objective of proposed section 54.33(d) (which is intended to incorporate a plant's current licensing basis into the plant's renewal license) is assured, and any potential arguments about what will or will not be carried over would be eliminated.

Second, the license amendment approach provides additional legal support for continuing the current licensing basis and limiting issues to those pertaining to age-related degradation. It has been the NRC's long-standing practice, in evaluating a license amendment application, not to revisit matters that were previously decided and are unaffected by the proposed amendment.^{2/} License amendment applications do not reopen a license to full reconsideration or to the application of new standards. Only matters with a sufficient nexus to a proposed amendment are at issue.

Accordingly, if renewal were accomplished by amendment, the renewal process could more easily assure that the findings previously made, and the underlying documents and analysis, will have continuing validity and will not be unnecessarily reexamined.

Support for the Current Licensing Basis Approach

The keystone of the NRC's proposed rule is its acceptance of the "current licensing basis" for plants seeking license renewal. This approach reflects the fact that the licensing basis for each plant does not remain fixed at the point of initial licensing, but instead evolves over the plant operating life as new licensee commitments are made and new NRC requirements are imposed. The NRC, through its many inspection and assessment activities, is constantly evaluating plant performance and safety, and is not hesitant to require plant improvements when deemed appropriate. This constant oversight and imposition of new requirements provides the NRC with confidence, at any point in time, that an operating plant's current licensing basis is adequate to protect the public health and safety. (If a plant's current licensing basis were not adequate to protect the public health and safety, the NRC would suspend or revoke the operating license.)

Because the plant's current licensing basis is adequate to protect the public health and safety at any point in time, there is no need to reevaluate, in a renewal proceeding, all the issues that were considered in an initial licensing proceeding. Such an effort would be a waste of valuable resources.

^{2/} The Atomic Energy Act prescribes no particular findings for a license amendment. NRC regulations provide that "the Commission will be guided by considerations which govern the issuance of initial licenses . . . to the extent applicable and appropriate." 10 C.F.R. @ 50.92 (emphasis added).

If basic aspects of plant design are acceptable in the 39th year of operation, they should be adequate in the 41st year of operation. For example, if the redundancy and separation of safety equipment satisfy fire protection requirements before renewal, they will satisfy the requirements following renewal. The same is, of course, true of operational programs. Quality assurance, training, security, environmental monitoring, fitness for duty, and other such operational programs acceptable before renewal will be no less adequate after renewal.

The only issues that do need to be addressed in a renewal proceeding are those time-dependent issues not already accommodated by a plant's current licensing basis.^{3/} This set of issues has been correctly identified as being limited to the effect of age-related degradation on the adequacy of structures, systems, and components, as indicated by the NRC's extensive and careful analysis in NUREG-1412, "Foundation for the Adequacy of the Licensing Bases". The identical conclusion was independently reached by the NUMARC Nuclear Plant Life Extension Working Group.

Having determined that the existing requirements and commitments applicable to each specific nuclear plant provided reasonable assurance that the public health and safety will be protected, the NRC's proposed rule properly focuses the inquiry of a license renewal proceeding upon age-related issues. This focused approach will avoid wasting many man-years to consider issues that have not only been previously decided during initial licensing, but confirmed by years of operational experience and inspection. We agree that there is no need to replicate the initial licensing process.

Compilation of the Current Licensing Basis

Proposed section 54.21(a) requires each license renewal applicant to "compile a list of documents identifying portions of the current licensing basis relevant to the integrated plant assessment, to be submitted as part of the application, and maintain all documents describing the current licensing basis in an auditable and retrievable form." This proposal is vague and has the potential to be extremely burdensome, without any justifying benefit.

First, it is not clear what "portions" of the current licensing basis should be considered "relevant" to the integrated plant assessment. Arguably, any document relating to a structure, system or component could be encompassed by this phrase, in which case the compilation would have to include the FSAR with all amendments; all SERs and TERs; all correspondence related to the FSAR and SERs; all licensing correspondence relating to a structure, system or component; all drawings, specifications and design criteria relating to any

^{3/} A great many time-dependent issues are already accommodated in the evolving licensing basis for each plant. For example, the requirement of annual emergency planning exercises, evaluated by the NRC and FEMA, ensure that an acceptable emergency response capability is maintained irrespective of changes in vicinity of a nuclear plant.

structure, system or component; all model, codes, or analyses relating to any structure, system or component; and the list would go on and on. This amount of documentation would be enormous.

Second, it is not clear what the phrase "to be submitted as part of the application" refers to. Grammatically, the phrase modifies and relates to the "integrated plant assessment", which of course is submitted as part of the application. We expect, however, that the intent is to require submittal of the "list" as part of each application. This phrase could also be construed to require the submittal of all listed documents as part of each application, which would deluge the NRC staff with unnecessary information.

Third, the proposed requirement that each license renewal applicant "maintain all documents describing the current licensing basis in an auditable and retrievable form" suggests that it is not just a "list" of documents that must be compiled, but all the documents and their contents, themselves. Further, the mass of documents that would have to be compiled may not be limited to the already enormous subset characterized as "relevant" to the integrated plant assessment, but instead may include "all documents describing the current licensing basis." This makes the required compilation even more burdensome.

Fourth, there is no valid use proposed to be made of this information. The compilation of this information is not necessary to perpetuate the current licensing basis, because all requirements and commitments comprising the current licensing basis carry over into the renewal term by force of proposed section 54.33(d). The compilation of this information should also be unnecessary for review of the integrated plant assessment, since proposed section 54.21(a)(4) requires the applicant to describe and provide the basis for resolving issues presented by the age-related degradation of systems, structures and components.

As a practical matter, the Updated Safety Analysis Report that each licensee is required to maintain pursuant to 10 CFR Part 50 Section 50.71 should provide the NRC with a more than ample general reference tool in support of review of renewal applications. Further, if questions arise during the NRC Staff's review of an integrated plant assessment, the NRC can always request further information. For all these reasons, we strongly recommend that the NRC delete any requirement to "compile" the current licensing basis.