



POLICY ISSUE

(Notation Vote)

December 7, 2020

SECY-20-0110

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING ON CRITERIA TO RETURN
RETIRED NUCLEAR POWER REACTORS TO OPERATIONS
(PRM-50-117; NRC-2019-0063)

PURPOSE:

The purpose of this paper is to request Commission approval to deny a petition for rulemaking (PRM) requesting criteria to return retired nuclear power reactors to operations (PRM-50-117) and publish a notice of denial in the *Federal Register*. The staff recommends that the Commission deny PRM-50-117 because the existing regulatory framework may be used on a case-by-case basis to address the issue raised by the petitioner. In addition, nuclear industry representatives have expressed minimal interest in the development of a new regulatory process for reauthorizing operation. This paper does not address any new commitments or resource implications.

BACKGROUND:

George Berka (petitioner) filed a PRM with the U.S. Nuclear Regulatory Commission (NRC) on December 26, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19050A507). The petitioner requested that the NRC amend Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," to establish criteria to return retired nuclear power reactors to operations.

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The NRC assigned docket number PRM-50-117 to this petition and published a notice of docketing in the *Federal Register* on July 26, 2019 (84 FR 36036). The public comment period closed on October 9, 2019. The NRC received 33 public comment submissions.

DISCUSSION:

Petitioner's Request

The petitioner requested that the NRC revise 10 CFR Part 52 to establish criteria that would allow retired nuclear power reactors to return to operation after their licenses no longer authorize operation. This circumstance could occur either after the NRC has docketed a licensee's certifications that it has permanently ceased operations and permanently removed fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect.

The petitioner offered specific rule language to address this request, depending on the status of the reactor:

- If "the facility had been in an operational condition at the time of retirement, had last operated no more than twenty-one (21)¹ calendar years prior to the retirement date," and if the facility "remains intact," then the facility would just need to pass a "general safety inspection."
- If "the facility had not been in an operational condition at the time of retirement, had last operated more than twenty-one (21) calendar years prior to the retirement date, is not intact, and/or has had significant decommissioning and/or dismantling activities commence," then the nuclear power reactor must be repaired or rebuilt "to the safety standards that had been in place at the time the facility had last operated." Then, the facility would need to pass a safety inspection "appropriate to the degree of repairs or reconstruction that had been performed," which would be, "[a]t the very least...a general safety inspection."

The petitioner referred both (1) to the low cost of returning a retired nuclear power plant to operation under his proposal relative to building new nuclear power plants or replacing the same electricity-generating capacity with wind or solar sources and (2) to the climate benefits of his proposal as justification for making this request of the NRC.

The petition raised one issue for NRC's consideration in rulemaking. In sum, the current regulatory text in 10 CFR 50.82(a)(2) and 10 CFR 52.110(b) states that operation of the reactor is no longer authorized after the NRC docketed the licensee's certifications that it has permanently ceased operations and permanently removed fuel from the reactor vessel². No explicit regulatory path exists to re-authorize operation of such a facility.

Public Comments

¹ The petitioner did not describe a basis for the 21 calendar years as part of the petition for rulemaking. This specific timeframe of 21 calendar years in the petitioner's suggested rule language did not have an impact on the NRC staff evaluation and recommendation.

² Although the petitioner requested rulemaking to amend 10 CFR Part 52, the petitioner discussed reauthorizing operation of retired nuclear power plants with Part 50 licenses. Therefore, the NRC staff evaluated the issue raised in this PRM with respect to both Parts 50 and 52.

The NRC received 33 public comment submissions from 31 individuals, 1 reactor licensee (Entergy Corporation), and 1 non-governmental organization (Californians for Green Nuclear Power). Of the 33 comment submissions received, 30 comment submissions supported the PRM and 3 comment submissions opposed it. The staff has summarized the comment submissions in the proposed *Federal Register* notice (Enclosure 1) and provided the NRC's response to the comment submissions in a separate document (ADAMS Accession No. ML20205L311).

Summary of Petition Evaluation and Public Meeting

The staff evaluated the petitioner's request and the public comments received. The comments received do not present additional information supporting the petitioner's request that the NRC amend its regulations. However, after considering the public comments, the staff identified the need to further engage the public to understand the degree to which the nuclear industry would use a new regulatory process for reauthorizing operation of decommissioning power reactors. This additional information was needed to evaluate whether the costs of undertaking rulemaking would be justified.

The staff also considered the following factors in its initial evaluation of the petition: current regulatory processes, safety and security considerations, and resources. The staff in its initial petition evaluation concluded that: (1) no existing regulations explicitly prohibit the NRC from reauthorizing operation of a decommissioning power reactor, (2) the petition does not raise a safety or security issue, and (3) the effort required to undertake a rulemaking on this issue could be extensive. Section IV, "Reasons for Denial," of the proposed *Federal Register* notice (Enclosure 1) provides a more detailed discussion of these factors.

The staff determined that a public meeting on the petition and related topics was prudent to fully understand the issues raised by the petitioner. The staff held a public meeting on February 25, 2020, to gather public input on three potential regulatory frameworks for power reactors: the resumption of operation for decommissioning power reactors, deferred status for operating reactors, and reinstatement of terminated combined licenses. The staff described these frameworks to gauge interest in a variety of approaches that could be pursued in rulemaking. The materials for the public meeting are available under ADAMS Accession No. ML20049A021 (package). A summary of the public meeting is available under ADAMS Accession No. ML20072H288, and a transcript of the public meeting is available under ADAMS Accession No. ML20072H393.

While the idea of creating a regulatory framework was generally supported in the written public comments received on the petition, the key insight from the public meeting related to this PRM was that there was minimal explicit interest from nuclear industry representatives in using any such framework for an existing facility. This insight led the staff to conclude that while such a framework could be useful, the resources needed to develop it would be unlikely to be cost-justified, since the NRC may address such requests under the existing regulatory framework—including granting exemptions, where needed—on a case-by-case basis.

The staff evaluated the petitioner's request, the public input received from the public comments, and the public meeting input in conjunction with the factors considered in the initial petition evaluation. The staff recommends denying the petition.

RECOMMENDATION:

The staff recommends that the Commission deny PRM-50-117 because the existing regulatory framework may be used on a case-by-case basis to address the issue raised by the petitioner. In addition, nuclear industry representatives have expressed minimal interest in the development of a new regulatory process for reauthorizing operation, such that the benefits of the requested rulemaking would be highly unlikely to outweigh the costs.

The staff requests the Commission's approval to publish the enclosed *Federal Register* notice (Enclosure 1) denying PRM-50-117. This notice provides a detailed response to the petitioner's request. The enclosed letter for signature by the Secretary of the Commission (Enclosure 2) informs the petitioner of the Commission's decision to deny the petition. The staff also will inform the appropriate congressional committees of the Commission's decision.

RESOURCE:

This paper does not address any new commitments or resource implications.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection to the denial of the petition.



Signed by Doane, Margaret
on 12/07/20

Margaret M. Doane
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letter to the Petitioner

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 RETIRED NUCLEAR POWER REACTORS TO OPERATIONS (PRM-50-117;
 NRC-2019-0063), DATED: December 7, 2020

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