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March 5, 1991

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subj: **Notice of Proposed Rulemaking:
Nuclear Power Plant License Renewal
55 Fed. Reg. 29,043 (July 17, 1990)**

Dear Mr. Chilk:

In accordance with the above-referenced Notice of Proposed Rulemaking, we hereby submit the following supplemental comments on behalf of the Utility Decommissioning Group ("Group").¹ These comments supplement and are to be read together with our timely filed comments addressing decommissioning issues raised by the above-referenced notice of proposed rulemaking (filed October 15, 1990).

Our supplemental comments specifically concern a report recently issued by the NRC titled "Assessment of NRC Regulations for Nuclear Power Plants to Define Areas of Continuing Technical Adequacy for License Renewal," SCIE-NRC-203-90 (August 1990) ("Report"). We are concerned that the section of the Report that deals with decommissioning (pages 66-68) appears to reflect a position concerning NRC regulatory responsibility that is inconsistent with NRC requirements and the Commission's Statement of Considerations accompanying the proposed rule on plant license renewal. Specifically, the Report recommends a regulatory standard for financial assurance for decommissioning for those licensees who have filed an application for plant license extension that is higher than the "reasonable assurance" standard

¹ The members of the Utility Decommissioning Group are: Duke Power Company; Entergy Operations, Inc. (formerly Arkansas Power & Light, Louisiana Power & Light, and System Energy Resources, Inc.); Northeast Utilities; Pacific Gas and Electric Company; TU Electric; Virginia Power; and Yankee Atomic Electric Company.

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present in existing regulations. The Group believes that the NRC should adequately address this issue in promulgating any final rule on plant life extension. For the record, therefore, we hereby submit the following comments, and respectfully request that the Commission consider them.

Discussion

As discussed in the Group's comments (October 15, 1990), the provisions of the proposed plant life extension rule related to decommissioning mainly concern the postponement of the filing of a preliminary decommissioning plan until the plant life extension application is acted upon. The proposed rule recognizes that, if an operating license is renewed, decommissioning activities will be postponed by at least the length of the extension, and some associated filings should be delayed. The Group, with some suggested clarifications and additions, agreed with the spirit of the proposal. The Group understood, from the Federal Register notice of the proposed rule, that the Commission did not intend to alter the standard for providing reasonable assurance that adequate funding for decommissioning would be provided. The referenced report on plant life extension now leads the Group to question whether there is a competing point of view which was not mentioned in the proposed rule.

As an overview, the Report is divided into two major sections. The first section summarizes the results of a systematic review and evaluation of the General Design Criteria of 10 C.F.R. Part 50, Appendix A. The purpose of this review is to identify a general method by which the NRC could confirm continued licensee compliance with each criterion for license renewal. The second section evaluates the safety basis for NRC requirements in specific regulatory areas.

A review of the decommissioning regulatory requirements appears in the second section of the Report. That review makes the following statement:

Plants whose renewal applications are under NRC review at the 5-year point can request [an] exemption from the requirements of 10 C.F.R. § 50.75(f) to submit a preliminary decommissioning plan. In responding to such requests, the NRC will assure that the safety basis of the decommissioning rule will not be altered by license renewal. In other words, the NRC must find that there is reasonable assurance that funding would be available if the renewal application were denied and no preliminary decommissioning plan were in

place. Normal verification of funding would not be sufficient; the NRC would need to find that adequate plant-specific consideration had been made or that sufficient additional funding would be available to compensate for foregoing [sic] the plant-specific evaluation on which the decommissioning rule is based.

Report at 67 (emphasis added). We believe that this statement assumes a regulatory requirement that is not present in the NRC's existing regulations and contrary to the proposed rule on plant license renewal.

In addition to using undefined terms such as "adequate plant-specific consideration," and "sufficient additional funding" to compensate for "foregoing [sic] the plant-specific evaluation," the discussion suggests that those terms could be interpreted to mean something more than providing reasonable assurance that adequate funds will be available for decommissioning for licensees who have filed license renewal applications. The decommissioning rule requires only that NRC licensees provide reasonable assurance that funds will be available when needed to decommission their nuclear power plants. 10 C.F.R. § 50.75(f). NRC regulations do not require financial assurance greater than "reasonable assurance," contrary to the passage of the Report quoted above.

Further, the proposed nuclear power plant license renewal rule would not change the reasonable assurance standard. In fact, the Statement of Considerations for the proposed rule provides that "[t]he Commission does not believe that licensees who file their license renewal applications should also be required to proceed as if their facility will be decommissioned at the expiration of the current operating license." 55 Fed. Reg. 29,043, 29,054 (July 17, 1990). The Commission added that the current 10 C.F.R. § 50.75(f) "may be interpreted to exclude licensees who have filed renewal applications from the requirements for submission of the interim funding reports." *Id.* at 29,054-055. These statements evidence a Commission intent not to change the standard for decommissioning funding in the plant license renewal arena. Consequently, the Report's interpretation of that standard is apparently inconsistent both with the existing decommissioning regulations and present Commission intent in the license renewal arena.

We recognize that this study, which is a contractor report, does not necessarily reflect NRC Staff views on this matter. However, we understand that the NRC Staff working on the license renewal rulemaking is still considering appropriate mechanisms for affording schedular relief from the preliminary decommissioning plan requirement during consideration of a

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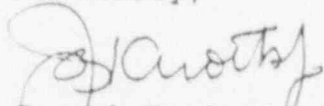
request for license renewal. Although the recommendation in this study was not reflected in the proposed license renewal rule (and, therefore, arguably could not be adopted by the Staff absent formal public notice of its consideration),² we believe consideration of our comments on this report are appropriate in the event the Staff considers the recommendations made therein.

Conclusion

The decommissioning provisions of the proposed rulemaking concerning nuclear power plant license renewal are appropriate and justified. The Group agrees with the rationale for the proposal, i.e., the prevention of wasted resources. The Group believes, however, that it is not the Commission's intent to heighten the standard for demonstrating the ability to provide funding for decommissioning in the license renewal arena. In this regard, the Group respectfully requests the Commission to adhere to the approach indicated in the Statement of Considerations accompanying the proposed rule in any final rule concerning nuclear power plant license renewal.

We appreciate the opportunity to supplement our comments on this rulemaking.

Sincerely,



Joseph B. Knotts, Jr.
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Counsel to the
Utility Decommissioning Group

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The Federal Register notice of proposed rulemaking included a section titled "Availability of Documents." 55 Fed. Reg. at 29,055. The Report in question was not included in the notice.