(14)

LeBoeuf, Lamb, Leiby & MacRae

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1333 New Hampshire Avenue, N.W.
Washington, DC 20036

(202) 457-7500

TELEX: 440274 FACSIMILE: 202-457-7511

LeBOEUF, LAMB, LEIBY & MacRAE (UK)
LONDON, ENGLAND

LeBOEUF, SUNDSTRÖM FERRY
BRUSSELS, BELGIUM

NEW YORK, NY
SALT LAKE CITY, UT
RALEIGH, NC
SAN FRANCISCO, CA
LOS ANGELES, CA

BOSTON, MA
SOUTHPORT, CT
NEWARK, NJ
ALBANY, NY
JACKSONVILLE, FL

DOCKET NUMBER
PROPOSED RULE PR 50
(53FR32919)

October 28, 1988

Samuel J. Chilk, Esq.
Secretary
U.S. Nuclear Regulatory Commission
Attn: Docket and Service Branch
1717 H Street, N.W.
Washington, D.C. 20555

Re: NRC Request for Comments on License Renewals

Dear Mr. Chilk:

On August 28, 1988, the Nuclear Regulatory Commission published for comment its advanced notice of proposed rule making concerning nuclear license renewal. 53 Fed. Reg. 32,919. As attorneys representing several utilities involved in the Commission's licensing and regulatory process, we wish to submit comments in response to the Commission's notice.

Our comments are organized to respond to the first four questions set forth in the Commission's notice. In responding to those questions, we will also comment, both generally and specifically, on the Commission's draft NUREG-1317.

1. There are no other major regulatory options that should be considered for license renewal. The Commission should adopt regulations providing that license renewal applications shall be treated as license amendment applications and, except where otherwise specifically provided, reviewed and processed by the Commission in the same manner as a license amendment.

2. We believe that the options identified as A in Tables ES-1 and 3-1 and ES-2 and 3-2 of NUREG-1317 are the preferred options and will insure continuing adequate protection of public health and safety. With respect to the first option A, we believe that the Commission should generally adhere to the design licensing basis for the plant, rather than requiring an independent review. We find that the discussion in paragraphs 2.2 and 3.1 of NUREG-1317 ignores the Commission's current regulations requiring maintenance of an Updated Safety Analysis

Report for each plant. 10 C.F.R. § 50.71(e). That requirement, which converts the FSAR into a living document, largely guarantees that a current licensing design basis will be available for an application for license renewal.

In addition, the NUREG seems to give inadequate recognition to other current programs of the Commission. For example, it is virtually certain that the first several renewal applications will be filed by plants that have undergone an SEP review. Such plants have already been studied extensively to insure their compliance with current safety requirements and have made significant, major modifications to meet those requirements. Similarly, other older plants that were not subject to SEP review will likely have completed an ISAP prior to applying for license renewal. Finally, we are aware that individual older plants have active programs to reconstitute documentation and records of their original design basis. For all of these reasons, we submit that an independent review of the design basis in connection with license renewal is not necessary to protect the public health and safety and would impose an unwarranted burden on applicants.

With regard to the second option A, we believe that it is preferable because it is in line with current nuclear utility practices and it complements the philosophy of license renewal based upon the plant's current design. In particular, the steps outlined in subparagraph 3, beginning on page 3-15 of NUREG-1317, generally reflect current utility practices. If the Commission prescribes criteria for license renewal along the same lines, all nuclear utilities will be encouraged to maintain their plants in a way that reflects age-related concerns. This is desirable whether or not a particular plant is a candidate for license renewal; if license renewal is sought, following such a program will facilitate the renewal.

3. The benefits of basing license renewal upon the original licensing design basis of a plant, as subsequently amended, are covered in the preceding discussion. In addition, the selection of that option avoids reliance upon a PRA, the methodology for which is currently not completely developed.

4. With respect to environmental issues, we submit that there is no justification for the preparation of a generic environmental impact statement on license renewal. First, it is unlikely that license renewal will produce any significant adverse environmental impacts. Second, it is also unlikely that significant generic information can be developed and documented to reduce materially the required environmental evaluation of individual license renewal applications. Instead, we recommend

that the Commission amend its regulations to require the preparation and submission of a supplemental environmental report by the applicant for license renewal and the preparation of an environment assessment ("EA") for each application. We would expect that in most, if not all, cases the EA would support a conclusion that no environmental impact statement is required.

With regard to procedural issues, we are attaching a detailed response to Part 5 of NUREG-1317.

We appreciate the opportunity to comment on the Commission's advance notice, and we look forward to participating in the resulting rule making.

Sincerely,

LeBOEUF, LAMB, LEIBY & MacRAE,

By Harry H. Voigt
Partner

Enclosure

DETAILED COMMENTS ON PART 5 OF NUREG-1317

5.1 It is preferable for the Commission to treat a license renewal application as an amendment to the existing license and to apply existing procedures for the review of license amendments. We believe that any concern as to whether an amendment can extend the initial license term beyond the statutory limit could be resolved by the Commission including in the Statement of Considerations for its new rules an explanation that it is exercising its license renewal authority, even though for procedural purposes it is processing renewal applications as amendments.

5.2 It appears desirable to establish a minimum five-year term for license renewals to avoid the administrative burden that would be created if the Commission had to review applications for shorter periods of time. We have no technical basis for recommending a maximum term, but we suspect that anything beyond 20 years would tax the ability of both the industry and the Commission to predict the effects of aging.

5.3 We recommend that the latest date for filing a license renewal application be two years prior to expiration of the initial license. This would permit a one-year interval during which a substantial, if not complete, evaluation could be conducted by both the applicant and the Commission prior to the time that the applicant would otherwise have to file a decommissioning plan.

5.4 To facilitate utility planning for future power supply and construction, the Commission should allow a license renewal application to be filed as much as 12 years in advance. Such an application would incorporate at least 27 years of plant operating and maintenance information and experience with the effects of plant aging. This should provide an adequate data base for license renewal.

5.5 In general, license renewal to begin at the end of the original license appears to be preferable. However, we have no basis upon which to oppose prior comments requesting that an applicant for renewal have the option of requesting a superseding license.

5.6 License renewals should be based upon adherence to a plant's license design basis and the backfit rule should definitely be applied to any proposed changes in the design basis. Prior to final action upon a renewal application, it would be premature and improper to include the term of a possible renewal in the calculation of costs and benefits under the backfit rule. On the other hand, inclusion of the renewal term requested by the applicant when applying the backfit rule to the renewal application itself is justified.

5.7 As previously stated, it is desirable for the Commission to treat license renewal applications as amendments. If it does so, it would be appropriate to apply the Sholly amendment and require a prior hearing only if the Commission is not able to make a finding of no significant hazards

consideration. In addition, the Commission should adopt substantive standards for assessing renewal applications by rule making and then provide that its standards may not be challenged in individual renewal license cases. Finally, the Commission should consider adopting procedures for a legislative hearing for contested license renewal applications.

5.8 To our knowledge, the Commission has not, for many years, required a licensee to obtain a construction permit for plant alterations or modifications. Specifically, significant modification programs arose out of, and were approved in connection with, SEP reviews without requiring a construction permit. The Commission should establish as its policy that a construction permit will not be required in connection with a license renewal application.

5.9 Under the Commission's current regulations, emergency preparedness is the subject of ongoing review and periodic exercises throughout the life of a plant. Unless this regulatory regime is modified substantially, there would appear to be no need to give special attention to emergency preparedness at the time of license renewal. Existing plans and procedures would simply be carried forward.

5.10 We agree that regulations for license renewal and decommissioning should be coordinated. If the Commission adopts a two-year minimum requirement for the filing of a license renewal application, as recommended in response to paragraph 5.2, we believe that the problem of conflict will be minimized.

5.11 Although antitrust review remains as a statutory requirement, changed economic and regulatory conditions have largely eliminated its significance. If the Commission determines to treat license renewal applications as amendments, antitrust review will not automatically be required, and it is unlikely to be necessary in individual cases.

5.12 We agree that Price-Anderson coverage is not a significant issue.

LeBOEUF, LAMB, LEIBY & MacRAE

October 28, 1988