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RULE NAME: MARVIN LEWIS: PETITION FOR RULEMAKING

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NOTES ON PETITION CONCERNED WITH REINSTATING FINANCIAL QUALIFICATIONS IN OP
STATUS ERATING LICENSING PROCEEDINGS. PETITION DENIED BY EDO ON 7/17/90.
F RULE FILE LOCATED ON P1.

TO FIND THE STAFF CONTACT OR VIEW THE RULEMAKING HISTORY PRESS PAGE DOWN KEY

HISTORY OF THE RULE

PART AFFECTED: PRM-050-052

RULE TITLE: MARVIN LEWIS: PETITION FOR RULEMAKING

PROPOSED RULE SECY PAPER:	PROPOSED RULE SRM DATE: / /	DATE PROPOSED RULE SIGNED BY SECRETARY: 08/23/88
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DOCKET NO. PRM-050-052
(53FR32913)

In the Matter of

MARVIN LEWIS: PETITION FOR RULEMAKING

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
10/11/88	10/06/88	COMMENT OF ECOLOGY/ALERT (E. NEMETHY, SEC'Y) (1)
10/11/88	10/06/88	COMMENT OF ECOLOGY/ALERT (E. NEMETHY, SECRETARY) (9)
10/24/88	10/20/88	COMMENT OF OHIO CITIZEMS FOR RESPONSIBLE ENERGY (SUSAN L. HIATT) (2)
10/27/88	10/24/88	COMMENT OF CANE (MARVIN I. LEWIS) (3)
10/27/88	10/28/88	COMMENT OF DUKE POWER COMPANY (ALBERT V. CARR, JR) (4)
10/28/88	10/24/88	COMMENT OF MARYLAND NUCLEAR SAFETY COALITION (PATRICIA BIRNIE) (5)
10/28/88	10/27/88	COMMENT OF GPU NUCLEAR CORPORATION (J. L. SULLIVAN, JR., DIRECTOR,) (6)
10/28/88	10/28/88	COMMENT OF HOPKINS, SUTTER, HAMEL & PARK (JOSEPH GALLO) (10)
10/31/88	10/27/88	COMMENT OF LONG ISLAND LIGHTING COMPANY (JOHN D. LEONARD, JR., V. P.,) (7)
10/31/88	10/28/88	COMMENT OF BISHOP, COOK,PURCELL & REYNOLDS (NICHOLAS S. REYNOLDS) (8)
10/31/88	10/28/88	COMMENT OF NUCLEAR MANAGEMENT AND RESOURCES COUNCIL (JOE F. COLVIN) (11)
10/31/88	10/27/88	COMMENT OF FLORIDA POWER CORPORATON (ROLF C. WIDELL, DIRECTOR) (12)
10/31/88	10/27/88	COMMENT OF YANKEE ATOMIC ELECTRIC COMPANY (ANDREW C. KADAK, VICE PRESIDENT) (13)
10/31/88	10/27/88	COMMENT OF PHILADELPHIA ELECTRIC COMPANY (EUGENE J. BRADLEY) (14)

DOCKET NO. PRM-050-052 (53FR32913)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
10/31/88	10/26/88	COMMENT OF SOUTH CAROLINA ELECTRIC GAS COMPANY (O. S. BRADHAM, V.P.) (15)
10/31/88	10/27/88	COMMENT OF GULF STATES UTILITIES COMPANY (J. E. BOOKER, MANAGER-RIVER BEND) (16)
10/31/88	10/28/88	COMMENT OF CONSOLIDATED EDISON COMPANY OF N.Y, INC. (MURRAY SELMAN, SENIOR V. P.) (17)
11/01/88	10/26/88	COMMENT OF PHILADELPHIA ELECTRIC COMPANY (JOSEPH W. GALLAGHER) (18)
11/01/88	10/27/88	COMMENT OF CONSUMERS POWER (KENNETH W. BERRY, DIRECTOR) (19)
11/02/88	10/27/88	COMMENT OF DETROIT EDISON (B. RALPH SYLVIA, SENIOR V.P.) (20)
11/04/88	10/28/88	COMMENT OF BECHTEL POWER CORPORATION (A. ZACCARIA, SR. V.P. & DEPUTY) (21)
11/04/88	10/28/88	COMMENT OF ILLINOIS POWER COMPANY (D. L. HOLTZSCHER) (22)
11/17/88	11/02/88	COMMENT OF TENNESSEE VALLEY AUTHORITY (R. L. GRIDLEY, MANAGER NUCLEAR) (24)
11/21/88	11/17/88	COMMENT OF CONNER & WETTERHAHN, P.C. (ROBERT M. RADER) (23)
08/17/90	07/17/90	MARVIN LEWIS: DENIAL OF PETITION FOR RULEMAKING

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-52]

Marvin Lewis; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-50-52) from Mr. Marvin I. Lewis. The petition requests that the Commission amend its regulations in 10 CFR Parts 2 and 50 to reinstate financial qualifications as a consideration in the operating license hearings for electric utilities. The petition is being denied because it raises no issues that were not previously considered in the rulemaking process that resulted in the Commission's adoption on September 12, 1984 (49 FR 35747) of a final rule entitled "Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants," and because no new circumstances have arisen to warrant a change in the current regulation.

ADDRESSES: Copies of correspondence and documents listed below are available for public inspection at the Commission's Public Document Room at 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Darrel A. Nash, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1256.

The Petition

By letter dated June 6, 1988, Mr. Marvin I. Lewis of Philadelphia, Pennsylvania, filed with the NRC a petition for rulemaking. The petitioner requested that the NRC rescind the rule that has eliminated financial qualifications from consideration at the operating license stage for electric utilities.

Basis for Request

Grounds for the Petition

Mr. Lewis states that long-standing operating problems at Limerick I and II and at the Peach Bottom plants have placed a financial burden on the Philadelphia Electric Co (PECo). Mr. Lewis asserts that PECo has admitted being under financial pressure and that the cost of Limerick I and II has left PECo billions of dollars in debt. Mr. Lewis also asserts that despite the shaky financial condition of the parent utility, Long Island Lighting Company (LILCO), Shoreham was granted a license to operate. He claims that LILCO had admitted that it lacked sufficient monies to pay for decommissioning of the nuclear power plant, and he is concerned that the financial problems facing PECo will lead to a situation at Limerick II similar to the Shoreham situation (i.e., the shutdown of a nuclear power plant after it reached criticality and its components had become contaminated with radioactivity).

General Solution to the Problem

The petitioner generally requests that the NRC reinstate financial qualification reviews of electric utilities as a part of the operating license review and hearings for nuclear power plants. In addition, the petitioner specifically requests that the NRC suspend the licensing proceedings for Limerick II until the parent utility, PECo, can demonstrate to the satisfaction of the NRC that it is financially qualified to proceed safely with Limerick II and its other nuclear operations.

Summary of Petition

Mr. Lewis believes that Limerick II will be issued a license to operate at full power, and then because of PECo's financial problems and the excess generating capacity in the service area resulting from the plant's operation, PECo will decide to decommission Limerick II. The petitioner asserts that such action by PECo will expose him and other members of the public to radiation without any corresponding benefit. Mr. Lewis states that even if the plant stays open, the shipment of radioactive waste will expose him to radiation without any corresponding benefit, and he claims this is a violation of the Atomic Energy Act. Mr. Lewis cites the Atomic Energy Act as the basis for his assertion that the Federal Government is required by law to "protect the health and safety of the public" and that the Nuclear Regulatory Commission has been charged with enforcing this mandate.

Petitioner's Proposal

The petitioner requests that the NRC amend its regulations in 10 CFR Parts 2 and 50 to reinstate financial qualifications as a consideration in the operating license hearings for electric utilities. To achieve this goal, the NRC would have to revoke the provisions of the final rule entitled "Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants," adopted on September 12, 1984 (49 FR 35747) and also revoke the provisions of the final rule entitled "Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings for Nuclear Power Plants," adopted March 31, 1982 (47 FR 13750). Part 2 would be amended by revising § 2.104(c)(4) and paragraph VIII.(b)(4) of Appendix A to reinstate the language of those provisions that existed before issuance of the final rule published March 31, 1982 (47 FR 13750). Part 50 would be amended by revising §§ 50.33(f), 50.40(b), and 50.57(a)(4) to reinstate the language of those provisions that existed before issuance of the final rule published March 31, 1982 (47 FR 13750). Finally, the definition of "electric utility" in §§ 2.4 and 50.2 would be revoked because it would be unnecessary.

Public Comments on the Petition

A notice of filing of petition for rulemaking was published in the Federal Register on August 29, 1988 (53 FR 32913). Interested persons were invited to submit written comments or suggestions concerning the petition by October 28, 1988. The NRC received 21 comments (one was double counted) in response to the notice: 4 from citizens organizations (one of which was sent by the

petitioner); and 17 from industry, industry representative organizations, and industrial associations (two comments were received from one organization).

All of the citizens organizations supported the petition, and all of the industry respondents opposed the petition.

The main reasons given for supporting the petition were

1. A utility under financial duress might take short cuts in operation and procedures which could result in accidental releases of radiation.

2. The NRC would be under pressure to allow many questionable safety practices under fear that the utility would crash without these questionable approvals.

3. Unplanned expenses associated with the outages at the Peach Bottom units have greatly weakened PECo's financial stability.

4. PECo's long history of incompetence and irresponsibility should have been a factor considered by the NRC in licensing Limerick I and II.

5. In adopting the financial qualification regulations, the NRC found that State regulatory commissions would always guarantee utilities an adequate rate of return. That this finding is not correct has been demonstrated in the past by some of these commissions which have denied rate increases requested by nuclear utilities.

The main reasons given for opposing the petition were

1. In adopting the present rule, the NRC found that the regulated nature of its licensees, electric utilities, assured adequate funding for safe power reactor operation through State and Federal ratemaking processes. The NRC failed to find, at least for regulated electric utility owners of power reactors, any proven link between its financial qualification review of such licensees and safety.

2. The petition does not demonstrate any rational relationship between the facts asserted (an increase in radiation exposure) and a need to amend the financial qualification rule to require a review at the operating license stage.

3. The petitioner had the opportunity to comment and did comment on the proposed rule. The petition appears to be an attempt to reopen consideration of a final rule of the Commission, and this rule has already been the subject of extensive rulemaking proceedings and judicial review. The petition in reality is an attempt to reopen an individual licensing proceeding.

4. The petition seeks to reopen a previously resolved matter. In general, the courts have held that, absent a showing that new circumstances have arisen to warrant a change, a regulation validly promulgated by an administrative agency is entitled to finality.

5. There has been no significant change in the ratemaking process or in fundamental economic regulation principles that would warrant the NRC's reconsideration of its 1984 decision.

6. The petitioner appears to be challenging the finding made in adopting the rule, that is, that utility rate regulatory commissions would, without exception, allow prudently incurred costs of safely operating and decommissioning nuclear power plants. The D.C. Circuit Court of Appeals found no fault with the Commission's findings on this issue. The petition does not offer any reasons or supporting facts to show that these conclusions are now erroneous.

7. The NRC has the authority under Section 182a of the Atomic Energy Act and under 10 CFR 50.54(f) to obtain any financial information necessary to determine whether a power reactor licensee's financial situation might affect the the licensee's ability to continue to operate safely.

8. Most of the rulemaking petition is devoted to the problems of PECo and the licensing of Limerick I and II. The licensing of Limerick I and II is not a generic industry problem. If there are problems at Limerick, there are other, more appropriate means of seeking Commission action.

9. The problems of PECo alleged by the petitioner (such as an inadequate cooling water supply, an excess of generating capacity in the service area, and transfer of qualified operating personnel from one plant to another) do not justify a generic change in the financial qualification rule.

10. Experience has shown that electric utilities have taken appropriate steps to assure the availability of adequate financial resources, even during periods of financial stress, by providing for delay of non-nuclear expenses and by securing additional financing.

11. The financial qualification rule is an inappropriate standard by which to judge the adequacy of a utility's decommissioning fund. The requirements regarding the adequacy of a utility's decommissioning fund for reactors are contained in other NRC regulations.

12. In adopting the present financial qualification rule, 10 CFR 50.33(f), the Commission expressed its intent to use its inspection/investigation resources to assure that licensees experiencing financial difficulties continue to comply with regulatory requirements necessary for the safe operation of their nuclear power plants.

13. The NRC's fully implemented and often extensive onsite licensee inspection program and its Systematic Assessment of Licensee Performance process provides direct information regarding the achievement of safe levels of operation at each facility, obviating any need for indirect methods of measurement such as the financial situation of licensees.

14. Reintroducing the case-by-case review of the financial qualifications of licensees would interfere with the NRC's move toward standardization.

Reasons for Denial

The current financial qualification regulation in 10 CFR 50.33(f) resulted from an extensive rulemaking process that included detailed studies by the staff and the National Association of Regulatory Utility Commissioners (NARUC). It was twice noticed as a proposed rule for comment in the Federal Register (August 18, 1981 (46 FR 41786) and April 2, 1984 (49 FR 13044)) and each time extensive comments were received. These comments were evaluated, and the final rules were modified accordingly. All of the concerns relating to financial qualifications expressed in the petition were considered in these earlier proceedings. The final rule was also reviewed by the U.S. Court of Appeals for the D.C. Circuit.[1] Situations such as those alleged to exist at PECo and LILCO were considered in the rulemaking and court review processes.

The portion of the preamble to the present rule entitled "Background" (49 FR 35747; September 12, 1984) provides the basis for the promulgation of the existing regulation. The NRC's findings as set forth in the preamble to the 1984 final rule were adjudged to adequately justify and support that rule.[2] No changes in rate regulatory law have taken place since then, nor is the NRC

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1 New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984); Coalition for the Environment, St. Louis Region v. NRC, 795 F.2d 168 (D.C. Cir. 1986).

2 Coalition for the Environment, St. Louis Region v. NRC, 795 F.2d 168, 176 (D.C. Cir. 1986).

aware of any change in the practices or commitments of rate regulatory commissions. The petitioner does not identify any changed circumstances; he only states, "We are presently faced with the very problems which I stated or predicted in my 5-28-84 comments on the rule." This argument is clearly an attack against the basis of the rule and does not arise from new or changed circumstances.

The petition alleges financial and other problems of two individual licensees, Philadelphia Electric Company and Long Island Lighting and Power Company. Rulemaking is an inappropriate process for dealing with these problems of individual licensees.

Because the petition presents no information not previously considered and because there are no new circumstances, the NRC has denied this petition.

Dated at Rockville, Maryland, this 17th day of July, 1990

For the Nuclear Regulatory Commission.

James M. Taylor
Executive Director for Operations

TENNESSEE VALLEY AUTHORITY
CHATTANOOGA, TENNESSEE 37401

5N 157B Lookout Place

NOV 02 1988

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

Gentlemen:

NUCLEAR REGULATORY COMMISSION (NRC) - PETITION FOR RULEMAKING: FINANCIAL QUALIFICATION

The Tennessee Valley Authority (TVA) has reviewed and is pleased to provide comments on the petition for rulemaking, PRM 50-52, noticed in the August 29, 1988 Federal Register (53 FR 32913).

TVA believes that the considerations taken into account by NRC in publishing its final rule dated September 12, 1984, to eliminate the financial qualification from consideration during the operating license review, are still applicable today.

In addition, we want to emphasize the following specific comments:

1. NRC still possesses the authority under Section 182a of the Atomic Energy Act of 1954 to review the adequacy of a licensee to operate a nuclear facility, including the financial qualification of the utility, at any time.

2. Reinstatement of this regulation would be in direct conflict with the NRC's well considered efforts to streamline the licensing process while remaining committed to assuring the safe operation of nuclear facilities.

3. NRC's inspection and enforcement program is a more direct and efficient way of assuring operating safely than a review of a utility's finances.

On the basis of the above comments, we request the petition be denied. We appreciate the opportunity to comment.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

R. L. Gridley, Manager
Nuclear Licensing and
Regulatory Affairs

cc: See page 2

U.S. Nuclear Regulatory Commission

NOV 02 1988

cc: Ms. S. C. Black, Assistant Director
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November 17, 1988

Samuel J. Chilk, Secretary
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Notice of Receipt of Petition for
Rulemaking by Marvin I. Lewis,
Docket No. PRM-50-52

Dear Mr. Chilk:

Because of its potential impact upon Niagara Mohawk Power Corporation, and all Commission facility licensees, the Corporation has requested our firm to respond to the Notice of Receipt of Petition for Rulemaking submitted by Marvin I. Lewis, published by the Nuclear Regulatory Commission ("Commission" or "NRC") on August 29, 1988.1/

As stated in the Notice, the Lewis Petition requests the Commission to amend its regulations under 10 C.F.R. Parts 2 and 50 to reinstate financial qualifications as a consideration in hearings on the issuance of an operating license for a nuclear power reactor. Although the petition does not fully describe Mr. Lewis' participation in NRC proceedings related to the financial qualifications issue, his prior involvement is in fact quite relevant to the petition. In particular, the Commission should focus on Mr. Lewis' participation in the proceeding which led to the

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1/ 53 Fed. Reg. 32913 (1988). The Commission stated that it would consider comments filed after expiration of the formal period for comments if practical. Niagara Mohawk respectfully requests the Commission to consider its views, which it believes will be helpful in the disposition of this matter.

issuance of a full-power operating license for Limerick Generating Station, Unit 1 on August 8, 1985.2/

Background

The NRC received a petition to intervene in the operating licenses proceeding from Mr. Lewis on September 8, 1981. The presiding Atomic Safety and Licensing Board determined that Mr. Lewis had an interest sufficient for standing and admitted him as an intervenor.3/

Subsequently, the contentions admitted on behalf of Mr. Lewis were withdrawn or resolved against him.4/ Mr. Lewis later sought admission of two other contentions related to emergency planning, which were denied.5/ In the interim

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2/ See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC 184 (1985). As the Commission is aware, appeals from the issuance of the license were filed by two intervenors in the United States Court of Appeals for the Third Circuit and are still pending decision at this time. No appeal, however, was filed by Mr. Lewis.

3/ Limerick, LBP-82-43A, 15 NRC 1423, 1435-36 (1982). The Licensing Board admitted two safety contentions challenging the adequacy of the Limerick reactor design (id. at 1504, 1508), and another contention challenging the adequacy of the Applicant's quality assurance program (id. at 1517).

4/ Lewis safety contention I-55 was consolidated with another contention admitted on behalf of another intervenor, which later dropped the contention. See Limerick, LBP-83-39, 18 NRC 67, 69 (1983). Lewis safety contention I-62 was decided against him by summary disposition. See Limerick, Docket Nos. 50-352 and 50-353, "Memorandum and Order" (November 15, 1983), recon. denied, "Memorandum and Order" (December 7, 1983). Contention VI-1 on quality assurance was pursued by another intervenor. Mr. Lewis did not participate in the hearing resulting in a finding against this contention. See Limerick, LBP-84-31, 20 NRC 446, 509 (1984).

5/ Limerick, LBP-84-18, 19 NRC 1020, 1030-34 (1984). Mr. (Footnote Continued)

between the dismissal of the safety contentions and the denial of off-site emergency planning contentions, Mr. Lewis filed an additional petition as the "legal representative" of Citizen Action in the Northeast ("CANE").

In the CANE petition, Mr. Lewis discussed the Commission's actions in eliminating financial qualifications review for the licensing of nuclear power reactors. He noted that the Commission had proposed to amend its rules to eliminate individualized reviews for electric utilities in early 1982,6/ and that he had "proceeded to contest, in a very limited way, the financial qualifications of Philadelphia Electric" to operate its Limerick plant before the Pennsylvania Public Utility Commission.7/ The Commission thereafter adopted the proposed rule, which eliminated the financial qualification review requirement for electric utilities by adopting a new 10 C.F.R. §50.33(f).

A challenge to the new rule, however, resulted in a decision by the United States Court of Appeals for the District of Columbia on February 7, 1984 which invalidated the rule for failure to provide an adequate explanation of its purpose and basis in law.8/ The Court of Appeals nonetheless provided the NRC with an opportunity to reinstate its rule with a satisfactory statement of its purpose and basis.

As a representative of CANE before the Licensing Board, Mr. Lewis cited the Court's remand decision as grounds "to file this challenge to PECO's financial qualifications to operate and decommission Limerick Generating Station Units 1 and 2."9/ In a ruling issued March 15, 1984, the Licensing

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(Footnote Continued)
Lewis did not appeal the denial of these two contentions.

6/ See 47 Fed. Reg. 13750 (1982).

7/ Limerick, Docket Nos. 50-352 and 50-353, CANE Petition at 1 (March 5, 1984).

8/ New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984).

9/ Limerick, Docket Nos. 50-352 and 50-353, CANE Petition at 2 (March 5, 1984).

Board denied the Lewis/CANE petition, citing the directive of the Commission in its statement of policy excluding such contentions pending development of a new financial qualifications rule.10/ Neither CANE nor Mr. Lewis on its behalf appealed the ruling of the Licensing Board.

Thereafter, the Commission proceeded to act on the invitation by the Court of Appeals to clarify the purpose and legal basis for its rule eliminating individualized financial qualifications review. In a newly proposed rule, the Commission distinguished between applications seeking operating licenses and those seeking construction permits, retaining its financial qualifications review only for the latter category.11/

Following the customary notice and comment period, the Commission adopted the rule as stated in its present form. Challenges to the revised rule by others than Mr. Lewis were again filed in the United States Court of Appeals for the District of Columbia, which upheld the regulation.12/

Reasons for Denial of the Petition

1. Finality of review should be respected. Although nominally phrased as a request to rescind the existing rule on financial qualifications review, the Lewis petition merely questions the wisdom of the Commission's original action and seeks to reopen a closed rulemaking proceeding. We do not respond to the factual allegations by Lewis against the Philadelphia Electric Company, but the Supreme Court has admonished against even considering such allegations as a basis for reopening a completed agency proceeding. Quoting with approval from an earlier case, the Supreme Court in Vermont Yankee reiterated the important principle of finality of administrative review:

> Administrative consideration of evidence . . . always creates a gap

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10/ Limerick, Docket Nos. 50-352 and 50-353, "Order Confirming Miscellaneous Oral Record Rulings" (March 15, 1984).

11/ See 49 Fed. Reg. 13044 (1984).

12/ Coalition for the Environment v. NRC, 795 F.2d 168 (D.C. Cir. 1986).

> between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed] . . . . If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.13/

At one time or another, the lower federal courts and the Commission's adjudicatory boards have implemented this salutary rule of administrative law.14/

It cannot be disputed that all potentially interested parties, including Mr. Lewis (who acknowledges his participation in the 1984 rulemaking), had an adequate opportunity to fully participate in the Commission's proceeding following remand of its financial qualifications review rule. Given the opportunity in 1982 and 1984 to

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13/ Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 554-55 (1978), quoting ICC v. Jersey City, 322 U.S. 503, 514 (1944) (brackets in original).

14/ The United States Court of Appeals for the District of Columbia rejected the premise "that proceedings before administrative agencies are to be constituted as endurance contests modeled after relay races in which the baton of proceeding is passed on successively from one legally exhausted contestant to a newly arriving legal stranger." Easton Utilities Commission v. AEC, 424 F.2d 847, 852 (D.C. Cir. 1970), cited with approval, Gulf States Utilities Company, (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 797 (1977). See also Union Electric Company (Callaway Plant, Unit 1), ALAB-750A, 18 NRC 218, 1220 (1983); Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 750 (1977).

object to the Commission's deletion of financial qualifications review for operating license applicants, Mr. Lewis cannot quarrel with the existing content of the rule. To entertain a petition to rescind the rule would upset the settled expectations of those who have come to rely upon the rule in violation of the important principle of finality in administrative proceedings, as bespoken by the Supreme Court in Vermont Yankee.

Moreover, allowance of the Lewis petition would effectively negate the 60-day period for seeking judicial review of agency action under the Hobbs Act,15/ by which Congress has expressly codified the principle of finality.16/ Although he participated in both the financial qualifications rulemaking and specifically raised the issue in the Limerick licensing case, Mr. Lewis appealed neither final agency action by the Commission to the federal courts as permitted by the Hobbs Act.17/ To reconsider the finally adopted rule at this late juncture would excuse, even reward, the failure by Mr. Lewis to act within the time permitted by statute.

For these important reasons, the Commission should not reopen a rulemaking proceeding which resulted in a judicially approved rule following full public participation.

2. No generic issue is presented. Although an agency may proceed by way of administrative rulemaking or by decisionmaking in individual proceedings, rulemaking is intended to resolve disputed issues of law and to promulgate

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15/ 28 U.S.C. §2344.

16/ See generally Montana v. Clark, 749 F.2d 740, 744 (D.C. Cir. 1984), cert. denied, 474 U.S. 919 (1985); Natural Resources Defense Council v. NRC, 666 F.2d 595, 602 (D.C. Cir. 1981); United States Brewers Ass'n, Inc. v. EPA, 600 F.2d 974, 978 (D.C. Cir. 1979).

17/ Indeed, Mr. Lewis did not even appeal the denial by the Licensing Board of his financial qualifications contention on behalf of CANE.

policy rules and standards generically applicable to all similarly situated parties.18/

An agency should not utilize rulemaking as a response to a petition which pleads facts alleged to be applicable only to one or two of the agency's many licensees. Thus, Mr. Lewis has shown no cause for amending the Commission's regulation governing financial qualifications review for all reactors on the basis of his allegations (for which he has demonstrated no support whatsoever) as to only a very few.

3. No basis exists for a rescission or modification of the rule. Even assuming that the Commission were otherwise inclined to entertain the Lewis petition, it contains no legal, technical or other basis for rescinding or modifying the existing rule under 10 C.F.R §50.33(f). Except for a clarification of the basis and purpose of the rule, the Commission's elimination of financial qualifications review at the operating license stage was judicially upheld in 1984. As noted, the clarification was subsequently approved by the Court of Appeals in 1986. Nothing stated by Mr. Lewis casts any doubt on the wisdom or correctness of these decisions or upon the policy considerations which initially prompted the rulemaking.

Many commentors who opposed adoption of the rule raised questions similar to those in the Lewis petition. Like Mr. Lewis, these commentors speculated that insufficient revenues would be obtained from ratemaking proceedings and predicted resulting adverse effects on safety.19/ But the Commission concluded, based in part on additional information obtained during staff visits with Public Utility Commissions and other entities, that the "reasonable and prudent costs of safely maintaining and operating nuclear plants will be allowed to be recovered through rates," even though the margin or timing of profits might be affected by adverse ratemaking rulings.20/

18/ SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947); United States v. Florida East Coast R. Co., 410 U.S. 224, 245 (1973).

19/ See 49 Fed. Reg. 35747 (1984).

20/ Id. at 35749.

In short, nothing submitted by Mr. Lewis contradicts the Commission's original conclusion "that ratemaking authorities [have] varying mechanisms to ensure sufficient utility revenues to meet the costs of NRC safety requirements,"21/ and that "rates are established in general rate cases to produce sufficient overall revenues to assure sound functioning of the electric power systems, including nuclear plants."22/ The NRC found the Public Utility Commissions "unanimous in saying that safety-related operating expenses were always considered reasonable expenses when prudently incurred and were allowed to be recovered through rates."23/

In affirming the Commission's revised rule, the Court of Appeals expressly affirmed these significant rulemaking findings.24/ Mr. Lewis' recitation of alleged financial hardships facing one or more utilities in operating their nuclear plants, while unsubstantiated, is nothing more than an attempt to perpetuate the now rejected fallacy of a link between nuclear safety and an electric utility's profits.

Far from providing the requisite "reasoned analysis" for rescinding or modifying its financial qualifications rule,25/ Mr. Lewis has provided no basis whatever to support his request, which would represent an abrupt and complete reversal of agency policy.

21/ Id.

22/ Id. at 35750.

23/ Id. (emphasis in original). The Commission also relied on a study of investor-owned utilities by National Economic Research Associates, Inc., which analyzed financial incentives in operating a nuclear power reactor and concluded that the financial risks of cutting corners, including the necessity of shutdown and removal from the rate base in case of an accident, far outweigh any financial advantage in cutting corners. Id.

24/ Coalition for the Environment v. NRC, 795 F.2d at 176.

25/ Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 42 (1983). See also AFL-CIO v. Brock, 835 F.2d 912, 917 (D.C. Cir. 1987); Dalton v. United States, 816 F.2d 971, 974 (4th Cir. 1987).

For the foregoing reasons, the Commission should deny Mr. Lewis' petition in its entirety.

Sincerely,

Robert M. Rader

Robert M. Rader

(22)

U-601296
L30-88(10-28)-LP
1A.120

ILLINOIS POWER COMPANY

CLINTON POWER STATION, P.O. BOX 678, CLINTON, ILLINOIS 61727

October 28, 1988

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

Subject: Comments on Petition for Rulemaking
Financial Qualifications

Dear Mr. Chilk:

The purpose of this letter is to provide Illinois Power's (IP) comments on the petition for rulemaking on the consideration of financial qualifications of electric utilities in operating license hearings (Docket No. PRM-50-52). The issue of financial qualification was reviewed by the Nuclear Regulatory Commission (NRC) in 1984 when the final rule was published which eliminated the consideration of financial qualifications during operating license reviews.

Illinois Power does not agree that financial qualifications should be reinstated into the operating licensing hearings for all electric utilities. The arguments used by the NRC in changing the financial qualification rule in 1984 are still applicable. Since the NRC maintains the authority to review a utility's financial qualification at any time, there is no need to revise the existing NRC position on the review of nuclear licensee's financial qualifications in all operating license hearings.

Sincerely yours,

D. L. Holtzscher

D. L. Holtzscher
Acting Manager -
Licensing and Safety

DWW/krm

(21)

Bechtel Power Corporation
Engineers – Constructors

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Mail Address: P. O. Box 3965, San Francisco, CA 94119

October 28, 1988

15740 SHADY GROVE ROAD GAITHERSBURG, MD 20877-1454

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Petition for Rulemaking -
Financial Qualifications
53 FR 32913 (August 29, 1988)

Gentlemen:

The purpose of this letter is to comment on the subject petition for rulemaking. This petition seeks to restore requirements for review of financial qualifications at the operating license stage which were eliminated by the Commission in September, 1984 as part of a prior rulemaking.

Bechtel is opposed to this petition and opposed to the reinstatement of financial qualification reviews at the operating license stage. The same reasons which were cited in support of the 1984 rulemaking (49 FR 35747) are still valid today. Specifically:

1. Case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary due to the ability of such utilities to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operations through the ratemaking process.

2. A survey of the National Association of Regulatory Utility Commissioners indicated that all ratemaking authorities had mechanisms to ensure sufficient utility revenues to meet the costs of NRC safety requirements.

3. Public Utility Commissioners visited by the NRC were unanimous in agreeing that safety-related operating expenses were always considerred reasonable expenses when prudently incurred and were allowed to be recovered through rates.

4. The NRC retains its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be

necessary for the Commission to determine whether an application for a license should be granted or denied or whether a license should be modified or revoked.

The NRC maintains the authority to review the adequacy of a license to operate a nuclear facility. including the financial qualification of the utility, at any time.

The statutory authority and regulatory responsibilities of the NRC have not changed. There is no need to revise the existing Commission position on the review of nuclear licensee financial qualification.

Bechtel appreciates the opportunity to comment on this petition.

Sincerely,

A. Zaccaria
Sr. Vice President and
Deputy Manager of Operations

AZ:CB

B. Ralph Sylvia
Senior Vice President

Detroit Edison

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Newport, Michigan 48166
(313) 586-4150

(20)

October 27, 1988
NRC-88-0251

The Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Reference: Fermi 2
NRC Docket No. 50-341
NRC License No. NPF-43

Subject: Notice of Receipt of Petition for Rulemaking on Financial Qualifications (FR Doc. 88-19542)

The receipt of a petition for rulemaking was noticed in the August 29, 1988 Federal Register. The petition requested that the NRC amend its regulations to reinstate financial qualifications as a consideration in the operating licensing hearings for electric utilities. Granting of this petition is unnecessary for protection of the health and safety of the public and potentially could be abused.

Each license applicant is required to meet the rules and regulations enacted to protect the health and safety of the public. The plant is licensed based on a Final Safety Analysis Report and NRC review of the plant documented in Safety Evaluation Reports. As long as the utility has the financial capability to meet the regulations enacted to protect the health and safety of the public, it should be licensed. Review of financial qualification is unnecessary and the financial state of the licensee may vary depending on its size and its type (investor-owned utility, cooperative, holding company, municipality, etc.)

A potential side effect of granting this petition could be the questioning of financial qualifications for operating plants. License changes allow the opportunity for hearings. Discussion of financial qualifications could prolong such hearings unnecessarily and expend considerable resources - both NRC and licensee.

Detroit Edison feels the important issue is that licensees have adequate resources to protect the health and safety of the public. If

the applicant can demonstrate that the public health and safety will be adequately protected during license hearings, there is no reason for a detailed examination of financial qualifications.

Sincerely,

B Ralph Sylva

cc: Mr. A. B. Davis
Mr. R. C. Knop
Mr. W. G. Rogers
Mr. J. R. Stang

19

Consumers Power

POWERING MICHIGAN'S PROGRESS

General Offices: 1945 West Parnall Road, Jackson, MI 49201 • (517) 788-1636

Kenneth W Berry
Director
Nuclear Licensing

October 27, 1988

Secretary of the Commission
US Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

CONSUMERS POWER COMPANY COMMENTS ON THE PETITION FOR RULEMAKING - REINSTATE FINANCIAL QUALIFICATIONS AS A CONSIDERATION IN THE OPERATING LICENSING HEARINGS FOR ELECTRIC UTILITIES.

Consumers Power Company is pleased to offer the following comments on the petition for rulemaking requesting the Commission to amend its regulations in 10CFR Parts 2 and 50 to reinstate financial qualifications as a consideration for the operating licensing hearings for electric utilities as published in the Federal Register on August 29, 1988 (53FR32913).

Consumers Power Company does not believe it is necessary to reinstate the financial qualifications for the following reasons.

First, the statutory and regulatory responsibilities of the NRC have not changed. The NRC maintains the authority to review the adequacy of a licensee to operate a nuclear facility, including the financial qualifications of the utility at anytime.

Second, the Public Service Commission of Michigan, which is the ratemaking authority within the state assures that safety related operating expenses when prudently incurred are allowed to be recovered through the rates.

Third, under this proposed change the financial qualifications of a utility could be questioned in a formal hearing for each and every license amendment. If this were allowed it would create undue expense and time delays in the amendment process.

OC1088-0186-NL02

In conclusion, it is very clear that the Commission has the authority under section 182a of the Atomic Energy Act of 1954 as amended, to obtain any information it deems necessary to determine whether an application for a license should be granted or denied or whether a license should be modified or revoked. Because of this authority and the ability for licensees to recover safety related expenses Consumers Power believes there is no need to revise the existing Commission's position.

Kenneth W Berry
Director, Nuclear Licensing

CC DPHoffman, P26-117B
HFCooper, P24-617

KWB 88-61

OC1088-0186-NL02

(18)

PHILADELPHIA ELECTRIC COMPANY
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JOSEPH W. GALLAGHER
VICE PRESIDENT
NUCLEAR SERVICES

October 26, 1988

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

SUBJECT: Petition for Rulemaking: Financial Qualifications

Gentlemen:

This is in response to the request dated August 29, 1988 (Docket No. PRM-50-52). The petitioner's statement that the shipment of radioactive waste will expose him to radiation without corresponding benefit is without foundation and is presented with no proof whatsoever. On the contrary, it can be easily shown that the shipment of radioactive waste from Limerick or any other operating nuclear facility results in negligible radiation exposure to the general population.

With respect to the overall merits of this petition, we feel that the conditions which existed on September 12, 1984, when the Commission published its final Rule on the subject (49 FR 35747) are still present. The most significant point uncovered during that investigation was that the Public Utility Commission had mechanisms to ensure that the utilities would recover the costs of the various NRC safety requirements. The Public Utility Commissioners visited by the NRC during this investigation were unanimous in stating that safety-related operating expenses were considered as reasonable expenses and were allowed to be recovered through rates.

The possibility of requiring a financial qualification investigation for each and every Technical Specification Amendment adds a totally unnecessary degree of complexity and significant expense to the license amendment process. The possibility of requiring a financial qualification hearing for an operating license amendment, which could be as simple as a Technical Specification setpoint change, is unwarranted.

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

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PDR,

For the reasons we have stated above, we strongly believe that the petition assigned Docket No. PRM-50-52 should be rejected in its entirety.

Very truly yours,

J. W. Gallagher

cc: C. A. McNeill, Jr.
T. J. Price - NUMARC

Murray Selman
Senior Vice President

(17)

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, NY 10003
Telephone (212) 460-6398

October 28, 1988

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

Re: Proposed Amendment to 10 CFR §§2.104(c)(4) and 50.33(f) -- Petition to Reinstate Financial Qualifications Issues in Operating Licensing Hearings (53 Fed. Reg. 32913, August 29, 1988)

Dear Mr. Chilk:

Consolidated Edison Company of New York, Inc. ("Con Edison"), as owner and operator of Indian Point Units No. 1 and 2, submits the following comments on the referenced petition for rulemaking (the "Petition"), relating to financial qualifications of utility companies. As a Commission licensee, Con Edison has a substantial interest in the Petition because its acceptance and adoption by the NRC could quite possibly require the Company and other regulated public utilities to needlessly address financial qualification considerations in connection with an amendment to, or an application and/or hearing for, an operating license. In addition to these comments, Con Edison endorses the comments submitted to the Commission by the Nuclear Management and Resources Council.

1. There is no occasion for the Commission to reconsider its financial qualifications regulations absent a significant change in circumstance.

In 1984, the Commission exempted utilities from a consideration of financial qualifications during operating license review. 49 Fed. Reg. 35747, September 12, 1984. Thereafter, this 1984 rulemaking withstood judicial scrutiny in Coalition for the Environment v. NRC, 795 F.2d 168 (D.C. Cir. 1986). The present Petition, in referencing supposed

financial concerns at Philadelphia Electric Company alone as its sole basis for reinstating financial qualifications review, necessarily fails to delineate a factual basis for promulgating a generic rule. In addition, the NRC already has in place procedures adequate for separately reviewing the financial qualifications of each utility-licensee on an individual basis. The Commission should not re-entertain the entire financial qualifications argument; rather, it should rely on its previously well-considered rulemaking, given the lack of changed circumstances and previous judicial ratification of its existing regulations.

2. Financial concerns do not create a basis for inferring an increased likelihood of safety concerns, which would be amply revealed by the Commission's inspection program if they were to arise.

Requiring a utility to demonstrate its financial qualifications requires only a "reasonable assurance of obtaining the funds necessary to meet operating costs". Coalition for the Environment v. NRC, 795 F.2d 168, 175 (D.C. Cir 1986). The Commission has clearly adopted the view that utilities have the ability to recover the costs of safe operation through ratemaking, as evidenced by the statements made when it exempted utilities from the financial qualifications requirements in its 1984 rulemaking (49 Fed. Reg. 35747, September 12, 1984). In promulgating its 1984 rule, the NRC found that the public utility commissioners it visited unanimously agreed that safety related expenses were always considered reasonable when prudently incurred, and therefore recoverable through rates. 49 Fed. Reg. at 35747. In addition, the NRC's position in its 1984 rulemaking was fully supported by a survey of the National Association of Regulatory Utility Commissioners. 49 Fed. Reg. at 35749.

Furthermore, as the Commission has pointed out, "[a] financial hazard is not a safety hazard per se." 49 Fed. Reg. at 35759. "[N]either the Commission's regulations nor the Atomic Energy Act mandate ... enforcement proceedings merely because a licensee may be experiencing financial difficulties." Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), DD-85-14, 22 NRC 635, 637 (1985), quoting Maine Yankee Atomic Power Co.

(Maine Yankee Atomic Power Station), CLI-83-21, 18 NRC 157, 160 (1983), aff'd. DD-83-3, 17 NRC 327 (1983); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), DD-82-8, 16 NRC 394, 395 (1982). In addition, licensees are required to "cease operations if necessary funds to operate safely [are] not available". 49 Fed. Reg. at 35749. The Petition improperly and without justification infers that utilities will ignore this requirement.

In fact, the Commission's fully implemented and extensive on-site licensee inspection program and its Systematic Assessment of Licensee Performance (SALP) process provides direct information as to achievement of safe levels of operation at each facility. This extensive body of data obviates any need for indirect and inappropriate financial measures of licensee satisfaction of safety standards.

3. Potential decommissioning problems should be dealt with through decommissioning regulations.

The Commission recently published final decommissioning rules at 53 Fed. Reg. 24018, June 27, 1988. The Petition again fails to recognize the distinction that the Commission has drawn between financial qualifications for operations and decommissioning, which imposes its own self-contained financial requirements. The rule proposed by the Petition here would supplant the decommissioning rules by reviving financial qualification rules no longer in effect.

4. The approach advocated by the Petition would interfere with the Commission's move towards standardization.

In 53 Fed. Reg. 32060 (August 23, 1988), the Commission proposed to standardize certification of nuclear plants to "secure the benefits of a greater degree of standardization and early resolution of issues." 53 Fed. Reg. at 32061. Were the Commission to return to a case-by-case financial qualifications review, it would frustrate the benefits sought by the move towards standardization, and add further and unnecessary complications to a licensing process which the Commission has recognized to be overburdened and is now attempting to consolidate and simplify.

CONCLUSION

For the foregoing reasons, the Commission should reject the Petition and leave intact the well-considered and judicially-approved rules now in place. Con Edison is pleased to have had the opportunity to comment on this matter.

Respectfully submitted,

Murray Selman

Murray Selman
Senior Vice President

MS:jms

(16)

GULF STATES UTILITIES COMPANY

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AREA CODE 504 635-6094 346-8651

October 27, 1988
RBG- 29102
File Code G9.23

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Gentlemen:

Gulf States Utilities Company (GSU) is pleased to comment on the Commission's notice of receipt of petition for rulemaking (53FR32913, dated August 29, 1988) that was submitted by Mr. Marvin J. Lewis. This petition requests that the Commission amend its regulations in 10CFR Parts 2 and 50 to reinstate financial qualifications as a consideration in the operating licensing hearings for electric utilities.

On September 12, 1984 (49FR35747), the Commission published a final rule that eliminated financial qualifications from consideration during the operating license review and hearings for electric utilities. In his petition for rulemaking to the Commission, Mr. Lewis stated, in part, that this final rule prevents the financial condition of a utility from being investigated during license hearings. He further states that the final rule requires the assumption of financial adequacy resulting in several problems that could pose a danger to the public health.

GSU disagrees with Mr. Lewis and is opposed to the August 29, 1988, petition for rulemaking for the following reasons:

1. The NRC maintains the authority to review the adequacy of a licensee to operate a nuclear facility, including the financial qualification of the utility, at any time.

2. The NRC's statutory authority and regulatory responsibilities have not changed. There is no need to revise existing Commission position concerning the review of licensee financial condition.

3. In the 1984 final rule published September 12, 1984 (49FR35747), the Commission used several persuasive arguments for eliminating the financial qualification from consideration during the operating license review. GSU supports the Commission's reasoning and believes that several of the arguments used in the 1984 final rule are still applicable today. Some of these arguments are:

   a) In the third paragraph of the background of the final rule (p. 35748), the Commission states, "The proposed rule on remand was promulgated on the Commission's belief that case-by-case review of financial qualifications for all electric utilities at the operating license stage is unnecessary due to the ability of such utilities to recover, to a sufficient degree, all or a portion of the costs of construction and sufficient costs of safe operations through the rulemaking process."

   b) The NRC Staff found (p. 35749) that the survey by the National Association of Regulatory Utility Commissioners (NARUC) "lends strong support to the proposed rule. The conclusion that emerged from the study was that rulemaking authorities had varying mechanisms to ensure sufficient utility revenues to meet the costs of NRC safety requirements, but that all ratemaking authorities had such mechanisms."

   c) The Commission found (p. 35750) that the Public Utility Commissioners (PUC) visited by the NRC "were unanimous in saying that safety-related operating expenses were <u>always</u> considered reasonable expenses when prudently incurred and were allowed to be recovered through rates."

   d) The Commission believes (p. 35750) "that the record of this rulemaking demonstrates generically that the rate process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule, the Commission concludes that other than in exceptional cases, no case-by-case litigation of the financial qualification of such applicants is warranted."

e) In Part III, additional information (p. 35751) the Commission, by this rule, "does not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied or whether a license should be modified or revoked."

GSU appreciates the opportunity to comment on this petition for rulemaking.

Sincerely,

J. E. Booker

J. E. Booker
Manager-River Bend Oversight
River Bend Nuclear Group

JEB/LLD/DHW/KNC/do

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Ollie S. Bradham
Vice President
Nuclear Operations

(15)

October 26, 1988

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Virgil C. Summer Nuclear Station
Docket No. 50/395
Operating License No. NPF-12
Comments on Petition for Rulemaking

Gentlemen:

South Carolina Electric & Gas Company (SCE&G) is pleased to provide comments on the Petition for Rulemaking submitted by Mr. Marvin I. Lewis, Docket No. PRM-50-52. The proposed rulemaking would reinstate the financial qualification requirements of 10CFR Parts 2 and 50, originally eliminated in September 1984. These requirements would mandate the consideration of the financial condition of a utility during operating license reviews and hearings.

SCE&G believes that the reinstatement of this rule is wholly unnecessary. The assumptions implicit in Mr. Lewis' Petition for Rulemaking were cogently rebutted when the Commission published the final rule eliminating these financial requirements in September 1984 (49 FR 35747). SCE&G believes that the referenced analysis provides sufficient grounds for denial of Mr. Lewis' Petition.

The following are brief restatements of the key points raised by the Commission in eliminating this rule:

1. The original rule was limited in scope, and its focus was simply the availability of funds, not how they are to be spent. Its limitations are that having a source of funds for safety purposes does not in and of itself assure the funds will be spent for safety purposes and that there is little, if any, correlation between the safety performance of a utility and its financial status.

2. The review of a Licensee's potential misuse of funds for safety purposes is a management integrity concern and is better addressed pre-licensing in a review of a licensee's management, training and technical qualification and post-licensing in the Commission's inspection and enforcement program.

3. A survey of the National Association of Regulatory Utility Commissioners indicates that it is standard practice among all ratemaking bodies to ensure that utilities recover all reasonable costs of safe operation.

4. The Commission still maintains the authority under 10CFR50.54(f) to require additional information, including financial qualification, "...to enable the Commission to determine whether or not its license should be modified, suspended or revoked."

It is clear from the foregoing that the Commission maintains sufficient controls to assure the safety performance of its licensees. Furthermore, the reinstatement of the financial qualification rule would in no way enhance the Commission's ability to protect the health and safety of the public given its existing mechanisms of enforcement. SCE&G strongly urges the Commission to deny Mr. Lewis' Petition.

Very truly yours,

O. S. Bradham

c: D. A. Nauman/J. G. Connelly, Jr./O.W. Dixon, Jr./T.C. Nichols, Jr.
E. C. Roberts
W. A. Williams, Jr.
M. L. Ernst
J. J. Hayes, Jr.
General Managers
C. A. Price/R. M. Campbell, Jr.
R. B. Clary
K. E. Nodland
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NPCF
File 811.02 (Folder 2.021)
855.00AA

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Eugene J. Bradley
Vice President and
Associate General Counsel

October 27, 1988

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

Attention: Docketing and Service Branch

Re: Marvin Lewis Petition for Rulemaking,
Docket No. PRM 50-52

Dear Mr. Chilk:

On August 29, 1988, the Commission published a "notice of receipt of petition for rulemaking" submitted by Marvin J. Lewis. See 53 Fed. Reg. 32913 (1988). The petition requests that the Commission "rescind" portions of 10 C.F.R. Parts 2 and 50 so as to reinstate pre-1982 requirements that electric utilities applying for operating licenses demonstrate their financial qualifications to conduct the proposed licensed activity. (Petition at 1.) In response to the Commission's notice, this letter contains the comments of Philadelphia Electric Company ("PECo") on the Lewis Petition.

Background

After giving notice and allowing opportunity for comment, the Commission adopted, in September 1982, a rule which eliminated individualized financial qualifications reviews for electric utilities seeking construction permits and operating licenses. See 47 Fed. Reg. 13,750 (1982). Several parties filed petitions for review of the new rule before the U.S. Court of Appeals for the District of Columbia Circuit, and on February 7, 1984, that court remanded the rule to the Commission on the grounds that it was not adequately supported by "its accompanying statement of basis and purpose." See New England Coalition on Nuclear Power v. NRC, 727 F.2d 1127 (D.C. Cir. 1984).

Meanwhile, on March 5, 1984, Petitioner Lewis sought intervention in the Atomic Safety and Licensing Board proceeding reviewing PECo's application for operating licenses for the Limerick Generating Station, Units 1 and 2. Having already sought intervention in that proceeding as an individual, Mr. Lewis' March 1984 petition was purportedly filed on behalf of an organization called Citizen Action in the Northeast ("CANE"). Citing the February 1984 court of appeals remand of the Commission's rules eliminating electric

utility financial qualification reviews in operating license application proceedings, the Lewis/CANE Petition proposed the addition of a financial qualifications contention. On March 15, 1984, the Licensing Board issued an order stating that "CANE's contention must be denied at this time on the basis of the Commission's Statement of Policy which instructs us to continue to treat the present rule excluding such contentions as valid." (Order Confirming Miscellaneous Oral Record Rulings, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-02, 50-353-OL (dated March 15, 1984, pp. 1-2) The Order observed that "the rule(excluding evaluation of financial qualifications) remains valid until (and unless) the Court's mandate is issued" and that the Commission intended "to conduct an expedited rulemaking to address the problems which the court perceived in the present rule." (Id., p. 2)1/

In response to the D.C. Circuit remand, on April 2, 1984, the Commission published for comment a new proposed financial qualifications review rule. See 49 Fed. Reg. 13,044 (1984). Therein, the Commission proposed the elimination of case-by-case review of the financial qualifications of electric utilities seeking operating licenses but the retention of case-by-case examination of all applicants seeking construction permits. As acknowledged in his pending Petition (p.1), Petitioner Lewis submitted comments on this proposed rule in which he urged the Commission to revert to the pre-1982 rule allowing consideration of financial qualifications in operating licensing proceedings. After reviewing the comments received, the NRC adopted the proposed rule which excluded electric utility financial qualifications issues from individual operating license proceedings. See 49 Fed. Reg. 35,747 (1984). Again, several parties (not including Mr. Lewis) petitioned the D.C. Circuit to review the new financial qualifications rule. On July 11, 1986, that Court denied the petition, See Coalition for the Environment v. NRC, 795 F.2d 168 (D.C. Circuit 1986), and the Commission's 1984 financial qualifications rule thus remains in effect.

Discussion

Petitioner Lewis is attempting through his pending Petition to initiate reconsideration of the Commission's prior rulemaking on financial qualification considerations in the operating license context with the objective of providing him the opportunity to initiate a relitigation of the Commission's final resolution of issues in the Limerick Generating Station operating license proceeding. For the reasons set forth below, the Lewis Petition should be denied.

1/ Final agency action in the Limerick operating license proceeding occurred on June 19, 1987 when the Commission declined review of Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-863, 25 N.R.C. 273 (1987). (See Memorandum to Board and Parties, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352/353 OL, from Samuel T. Chilk, Secretary of the Commission (dated June 25, 1987).

I. CONTRARY TO PETITIONER'S ASSERTION, THE ATOMIC ENERGY ACT DOES NOT REQUIRE THE REQUESTED RULEMAKING CHANGES

Petitioner Lewis appears to assert that the Commission's current rule on the financial qualifications of electric utility operating license applicants is "in violation of" the Atomic Energy Act. (See Petition at 4.) The D.C. Circuit, however, has already considered and rejected this precise argument in reviewing the rule Petitioner Lewis now seeks to change. In 1985, the challengers of that newly promulgated rule argued that "[t]he Commission's . . . elimination of case-by-case review of [the] financial qualifications [of utility applicants for operating licenses] is 'inconsistent' with the requirements of the Atomic Energy Act." Coalition for the Environment, 795 F.2d at 173-74. The court held that this argument was "without foundation," noting with approval the First Circuit's earlier conclusion that the Atomic Energy Act "'gives the NRC complete discretion to decide what financial qualifications are appropriate.'" Id. at 174 (quoting New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 93 (1st Cir. 1978)). For the same reason, Petitioner Lewis' assertion is also "without foundation." Id.

II. THE PETITIONER HAS PROVIDED NO REASONED ANALYSIS FOR CHANGING THE EXISTING RULE

"(A)n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change." Motor Vehicle Mfrs. Assn'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983). See also St. James Hosp. v. Heckler, 760 F.2d 1460, 1472 (D.C. Cir.), cert. denied, 474 U.S. 902 (1985); Sierra Club v. Clark, 755 F. 2d 608, 619 (D.C. Circ. 1985); Center for Auto Safety v. Peck, 751 F.2d 1336, 1343 (D.C. Cir.1985). And in seeking rescission or modification of an existing agency rule, a petitioner is obliged to place before the agency factual support for the requested change. See, e.g., General Motors Corp. v. U.S. Environmental Protection Agency, 738 F.2d 97, 100 (3d Cir. 1984) (upholding denial of petition to amend rule based on "the lack of specific factual support for petitioners' requested relief").

The Lewis Petition manifests no attempt whatsoever to meet these burdens. In the first place, the Petition is devoid of any substantiated factual assertions. The Petition contains little more than patently misguided assertions founded on mere conclusory speculation. And to the extent (if any) that the Petition can be said to muster any cognizable facts, the Petitioner has failed to draw any rational relationship between those purported facts and the rule change he proposes.

For example, the crux of Petitioner's "statement of problem" appears to be that the Commission's "financial qualification rule does not allow the financial condition of [a] utility to be investigated during licensing hearings" and that the resulting "assumption of financial adequacy has lead to several real problems which lead to unnecessary and unneeded radiation exposures." (P.1.) Petitioner Lewis, however, then neglects to identify any

"real problem." In short, the Petition fails to reference any verified instance in which "radiation exposures" have occurred as a result of the rule Mr. Lewis seeks to revise.2/

Most of the Lewis Petition is devoted to making bald (and generally false) assertions about PECo and about its operation of the Limerick Generating Station. Petitioner Lewis recites his opinions about PECo's financial condition and speculates about PECo's chances of fully including Limerick capital costs in its rate base. (Petition at 2.) The Petition, however, does not even attempt to address the crucial question of how these unsupported factual assertions will affect PECo's ability to meet the costs of safely operating Limerick and how the factors cited by the Petitioner should now cause the Commission to reach a conclusion different from the one it reached in its 1984 rulemaking.

In reviewing the Commission's adoption of the challenged rule in 1984, the D.C. Circuit rejected precisely the claim which Petitioner Lewis appears to raise here -- that the NRC should consider the financial qualifications of utility applicants for operating licenses because those utilities will not receive through state utility regulatory bodies the funds necessary to cover the operating costs of nuclear facilities. In examining that claim, the court noted that "members of the Commission staff conducted visits and interviews with officials of various state and federal regulatory commissions to determine their rate setting practices" and that those regulatory commission officials had stated "'without exception that the costs of safely operating and decommissioning nuclear power plants are allowed to be recovered through rates as long as the utility can show that the claimed costs are prudent.'" Coalition for the Environment, 795 F.2d at 176 (quoting Commission memorandum). Further, the court observed that "'NRC conversations with ratemaking bodies as well as the results of [a] questionnaire confirm that it is standard practice among ratemaking bodies to factor in the amount of disallowances to ensure that utilities receive enough rate relief when a plant goes into operation to recover all reasonable costs of safe operation.'" Id. (quoting 49 Fed. Reg. 35,749 (1984)).

Notwithstanding the various challenges to the rule in 1984, the D.C. Circuit found no fault with the Commission's analysis and findings on this issue. The Lewis Petition does not offer any reasons or supporting facts -- new or old -- to suggest that these prior conclusions of the D.C. Circuit and the Commission must now be deemed erroneous.

2/ Petitioner does cryptically mention Long Island Lighting Co. and the Shoreham facility, but the Petition fails to suggest any relationship between his unsupported assertions about that facility and the rule change he advocates.

III. THE PETITION CONSTITUTES AN ABUSE OF THE COMMISSION'S PROCEDURES.

The federal courts have made clear that agencies should not be required to tolerate efforts to relitigate previously resolved matters. For example, in Natural Resources Defense Council v. NRC, 666 F.2d 595 (D.C. Cir. 1981), the Petitioner ("NRDC"), after failing to file a petition for review of certain new NRC regulations within the 60 day period permitted under the Hobbs Act, nevertheless pursued judicial review of the regulations by petitioning the Commission to rescind them after they had been in effect for 17 months. After the Commission denied the rescission petition, the NRDC sought review by the D.C. Circuit, citing procedural errors in the Commission's denial. The court roundly rejected the NRDC's effort to achieve a change in Commission rules through such a subterfuge, noting that the time limitations on raising objections to agency rules

> serve[ ] the important purpose of imparting finality into the administrative process, thereby conserving administrative resources and protecting the reliance interest of regulatees who conform their conduct to the regulations. These policies would be frustrated if untimely procedural challenges could be revived by simply filing a petition for rulemaking requesting rescission of the regulations and then seeking direct review of the Petition's denial. Indeed, the implications of the rule of law urged by the NRDC are staggering, for its logic knows no bounds; such a rule would permit procedural challenges to be brought twenty, thirty, or even forty years after the regulations were promulgated. No greater disregard for the principle of finality could be imagined.

Id. at 602. See also State of Montana v. Clark, 749 F.2d 740, 744 (D.C. Cir. 1984) ("To permit any complainant to restart the limitations period by petitioning for review of a rule . . . would eviscerate the congressional concern for finality embodied in time limitations on review."), cert. denied, 474 U.S. 919 (1985).

This concern about the finality of agency rules is no less important where the challenge to a regulation purportedly has substantive underpinnings. For example, in United States Brewers Ass'n., Inc. v. EPA, 600 F.2d 974 (D.C. Cir. 1979), the D.C. Circuit stressed that

> a petition to repeal a regulation can not be used to give (a) court jurisdiction if the petitioner has let the regulation go into effect without availing himself of the right to review which was open to him during the statutory review period . . . In other words, denial of a request to repeal cannot open up the merits of a regulation for review in the courts unless review is not previously available, or unless the grounds for the new challenge arose after the initial review period had run.

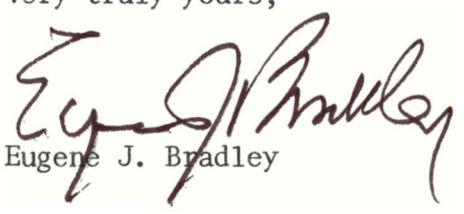
Id. at 978 (citations omitted). See also Nader v. NRC, 513 F.2d 1045, 1054-55 (D.C. Cir. 1975) (refusing to make untimely "collateral review" of a prior NRC rulemaking proceeding); B. Menzines, J. Stein & J. Gruff, Administrative Law § 15.10, at 15-140 (1988) ("If . . . an agency has conducted a comprehensive rulemaking proceeding, providing opportunity for full public participation, a subsequent petition for modification will not be granted.")

The Lewis Petition is plainly an attempt to reopen consideration of a Commission rule which has already been the subject of extensive rulemaking proceedings and judicial review as a means of providing the opportunity to reopen an individual licensing proceeding. In 1984, Petitioner Lewis had the opportunity to challenge the Commission rule at issue in proceedings before the D.C. Circuit. For whatever reason, he elected not to do so. As the precedents outlined above indicate, both the Commission and the parties regulated thereby have a strong interest in the finality of that rule. Petitioner Lewis therefore should not now be permitted to mount a tardy challenge to the rule, particularly when the rule has been subjected to ample public comment and judicial review and when Petitioner is unable to point to any significant changes in those factors considered by the Commission in adopting the rule in the first place. Petitioner's attempt to reopen discussion of a 4 year-old Commission rule is an abuse of Commission procedures that should not be tolerated.

Conclusion

Petitioner has demonstrated neither the need nor a reasonable basis for revising the Commission's financial qualifications rule in the manner requested. Moreover, there are strong reasons for not allowing Petitioner Lewis to manipulate the rulemaking petition process. The Lewis Petition therefore should be denied.

Very truly yours,



Eugene J. Bradley

EJB:ss

Telephone (617) 872-8100
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YANKEE ATOMIC ELECTRIC COMPANY

1671 Worcester Road, Framingham, Massachusetts 01701

October 27, 1988

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Petition to Reinstate Financial Qualification Issues in Operating Licensing Hearings (53FR32913)

Dear Sir:

Yankee Atomic Electric Company (YAEC) appreciates the opportunity to comment on the petition for rulemaking regarding reinstatement of financial qualification issues into the operating licensing hearings for nuclear power plants. YAEC owns and operates a nuclear power plant in Rowe, Massachusetts. Our Nuclear Services Division also provides engineering and licensing services to other nuclear power plants in the Northeast, including Vermont Yankee, Maine Yankee, and Seabrook.

The petitioner has requested the Commission to resume financial qualifications examinations of nuclear power plants seeking operating licenses. The petitioner alleges that exempting electric utilities from such an examination poses a danger to public health and safety.

What the petitioner fails to recognize, however, is that 10 CFR 50.33(f)(4) already affords the Commission the authority and flexibility to examine financial qualifications of an electric utility in those circumstances in which there is a potential relationship to public health and safety. In light of the Commission's proactive stance on licensing and regulatory reform, we believe that promulgation of regulations that would involve the Commission in activities beyond the scope of public health and safety, as is really being suggested by the petitioner, would be contrary to this philosophy.

Furthermore, the petitioner fails to acknowledge that the Commission has recently promulgated regulations that require licensees to address decommissioning funding as a separate financial qualification activity. Promulgation of additional regulations on this subject would also appear to be unnecessary.

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As we have stated on other occasions, we urge the Commission to more carefully weigh rulemaking activities and dispense with those of lesser value. It would seem to us that such action would have been appropriate for exactly this rulemaking petition. This petition amounts to a transparent attempt to frustrate the expeditious and meaningful review of operating license applications.

Truly yours,

Andrew C. Kadak

Andrew C. Kadak
Vice President

JMG/mjc

(12)

Florida Power
CORPORATION

October 27, 1988
3F1088-20

Samuel J. Chilk
U. S. Nuclear Regulatory Commission
Secretary Of The Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Crystal River Unit 3
Docket No. 50-302
Operating License No. DPR-72
Financial Qualifications

Dear Sir:

Florida Power Corporation (FPC) has reviewed the Notice Of Receipt Of Petition For Rulemaking (53 FR 32913, dated August 29, 1988), requesting the Commission to amend its regulations in 10 CFR Parts 2 and 50 to reinstate financial qualifications as a consideration in the operating licensing hearings for electric utilities.

The Commission published a final rule on September 12, 1984 (49 FR 35747) that eliminated financial qualifications from consideration during the operating license review and hearings for electric utilities. Those arguments used in the 1984 rulemaking resolution are still applicable today. FPC agrees with the Nuclear Management and Resources Council (NUMARC) that, there is no need to revise the existing Commission position on the review of Nuclear License financial qualification.

Sincerely,

Rolf C. Widell, Director
Nuclear Operations Site Support

GMF:RCW:wla

(11)

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

October 28, 1988

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

Attention: Docketing and Service Branch

Re: Notice of Receipt of Petition for Rulemaking - Marvin I. Lewis - Docket No. PRM-50-52 - 53 FR 32913 (August 29, 1988) - Request for Comments

Dear Mr. Chilk:

These comments are submitted on behalf of the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the NRC Notice of Receipt of Petition for Rulemaking, submitted by Marvin I. Lewis, that would seek to reinstate financial qualifications as a consideration in the operating licensing hearings for electric utilities.

NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

NUMARC strongly recommends that the Commission deny the petition for rulemaking that would seek to have the NRC amend its regulations to require financial qualification review in operating licensing proceedings for the reasons stated below.

In 1984, the NRC amended its regulations to eliminate the regiment for a financial qualification review to be conducted of electric utilities that are applying for a nuclear power plant operating license if the utility is a regulated public utility or is authorized to set its own rates (49 FR 35747, dated September 12, 1984). The fundamental factors bearing on that decision are as follows:

- The rule was promulgated based on the Commission's belief that a case-by-case review of financial qualifications for electric

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utilities at the operating license stage is unnecessary due to the ability of each utility to recover, to a sufficient degree, the costs necessary to support the safe operations if a licensed facility through the ratemaking process.

- The NRC staff found that the survey conducted by the National Association of Regulatory Utility Commissioners (NARUC) provided strong support for the proposed rule. The conclusion of the NARUC study was that all ratemaking authorities had some mechanism, albeit different ratemaking authorities had different mechanisms, such that they could ensure that sufficient utility revenues would be made available to meet the costs of NRC safety requirements.

- NRC discussions with various state Public Utility Commission staffs identified the common belief that safety-related operating expenses were always considered reasonable expenses when prudently incurred and that such expenses were allowed to be recovered through rates.

- The record of the rulemaking proceeding supported the conclusion that the ratemaking process assures that funds needed for safe operation will be made available to regulated electric utilities. Since obtaining such assurance was the sole objective of the financial qualification rule, the Commission concluded that, other than in exceptional cases, no case-by-case litigation of the financial qualification of operating license applicants was warranted.

- The NRC retains the authority to review the adequacy of a licensee to operate a nuclear facility, including the financial qualification of the utility, at any time.

In its 1984 rule, the Commission clearly stated that it did not intend to waive or relinquish its residual authority under Section 182a of the Atomic Energy Act of 1954, as amended, to require such additional information in individual cases as may be necessary for the Commission to determine whether an application for a license should be granted or denied or whether a license should be modified or revoked.

The statutory authority and regulatory responsibilities of the NRC have not changed. Furthermore, there has been no significant change in the ratemaking process or in fundamental economic regulation principles so as to warrant the NRC's reconsideration of its 1984 decision, reached after searching inquiry and based on the administrative record provided thereby.

We appreciate the opportunity to comment on this matter and would be pleased to discuss our comments further with appropriate NRC staff personnel.

Sincerely,

Joe F. Colvin

TJP/wdm

(10)

HOPKINS, SUTTER, HAMEL & PARK

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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October 28, 1988

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

Attn: Docketing and Service Branch

Subject: Petition for Rulemaking Submitted by
Mr. Marvin Lewis on June 27, 1988

Dear Mr. Chilk:

The U.S. Nuclear Regulatory Commission (NRC) requested, on August 29, 1988, comments on Mr. Lewis' petition for rulemaking. Mr. Lewis seeks a change in the NRC's regulations concerning the financial qualification of holders of licenses for the operation of nuclear power reactors. The regulations, 10 C.F.R. §§ 50.33 and 50.57(a), expressly exempt the owners of nuclear power reactors from the requirement of demonstrating their financial ability to operate their plants in a safe manner and in accordance with license requirements. Mr. Lewis would revise these regulations by reinstating the requirement for such a showing. Commonwealth Edison Company opposes Mr. Lewis' petition, and I am pleased to submit these comments on its behalf.

Prior to 1984, the NRC required that applicants for and holders of operating licenses for nuclear power reactors, among other things, establish and maintain the soundness of their financial conditions in order to assuage any doubt that the monetary resources were available to operate the facilities safely for the license terms. The regulatory requirement for licensee financial qualification was examined by the NRC during the course of a rulemaking, which was conducted between 1981 through 1984. The NRC found that the regulated nature of its licensees, public utilities, assured adequate funding for safe power reactor operation through state and federal ratemaking processes.

It was on this basis that the NRC issued, on September 12, 1984, the present regulations excluding public utility licensees from the purview of its financial qualification

reviews and evaluations. (49 Fed. Reg. 35747, September 12, 1984). The NRC also examined, during the rulemaking, the relationship between a licensee's financial condition and the safe operation of the licensed facility. The NRC failed to find, at least for regulated public utility owners of power reactors, any proven link between its financial qualification review of such licensees and safety.

Mr. Lewis' perceived need for the change to the NRC's regulations is based on alleged financial problems affecting a particular utility and the proposed operation of two of its nuclear plants. Mr. Lewis, based on his perception, also expresses safety concerns with respect to the operation of these facilities. Mr. Lewis fails to particularize his assertions of financial disability, and he fails to link his vaguely articulated safety concerns with those assertions. The petition, obviously, lacks basis; but even assuming the validity of Mr. Lewis' assertions, they do not serve to justify any change to the NRC's regulations.

Section 50.54(f) authorizes NRC to inquire of and obtain any necessary financial information it may need to address the unique case where a power reactor licensee's financial posture might warrant concern about the licensee's ability to continue safe operations. This existing authority was recognized by the NRC as being available for this purpose when it promulgated the 1984 regulations. (49 Fed. Reg. 35747, 35751.) Thus, existing regulations adequately permit NRC to inquire with respect to Mr. Lewis' concerns. No change, as suggested by Mr. Lewis, is necessary.

The petition for rulemaking should be rejected for the foregoing reasons. We appreciate the opportunity to present our views.

Sincerely,

Joseph Gallo

Joseph Gallo
One of the Attorneys for
Commonwealth Edison Company

JG/kit

ECOLOGY/ALERT
BOX 621
BLOOMSBURG 17815
E Nemethy, Sec'y

DOCKET NUMBER
PETITION RULE PRM 50-52
(53FR32913
Oct 6-88

(9)

Re: Docket PRM-50-52
Petition for rulemaking
by Marvin Lewis

DOCKETED
USNRC
'88 OCT 11 P4:10

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Sec'y - NRC
ATT: DOCKETING & SERVICE BRANCH

Gentlemen -

Despite Mr Lewis' speculations about the potential shut-down of Limerick 2 (which we'll bet you won't accept), he makes a strong case for the necessity for financial stability of utilities involved in nuclear power.

We feel you should give his petition a fair hearing, admit you used poor judgment in issuing a final rule on Sept 12-84 - which eliminated financial qualifications during license review - and rescind that ruling.

E. Nemethy

NOV - 1 1988

Acknowledged by card...

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October 28, 1988

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

Re: Proposed Amendment to 10 C.F.R. §§ 2.104(c)(4) and 50.33(f) -- Petition To Reinstate Financial Qualifications Issues In Operating Licensing Hearings

Dear Mr. Chilk:

On August 29, 1988, the Nuclear Regulatory Commission ("NRC" or "Commission") published in the Federal Register a Petition for Rulemaking filed by Mr. Marvin Lewis. The Petition urges the Commission to amend Federal Regulations 10 C.F.R. §§ 2.104(c)(4) and 50.33(f), which under ordinary circumstances exempt from an operating license hearing the issue of financial qualifications if the licensee is a regulated public utility or is authorized to set its own rates. On behalf of Northeast Utilities, System Energy Resources, Inc., TU Electric Company, and Washington Public Power Supply System, we respectfully submit the following comments in strong opposition to the proposed amendments.

1. Summary

The proposed amendment would reinstate mandatory financial qualification examinations into NRC operating license reviews and hearings. This would eliminate the current exemption for applicants and licensees that are "electric utilities," i.e., entities that are regulated public utilities or are authorized to set their own rates. The reasons asserted in support of the petition, however, fail to implicate any industry-wide safety issues sufficient to warrant such a generic rulemaking amendment. Furthermore, the petition fails to satisfy the requirements necessary for the NRC to consider a plant-specific waiver of the financial qualifications "electric utility" exemption or to justify any other plant-specific action.

The petitioner first asserts that elimination of financial qualifications inquiries from operating license hearings under normal circumstances "requires the assumption of financial adequacy," that this assumption is invalid, and that in his opinion the unsound financial status of several nuclear power utilities represents a present danger to the health and safety of the public. While offering no substantive proof to support these broad allegations, the petitioner appears to assert that the allegations warrant a reversal of the rationale adopted by the NRC in support of the 1984 amendment which eliminated mandatory case-by-case examination of financial qualifications for electric utilities. We fail to recognize in these broad assertions any substantial argument which would support the reversal of that sound Commission reasoning, which has withstood judicial scrutiny.

The petitioner next alleges several specific factual arguments related to only one electric utility company. First, he alleges that, due to the current shutdown at Peach Bottom, and allegedly "sizeable financial problems" at Philadelphia Electric Company ("PECo"), PECo is using its qualified labor from Limerick on an overtime basis to return Peach Bottom to service, and has thereby exacerbated its already "shaky" financial condition. We fail to discern in this speculation any violation of Commission regulations or other condition sufficient to warrant enforcement action, much less a generic rulemaking. Similarly, the petitioner postulates "a major probability" that the Susquehannah River will provide an inadequate cooling water source for both Limerick plants, which will cause shutdowns and adverse financial results to PECo. While offering no data in support of these conclusions, the petitioner has apparently categorically ruled out the possibility of alternative water supplies. Once again, we fail to recognize in this conjecture any compromise of NRC safety regulations or any cause for generic rulemaking.

Further, the petitioner asserts that the PECo service area is "grossly overbuilt," and that if Limerick Unit 2 were to come on line there would exist a 60% surplus over peak summer demand for electricity. This leads petitioner to allege that the Pennsylvania Public Utility Commission will be required to classify the Limerick Unit 2 plant as "unnecessary and unneeded" and thus refuse to allow its construction costs into rate base. As a result, petitioner speculates that capital recovery will become "near[ly] impossible." Not only does the petition fail to offer substantive proof of these allegations sufficient to warrant even plant-specific action, but we fail to detect in these allegations any justification to reverse sound NRC policy through generic rulemaking amendments.

Finally, the petition alleges that the combined effect of the various asserted problems will render PECo unable to finance

the predicted decommissioning of Limerick Unit 2. Irrespective of the fact that the petition offers only conjecture to support this prediction, this assertion illustrates yet another misperception of NRC regulations. The petitioner fails to recognize that decommissioning funding has been fully addressed in conjunction with the recently promulgated decommissioning rule, 10 C.F.R. § 50.75.

Mr. Lewis's petition tacitly attacks the presumption that is inherent in the present regulations: that electric utilities will recover through the ratemaking process sufficient costs to assure safe operation. See 49 Fed. Reg. 35747, 35748 at col. 1. If Mr. Lewis were successful, and the presumption eliminated, all nuclear utilities -- including licensees of operating plants -- could be subject to repeated, unwarranted financial qualifications review through the § 2.206 process.

2. Discussion

The petition urges the reversal of the sound Commission policy to eliminate mandatory financial qualifications examinations for electric utilities. The petitioner in essence asserts that the resumption of full-blown financial qualifications examinations would somehow correct the problems which he broadly asserts exist at PECo. Because the petition appears to propose generic amendments to address what are plant-specific safety concerns, however, the petition is fundamentally flawed. Nevertheless, below we discuss both the generic relief requested and the issue of whether any other plant-specific remedial action is warranted.

A. Petition Seeking Generic Amendment

The petitioner apparently seeks a generic amendment to 10 C.F.R. §§ 2.104(c)(4) and 50.33(f) which would reinstate mandatory case-by-case financial qualifications examinations in operating license reviews and hearings for all nuclear power plants. The evidence offered in support of this proposal is a series of broad assertions of unsubstantiated financial difficulties at one nuclear power utility. Not only has Mr. Lewis chosen the improper procedural device to address plant-specific potential safety violations, but he has failed to meet the burden of proof to justify any form of remedial action by the NRC in response to his allegations.

Regarding the proposed generic amendment, the petition appears to challenge the NRC rationale which supports the NRC's amendment to 10 C.F.R. § 50.33(f), which under ordinary circumstances eliminates the issue of financial qualifications from operating license hearings. In his petition, Mr. Lewis

assails the validity of this rationale with the bald assertions that "[t]he rule requires the assumption of financial adequacy" and that this "assumption" is invalid. In eliminating mandatory financial qualifications examinations, however, the Commission explicitly determined that such examinations "did not significantly assist in protecting [the] public health and safety,"1/ and that the protracted "financial review did little to identify health and safety problems."2/ The Commission premised the exemption upon a determination that "a utility's regulated status ensures that it recovers reasonable costs of operation."3/ These determinations are the result of over three years of NRC investigation of the issue of financial qualifications, and have been sustained as supported by "ample evidence" by the D.C. Circuit.4/

The D.C. Circuit has also ruled that the NRC determinations which support the elimination of case-by-case financial qualifications examinations are "not rendered infirm simply because speculative conditions can be posited under which the funds would not all be available . . . ."5/ In the present case, Mr. Lewis has provided scarcely more than speculation that PECo currently suffers from financial difficulties. An assertion of financial difficulties at a nuclear power utility has never alone supported even plant-specific enforcement action by the NRC. We fail to see how such an allegation could successfully be asserted to support generic rulemaking.

Petitioner also fails to recognize that "financial qualifications review, even when case-by-case, never required absolute certainty, only a showing that there was a 'reasonable

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1/ Maine Yankee Atomic Power Station (Maine Yankee Atomic Power Station), DD-83-3, 17 NRC 327, 328 (1983).

2/ Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426, 431 (1984), citing Financial Qualifications; Domestic Licensing of Production and Utilization Facilities, 46 Fed. Reg. 47, 786 (August 18, 1981). See also Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Review and Hearings for Nuclear Power Plants, 49 Fed. Reg. 35,747, 35,750 (September 12, 1984).

3/ Id. at 432. See also 49 Fed. Reg. at 35,750.

4/ Coalition for the Environment v. NRC, 795 F.2d 168, 175 (D.C. Cir. 1986).

5/ Id.

assurance' of financing the costs of operation."6/ Furthermore, the Commission's "regulations obviously do not require an applicant to have cash on hand to cover all possible contingencies. . . ."7/ It has been properly observed that "[w]hen [the] NRC changed its rules, it could not have contemplated that any utility covered thereby would never have financial difficulties or that a State would never deny a utility some of the return it was seeking,"8/ or that a regulated utility's financial picture would always be "rosy".9/ The petition nowhere addresses, in light of these precedents, the specific touchstone issue of "reasonable assurance" at PECo or for the balance of the nuclear industry. We therefore fail to understand how the asserted "financial pressure" at PECo impacts upon the generic financial qualifications exemption contained in 10 C.F.R. § 50.33(f).

Furthermore, the old, mandatory financial qualifications review was always an ungainly and unnecessary process. In this regard, it is not without significance that no electric utility was ever found financially unqualified under "the lengthy and detailed financial review procedures" which the petition urges the NRC to resume.10/ Of further significance is that the NRC rules which required the case-by-case examination of financial qualifications were promulgated in response to national economic conditions which no longer exist. The Commission has explained that the mandatory case-by-case financial qualifications analysis was promulgated during a period of national recession which led to financial difficulties for many utilities. However, "as the economy later recovered from the recession, the financial conditions of most utilities also improved substantially,"11/ thereby obviating the continuation of the lengthy procedures.

6/ Id.

7/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 79 (1977), quoting, Power Reactor Development Co., No. F-16, 1 AEC 128, 153 (1959).

8/ Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 59 (1983).

9/ Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426, 435 (1984).

10/ See Maine Yankee Atomic Power Station (Maine Yankee Atomic Power Station), DD-83-3, 17 NRC 327, 328 (1983).

11/ Coalition for the Environment, 795 F.2d at 171.

In promulgating the rule which eliminated the case-by-case examination of financial qualifications, the Commission specifically "retained the authority to require additional information in individual cases when the presumption of financial qualifications seemed unreliable."12/ It also expressed its "intent to utilize its inspection/investigation resources to help assure itself that utilities which have a need for operating funds will not skimp on complying with regulatory requirements."13/ The Commission pointed out the superiority of this more flexible approach by noting that "[a] financial disability is not a safety hazard per se" because the licensee is required under the Commission's regulations to "cease operations if necessary funds to operate safely [are] not available."14/ The Commission determined that the "limited usefulness of the financial qualifications inquiry underscores"15/ the determination that "safe operation is best ensured by other regulatory tools such as the NRC's inspection and enforcement process."16/ Therefore, if there are specific financial problems at Limerick or Peach Bottom, this plant-specific approach -- rather than generic rulemaking -- should be utilized.

In sum, because the rulemaking record is devoid of facts which establish a link between safety and financial qualifications,17/ and because "[t]he quality and extensiveness of the Inspection and Enforcement effort is such that any significant pattern of unsafe cost-cutting should be

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12/ Id. See also 49 Fed. Reg. 35,747, 35,751 at col. 1 (in which the Commission stated that it did not intend to waive or relinquish its residual authority under the Atomic Energy Act to require financial information in individual cases as might be necessary given special circumstances).

13/ Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-83-37, 18 NRC 52, 59 (1983), citing Public Service Co. of New Hampshire, 7 NRC at 19.

14/ 49 Fed.Reg. at 35,749.

15/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 19 (1978).

16/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-895, (July 5, 1988), Slip Op. at 9; citing, 49 Fed. Reg. at 35,748-49.

17/ 49 Fed. Reg. at 37,750-51.

detectable,"18/ petitioners' bald assertions of alleged safety hazards fail to justify a generic rulemaking amendment to require mandatory case-by-case examinations of financial qualifications.

B. Petition More Appropriately Seeks Plant-Specific Relief

As suggested above, the petitioner has apparently chosen an inappropriate procedural device. If in fact the petitioner is legitimately concerned about safety compliance at the Limerick and Peach Bottom stations, the proper approach is plant-specific enforcement action. Specifically, the petitioner could seek a waiver of the electric utility exemption in that case under 10 C.F.R. § 2.758(b) or other plant-specific relief under 10 C.F.R. § 2.206 (rather than a generic rulemaking amendment). However, even if the petitioner had pressed this effort, his petition still fails to offer proof sufficient to warrant relief.

As stated above, "the 'reasonable assurance' requirement of 10 C.F.R. §50.33 does not require a demonstration of near certainty that an applicant will never be pressed for funds. . . ."19/ Because of the absence of a precise link between safety and financial qualifications, it has been held that "neither the Commission's regulations nor the Atomic Energy Act mandate the institution of enforcement proceedings merely because a licensee may be experiencing financial difficulties."20/ The Commission has stated that "[m]ere speculation that financial pressures will undermine the safety of licensed activities is not enough . . . [because] the critical question

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18/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 19 (1978).

19/ Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 392 (1978); cited in Petition Concerning Financial Qualifications of Nuclear Power Plant Licensees, DD-81-23, 14 NRC 1807, 1809 (1981).

20/ Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), DD-85-14, 22 NRC 635, 637 (1985), quoting, Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-83-21, 18 NRC 157, 160 (1983), aff'g. DD-83-3, 17 NRC 327 (1983); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), DD-82-8, 16 NRC 394, 395 (1982).

is . . . whether such constraints have had an adverse impact on safety or are substantially likely to affect safety adversely."21/

The Commission has further commented that a waiver of the financial qualifications exemption "can be granted only in unusual and compelling circumstances."22/ The fact that relatively few waiver petitions have been filed in NRC adjudicatory proceedings, when combined with the "fact that few, if any, such petitions have been successful," underscores the difficulty of meeting the waiver standard.23/ The petition in the present case offers only the supposed admission by PECo that it is experiencing "financial difficulties." Only through conjecture is any attempt made in the petition to link potential safety compliance with this financial difficulty. We fail to see how an unsubstantiated allegation of insufficient financial qualifications could meet the required threshold level of proof to warrant a waiver or any other plant-specific action.

The Atomic Safety and Licensing Board ("ASLB") has recently determined that the singular fact that a nuclear power utility company had filed a Chapter 11 Bankruptcy petition does not, per se, require a grant of a § 2.758 waiver of the electric utility exemption.24/ In the present case, the petitioner has not even speculated that PECo's financial position might eventually require a Chapter 11 reorganization. However, even if the petitioner had alleged that a Chapter 11 filing by PECo was imminent, the ASLB has determined that the bald assertion that a Chapter 11 reorganization filing may exclude a utility from the ratemaking process, "without a great deal more, . . . falls far short of meeting the . . . burden under 10 C.F.R. § 2.758."25/ The current petitioner has failed to allege and substantiate any facts which provide the necessary indications of serious financial concerns required for the ASLB to certify a § 2.758 waiver petition to the Commission.

Finally, petitioner alleges that the "shaky" financial condition of PECo, when combined with the other postulated concerns of PECo, will ultimately force the decommissioning of

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21/ Id.

22/ Northern States Power (Monticello Nuclear Generating Plant, Unit 1), CLI-72-31, 5 AEC 25, 26 (1972).

23/ See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-895, (July 5, 1988), Slip Op. at 15.

24/ Id. at 22-23.

25/ Id. at 23.

the Limerick Unit 2 station, which the petitioner speculates PECo cannot finance. This allegation points to yet another fundamental misperception of the NRC's regulations. When the Commission published the rule changes which eliminated case-by-case financial qualifications examinations, it stated that decommissioning funding was more appropriately dealt with in the form of a specific rule governing decommissioning funding.26/ The Commission has recently published its final decommissioning rule.27/ Compliance with the decommissioning funding rule is an issue separate from compliance with the "financial qualifications" rules.28/

3. Conclusion

The petitioner proposes a generic rulemaking amendment to reinstate case-by-case financial qualifications examinations in operating license hearings as a solution to alleged financial problems at PECo. Not only has the petitioner failed to support any allegations sufficient to question the validity of the NRC rules now in force, but he has failed to indicate why he has presented what is essentially a petition for plant-specific relief in terms of a proposal for generic rulemaking.

The petitioner alleges in broad statements that PECo has a shaky financial position which he believes represents a present hazard to public safety. The petition, however, neither provides substantive proof of these alleged financial conditions, nor proof that, even if the financial conditions exist as asserted, these conditions would actually compromise PECo's desire or ability to comply with safety regulations.

Finally, the petitioner fails to recognize that any speculation regarding PECo's ability to provide adequate decommissioning funding is more properly addressed under the new decommissioning rule, not through a generic rulemaking to amend 10 C.F.R. § 50.33(f).

In sum, we are of the opinion that the current rules allow the Commission to determine the financial qualifications of an applicant or operating licensee in a reasonable, flexible, and

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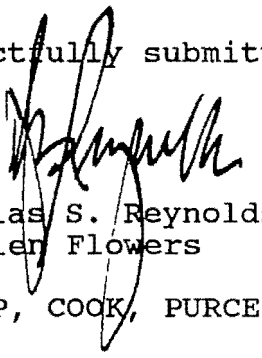
26/ See 47 Fed. Reg. at 13,751. See also Public Service Co. of New Hampshire, Slip Op. at 36, n.66 (July 5, 1988).

27/ See 53 Fed. Reg. 24,018 (June 27, 1988).

28/ See Public Service Co., Slip Op. at 36, n.66 (July 5, 1988). See also Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), DD-83-3, 17 NRC 327, 329 (1983).

efficient manner, in full compliance with the mandate of the Atomic Energy Act. Any specific financial difficulties resulting in potential safety problems can most effectively be addressed on a plant-specific basis. Therefore, we strongly recommend that the Commission deny the petition and decline to amend the well-supported regulations.

Respectfully submitted,



Nicholas S. Reynolds
R. Allen Flowers

BISHOP, COOK, PURCELL & REYNOLDS

(7)

DOCKET NUMBER
PETITION RULE PRM 50-52
53FR 32913

LONG ISLAND LIGHTING COMPANY

SHOREHAM NUCLEAR POWER STATION
P.O. BOX 618, NORTH COUNTRY ROAD • WADING RIVER, N.Y. 11792

JOHN D. LEONARD, JR.
VICE PRESIDENT - NUCLEAR OPERATIONS

VPNO 88-144

OCT 27 1988

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing & Service Branch

Subject: Comments on Marvin Lewis; Petition for Rulemaking
Docket No. PRM-50-52

Gentlemen:

The Long Island Lighting Company (LILCO) hereby submits our comments in response to the petition by Mr. Marvin Lewis seeking a rulemaking for the purpose of reinstating financial qualifications as a consideration in the operating license hearings for commercial nuclear facilities within the Commission's jurisdiction. 53 Fed. Reg. 32,913 (August 29, 1988). LILCO believes that Mr. Lewis' petition should be denied because the petition fails to establish a basis for the requested generic rule change.

LILCO does not comment on the accuracy of Mr. Lewis' comments on various facilities belonging to Philadelphia Electric Company. However, as to his assertion that LILCO "has admitted that it does not have sufficient monies to pay for decommissioning," LILCO submits that it has never made any such admission.

Very truly yours,

John D. Leonard, Jr.
Vice President - Nuclear Operations

PGP:ck

GPU Nuclear

GPU Nuclear Corporation
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Parsippany, New Jersey 07054
201-316-7000
TELEX 136-482
Writer's Direct Dial Number:

October 27, 1988
C300-88-0484

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

Subject: GPU Nuclear (GPUN) Comments
Re: Marvin Lewis; Petition for Rulemaking
Electric Utility Financial Qualification

The Commission requested comments on the subject petition for rulemaking (Docket No. PRM-50-52) by notice in the Federal Register on August 29, 1988 at 53 FR 32913. This letter provides comments by GPUN on the subject petition.

GPUN believes the Commission should deny the petition for rulemaking submitted by Mr. Lewis. GPUN offers the following comments for the Commission's consideration:

- GPUN knows of no instance where the financial condition of an electric utility has had detrimental effect on public health and safety with regard to nuclear power plant operation.

- The Commission, when publishing the final rule (49 FR 35747, September 12, 1987) eliminating electric utility financial qualification from consideration during the operating license stage, used arguments which are still valid today.

- Ratemaking authorities, while ensuring that the cost of electric service remains reasonable, have a further obligation to ensure sufficient utility revenues to maintain electric service reliability and to meet the costs of safe nuclear plant operation. It is inappropriate to presuppose that ratemaking authorities would act irresponsibly such that public health and safety are compromised.

- The Commission has not relinquished its authority to review the adequacy of nuclear power plant licensees to operate their facilities, including utility financial qualification, at any time.

- Experience has shown that electric utilities have taken appropriate measures to ensure their nuclear facilities have adequate resources for safe operation even during periods of financial pressure. These measures have included securing interim rate relief, obtaining special lines of credit, deferring non-nuclear maintenance and capital improvements, suspending stock dividends and establishing other cost-containment measures. In nearly all cases, the financial pressures have been temporary.

In conclusion, GPUN believes the basis the Commission used in promulgating its final rule remains valid and the subject petition for rulemaking has no merit and should be denied.

Very truly yours,

J. L. Sullivan, Jr.
Director, Licensing & Regulatory Affairs

JLS/PC/pa(7622f)

cc: CARIRS - TMI & O.C.

5

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MARYLAND NUCLEAR SAFETY COALITION

safe energy alternatives

October 24, 1988

DOCKET NUMBER
PETITION RULE PRM 50-52
(53FR32913)

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch

Re: Docket No.PRM-50-52 of 10 CFR Part 50

Dear Sir:

We support the request that the NRC reinstate financial qualifications of utilities as a consideration in the operating licensing hearings for electric utilities.

This issue has direct and indirect bearing on public health and safety. A utility that is under financial duress, often a result of ineffective management, may take short cuts in operation and procedures which result in accidental releases of radiation that endanger the public.

Our experience in researching the Philadelphia Electric Company (PECo), gives us reason to believe that large, unplanned expenses have greatly weakened the utility, with no relief in sight. This weakened fiscal condition can translate into substandard operation.

We were told that PECo has poured over $350 million into refurbishing Peach Bottom, plus has the continuing monthly cost of $5 million each month (now 19 months, with no restart in sight) for replacement power while Peach Bottom is out of service. Another $9 million a month cost is split among the three other partner utilities. These three utilities have sued PECo $250 million to recover these costs. Early this year some PECo stockholders announced a lawsuit against management for its gross mismanagement of Peach Bottom.

PECo estimates it will cost $80 million to repair a radioactive fuel leak at Limerick I that was detected this past August.

PECo's long history of incompetence and irresponsibility should have been a factor in considering the licensing of Limerick I and II. It is irresponsible of the NRC to rescind the rule which eliminates financial qualifications from consideration in licensing.

Please reinstate this rule.

Sincerely,

Patricia Burnie

NOV - 1 1988

Acknowledged by card.

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4

October 28, 1988

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch

RE: Marvin Lewis; Petition for Rulemaking
Docket No. PRM-50-52

Dear Mr. Secretary:

Duke Power Company (Duke) is pleased to have the opportunity to submit comments on the captioned Petition for Rulemaking. Marvin Lewis, (Petitioner) seeks a change in the Commission's regulations, at 10 CFR §§2.104(c)(4) and 50.33(f),1/ which under normal conditions exempt from NRC review of operating license applications, including hearings, the financial qualifications of applicants who are "electric utilities." Petitioner alleges that the Commission's present rules prevent the financial condition of a utility from being investigated during licensing hearings, thus requiring the assumption by NRC of financial adequacy on the part of the utility which could pose a danger to the public health and safety.

For the reasons set out below, Duke believes that Petitioner's request should not be addressed in a generic rulemaking. To the extent Petitioner has stated an appropriate claim, avenues exist within current NRC regulations to allow Petitioner to raise those claims for consideration. Thus there is no need for a rulemaking of the nature sought and Duke urges the Commission to dismiss the Petition.

Petitioner, a resident of Philadelphia, Pennsylvania, appears to be concerned about the financial stability of the Philadelphia Electric Company. Petitioner maintains that Philadelphia Electric Company, because of long-standing operating problems at Limerick and Peach Bottom, suffers financial difficulties and that such financial problems may lead to a situation in which these plants will have to be shut down. Therefore, Petitioner requests that the NRC amend its rules to reinstate review of financial qualifications as a requirement for all electric utilities, and suspend the licensing proceedings for Limerick Unit 2, until Philadelphia

1/ The Notice published in the Federal Register (53 Fed. Reg. 32913, August 29, 1988) does not specify the sections to be amended. It is believed, however, that the references in the text are the applicable provisions of the Commission's rules.

Electric can demonstrate to NRC that it is financially qualified to safely proceed with Limerick 2 and its other nuclear operations.

In Duke's view the relief requested by Petitioner, viz., generic amendment of NRC's rules, is inappropriate. Mr. Lewis appears not to have raised issues for utilities other than Philadelphia Electric and, so far as can be determined from the Notice published in the Federal Register, has presented no basis for reviewing the financial qualifications of all electric utilities. Leaving aside the question whether his allegation with respect to Philadelphia Electric raises an issue which the Commission may find cognizable, the Commission's rules as they currently are constituted provide avenues to Petitioner to raise the questions he wants considered, assuming he can make the proper showing, and thus provide him the relief he seeks without resorting to a generic rulemaking.

For example, if Petitioner seeks relief with respect to any aspect of operation of those Philadelphia Electric plants that currently hold operating licenses, the appropriate avenue for him to pursue is to petition the Executive Director for Operations under 10 CFR §§2.202 and 2.206 for issuance of a show cause order "to modify, suspend, or revoke [the operating license or licenses] or for such other action as may be proper." If Mr. Lewis is an intervenor in the licensing proceeding for Limerick Unit 2 and seeks a financial review of Philadelphia Electric as a part of that licensing process for Limerick 2 (and it appears that he does) the proper avenue for him to follow is to petition the Commission under 10 CFR §2.758 for a waiver of or exception to the general rules set out in §§2.104(c)(4) and 50.33(f). If Mr. Lewis is not now an intervenor in the Limerick 2 licensing proceedings he may seek permission from the NRC, under 10 CFR §2.714, to so participate to raise his concerns in that forum.

Because Mr. Lewis has existing avenues of relief open to him and because his Petition presents no compelling reason why the Commission should amend its current rules the Petition for Rulemaking should be denied.

Sincerely yours,

Albert V. Carr, Jr.

AVC/sjr

DOCKET NUMBER
PETITION RULE PRM 50-52
(53FR32913)

(13)

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'88 OCT 27 A10:05

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Marvin I. Lewis
7801 Roosevelt Blvd.#62
Phila., PA 19152

Secretary of the NRC
USNRC
Washington, D. C. 20555

Dear Secretary,

Please accept the following as my further comments on the Petition for Rulemaking noticed in 53 FR 167:32913 dated 29 August 1988. I am adding a New York Times article to the record. If adding the entire article infringes upon copyright rules , please add only this reference: New York Times dated 10-5-88 on Page A1 entitled,"Lilco's Competing Voices, While still pursuing license for Shoreham, Utility seems intent on abandoning plant."

What the article points to and what I was trying to bring out in my petition is that a utility in financial trouble performs acts which are not in the interest of the health and safety of the public. A utility in financial difficulties would put the health and safety of the public on the backburner and its own financial survival ahead of everything else. This is happening right now where local utilities cannot secure enough experienced control room operators and have had to ask for less experienced operators to be approved at TMI2. The NRC would be under pressure to allow many of these practices under the fear that the utility would crash without these questionable approvals.

We are facing many financial problems ahead in the nuclear industry. A signal from the NRC to allow practices for money saving reasons only would give a green light to utilities to practice questionably. A signal from the NRC that financial problems will again be studied as a part of licensing would give a signal to public and utilities to keep the question of safety above the question of finances. The Atomic Energy Act requires that all safety questions have preference over financial questions.

The petitioner is also Action Director for the Environmental Coalition on Nuclear Power, and has contacted the Director. ECNP has joined and agreed with this petition for rulemaking.

Respectfully submitted,

Marvin I. Lewis
7801 Roosevelt Blvd.#62
Phila., PA 19152

CANE
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NOV - 1 1988

Acknowledged by card.

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Lilco's Competing Voices

While Still Pursuing License for Shoreham, Utility Seems Intent on Abandoning Plant

10/5/88

By MATTHEW L. WARD

News Analysis

The Long Island Lighting Company has coveted an operating license for its Shoreham Nuclear Power Station for 20 years, but as it nears its goal the utility is showing ambivalence, simultaneously seeking permission to open Shoreham while patiently awaiting approval of an agreement to abandon it.

Even if it obtains a license to raise Shoreham to full power, Lilco has said it will not operate the $5.3 billion, 800-megawatt reactor as long as the agreement with New York State to abandon the plant is still up for approval by its shareholders and the state.

Monday, when Lilco finally received approval from the Securities and Exchange Commission to schedule a shareholders meeting for Nov. 4, a deadline of sorts was also set: If the state does not act, the tentative agreement allows Lilco to withdraw from it 14 days after its shareholders vote. But Lilco, having pursued its "dual track" to keep open the option of operating the plant while negotiating with the state to abandon it, may be prepared to wait longer.

A Change of Heart

Lilco executives, like businessmen anywhere, have not bared their goals and negotiating strategy to the public. But some of their thinking can be discerned from their actions, their statements and from talking to experts in the field.

Now rushing toward commercial operation reflects a change of heart. In the early 1980's, when Lilco won a license for low-power operation, it quickly moved ahead, even though such operation substantially boosted the cost of an abandonment.

Operating the plant has been the central imperative of the utility, which plowed ahead through years of difficult engineering and construction and ripping out and rebuilding, all the while ignoring the critics who predicted that Shoreham could reduce Lilco to penury.

Now that the opponents have been proved right — Lilco has indeed been impoverished by Shoreham's soaring costs, in part due to the delays the critics caused — Lilco is holding off claiming its prize because the reactor no longer offers the benefits it once promised.

Experts on utility operations say that the difference between abandoning the plant and operating it would not be as stark as it would seem at first glance. Engineers would lament destroying an unused machine, but even if an operating license were granted, further legal challenges by the state and Suffolk County could delay its opening for

Continued on Page B2, Column 1

Lilco on Shoreham: Strategy Has Conflicting Goals

Continued From Page A1

years more. The state and the county oppose Shoreham on the ground that Long Island could not be evacuated safely in a nuclear accident.

In addition, regulatory decisions and the negotiations with the state have already reduced the financial importance of opening the plant. And starting up the huge reactor would introduce new problems for Lilco's thinly stretched power network.

Delay in Legislature

The current delay is in the State Legislature. Long Island legislators contend that the settlement is too generous to Lilco. The utility, uncharacteristically, has waited patiently, although the period between Election Day and Inauguration Day could be critical for Shoreham.

After Election Day, when the votes of Long Islanders are not a pressing concern to the Republican Party, the Nuclear Regulatory Commission may feel less constrained about licensing the plant. After Inauguration Day, its view of Shoreham may change, especially if the new President is Michael S. Dukakis, who is far less sympathetic to the nuclear industry than the Reagan Administration has been.

But Lilco does not seem to think it urgent that the commission decide soon. One reason may be that a court challenge to a license is likely, throwing doubt on just when the plant would operate. But perhaps most striking among the probable reasons for Lilco's patience is that the plant's fate means much less to the utility than almost anyone could have imagined a few years ago.

Cost Already Reduced

Normally, utilities earn nothing on their investments in generating stations until those plants enter service, at which time rates rise to reflect the investment plus a rate of return. But in Shoreham's case, the $5.3 billion cost has already been whittled down to about $2 billion.

Operating the plant is still an option.

That is because the State Public Service Commission ruled in 1985 that Lilco had imprudently spent $1.4 billion, mostly through mismanagement of construction, and that that amount could not be passed on to consumers.

The commission, however, also decided that regardless of what revenue Lilco could expect under traditional rate-making procedures, the utility should not go bankrupt. So it put another $1.9 billion of Shoreham's cost into the formula used to calculate rates, even though the plant was not running. As a result, Lilco is already earning a return on that part of Shoreham, about $400 million a year.

In addition, the plan negotiated with the state, under which Lilco would sell Shoreham to the state for $1, calls for rate increases of 5 percent a year for the first three years and of about that much for seven more years. Those increases are about what Lilco would have received under a "Shoreham phase-in plan" developed two years ago by the Public Service Commission to get the price of the operating plant into rates without too much shock to consumers.

The Public Relations Factor

If there is no major financial difference, there are nonfinancial gains to abandoning Shoreham. One is public image; although it has not always been obvious in recent years, utilities prize their relationship with the public.

"If they close the reactor," said one executive of a utility with nuclear plants in the New York metropolitan region, "people will stop bashing them over the head." Another utility executive said that if Lilco gives up on Shoreham, "it will be like the Marshall Plan, with Lilco as the defeated country." For the first time in years, Lilco could have the cooperation of the Public Service Commission and local governments.

Part of that image is the reliability of electric supply. Since the early 70's, Lilco has argued that completing Shoreham was necessary to avoid imminent summer brownouts and blackouts. If such events come after Shoreham is shut by an agreement, Lilco can say, "I told you so."

Alternatively — if the experience of other utilities is any guide — even if Shoreham did begin commercial operation, there is a fair chance it would still be unavailable on peak days, posing other problems for Lilco.

Reactors like Shoreham are generally available for use less than 60 percent of the year. The owners can improve the odds by scheduling maintenance shutdowns for periods of low demand in the hope that the reactor would be ready when the busy summer months come.

Delays Are Common

But unscheduled shutdowns, or delays in reopening, are common. Reactors in Massachusetts, Pennsylvania, Tennessee and Alabama have been shut for more than a year because of management problems. There is always the possibility of major equipment failures, like those that have closed Indian Point 3 in Buchanan, N.Y., or Robert E. Ginna, near Rochester, for months at a time.

And there is always the chance of accident. The Three Mile Island Unit 2 reactor was the newest in the nation at the time of its partial meltdown 10 years ago next March.

And for technical reasons, even when

(2)

October 20, 1988

COMMENTS OF OHIO CITIZENS FOR RESPONSIBLE ENERGY, INC. ("OCRE") ON PETITION FOR RULEMAKING, MARVIN LEWIS, PRM-50-52, 53 FED. REG. 32913 (AUGUST 29, 1988)

PRM-50-52 would reinstate the financial qualifications review at the operating license stage for nuclear power reactors operated by electric utilities. OCRE supports this petition. In addition to granting the petitioner's requests, the NRC should also reopen all recently completed licensing proceedings in which financial qualifications was excluded as an issue due to the NRC's rulemaking. Petitioners and intervenors should be allowed to litigate the financial qualifications issue in these proceedings to ensure that financial factors do not adversely impact on safety.

The NRC's rulemaking assumed that electric utilities, being regulated entities, would always be assured an adequate rate of return. This is in fact not always true, especially in recent years as utilities with large and expensive nuclear generating facilities have attempted to recover their investments. The public utility commissions, mindful of public outcry against rising electric rates and of the impact of "rate shock", have limited relief for these utilities. An example is the Cleveland Electric Illuminating Co., which is trying to recover its investment in Unit 1 of the Perry Nuclear Power Plant in Ohio and Beaver Valley Unit 2 in Pennsylvania. The Public Utilities Commission of Ohio has twice denied an emergency rate hike request for CEI, despite a finding that the utility's financial health was precarious. This has lead the company to take the extraordinary step of exhorting its shareholders to write to the PUCO and to newspapers urging more favorable regulatory treatment by the PUCO. See attached letter. This letter contains the disturbing statement that CEI does not have the money for maintenance, equipment, and personnel. This is truly a frightening condition for a utility operating a nuclear power plant.

Some state regulatory commissions have imposed or are considering performance standards for nuclear power plants. This creates a dangerous incentive for cutting corners on maintenance or operating a plant when a shutdown would be more prudent.

The state regulatory commissions should not necessarily be blamed for this situation. They are simply responding to constituent pressure and their mandate to balance the economic interests of the utilities and the ratepayers. Nuclear safety has simply not been a primary consideration, if it is considered at all. This is to be expected in the regulatory system set up by the Atomic Energy Act, with its federal pre-emption of radiological health and safety issues. But, by rescinding the financial qualifications review at the operating license stage, the NRC has created a regulatory vacuum. Neither

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the NRC nor the states are examining the impact of financial pressures on nuclear power plant safety.

Absent a national requirement (most likely imposed by Congress on the states, and creating constitutional and jurisdictional issues, as well as being unpopular and difficult to enact) on state regulatory commissions to consider the nuclear safety impacts of their ratemaking decisions and policies, any such consideration will be voluntary, fragmented, and piecemeal. Such considerations are really the job of the NRC, which would have uniform, national standards for financial qualifications reviews. The NRC should quickly reinstate the financial qualifications standards in place before their recision.

Indeed, it is surprising that the NRC would not want to ensure the financial health of its licensees. In recent years the NRC has paid considerable attention to the costs of its regulations on its licensees. See, e.g., the Backfit Rule, 10 CFR 50.109. If consideration of costs to licensees in enacting or enforcing regulatory requirements is appropriate, then surely it is proper to examine the financial health of licensees to determine their fitness to hold an operating license.

The NRC should grant PRM-50-52 immediately. A serious problem exists which is not being addressed, and the NRC should take this opportunity to protect the public from financially-troubled utilities.

Respectfully submitted,

Susan L. Hiatt

Susan L. Hiatt
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CENTERIOR ENERGY

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Independence OH
216-447-3100

Mail Address
P O Box 94661
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September 14, 1988

Dear Share Owner:

Six years of unfair regulatory decisions by the Public Utilities Commission of Ohio have left us frustrated and in need of your help. In the absence of adequate rate increases, it will not be possible to keep our commitment to customers to provide the high quality service they deserve and expect.

While our customers may suffer in the future, you, as share owners, have already suffered from the PUCO's decisions. So, in your own self-interest, we ask that you write to the PUCO chairman, Thomas V. Chema. We will give you his address after a look at the recent PUCO record.

That record includes regulatory decisions that have added billions of dollars to the costs of the new nuclear units we built to ensure a reliable supply of electricity for Northern Ohio.

In the late 1970's, we asked the PUCO on several occasions to include "Construction Work in Progress" in our rate base. If the PUCO had done this, the total financing costs of building Perry Unit 1 and Beaver Valley Unit 2 would have been significantly lower.

The Commission has consistently urged us to come up with "creative solutions" to avoid the "rate shock" that would supposedly result from recovery of our investment in the nuclear units. Here are some of the things we did:

*The Cleveland Electric-Toledo Edison affiliation saved $56 million in 1987, 67% more than was projected.

*We put together the largest sale and leaseback of generating capacity in utility history. The $1.7 billion proceeds enabled us to redeem or refund nearly a billion dollars of high cost debt. Other proceeds were intended to help hold down customer rates in the future but we are having to spend that cash now to pay our bills.

*A comprehensive evaluation of daily jobs and departmental activities enabled us to offer a voluntary early retirement program that 544 employees accepted. The ongoing program promises significant additional savings.

*We developed a plan to phase in rate increases to recover our nuclear investment over a 10 year period, rather than all at once.

The PUCO's response to these cost-cutting successes and the phase-in plan is disheartening. Last December, the Commission gave us an extremely small rate increase, then later cut even that token amount.

In January, the PUCO ordered disallowances totaling about $800 million in connection with alleged imprudent management of the construction of Perry. Our share of that is about $400 million. That decision contrasted sharply with a finding in the less hostile political environment in Pennsylvania: the Pennsylvania Public Utilities Commission found no imprudence.

Also in January, the PUCO required us to discontinue booking an equity return as part of the carrying charges on our completed construction not yet in rate base. This is a complicated accounting issue but in essence it means share owners are not getting even an IOU on their investment and will not until the PUCO orders a phase-in plan. The accounting decision has lowered our reported earnings in 1988.

The PUCO's reluctance to grant rate increases led directly to our painful decision to cut the common stock dividend last March.

The final straw came with the PUCO's August 23 decision on our emergency rate increase request. The PUCO conceded that Centerior's "financial health is in serious peril," but nevertheless refused to grant even a nickel of the increase we badly need. Last week, the PUCO staff made recommendations in four pending cases that continue this negative regulatory record.

Not only has this record cost you as an investor, it has placed at risk our ability to continue to provide service. We just do not have the money for maintenance, for equipment, for people to do the work. If you find this as disturbing as we do, you may wish to write letters to your local newspaper. Your letters will help offset the noisy activism of various anti-utility and anti-nuclear groups.

In particular, you may wish to write to the PUCO. Please write to Mr. Thomas V. Chema, Chairman, The Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, OH 43215.

Enclosed are some suggestions for points to make in your letter. We would appreciate receiving copies of any letters you send.

In the coming months we face PUCO decisions in the principal rate cases for both our operating companies and additional proposed disallowances of investment in both Perry and Beaver Valley. We have appealed four of the PUCO's more onerous earlier decisions to the Ohio Supreme Court and we have asked the Commission to reconsider granting an emergency rate increase.

We need your help and we hope you will write Chairman Chema.

Sincerely,

Robert M. Ginn
Chairman and
Chief Executive Officer

Richard A. Miller
President

Letter writing tips

Letters to Chairman Chema or to the editor of your local paper should be in your own words and no longer than necessary to make your point. You may wish to consider these suggestions:

* The cost to you of the PUCO's decisions. (In the past two years the price of Centerior Energy common stock has fallen 50% and the dividend has been reduced 37.5%.)

* Only a financially healthy electric utility can assure the high quality service necessary for local economic growth.

* The Perry and Beaver Valley 2 units have been producing power for nearly a year. It's time for customers to begin paying for them.

* Centerior Energy has significantly reduced its costs; further cost reductions could affect service. It's time to raise rates.

* The Centerior Energy phase-in rate plan is fair to customers and would enable share owners to recover their investment in facilities now providing power.

* The PUCO should promptly approve the Centerior Energy phase-in rate plan.

(1)

ECOLOGY/ALERT
BOX 621
BLOOMSBURG 17815
E Nemethy, Sec'y

Oct 6-88

Re: Docket PRM-50-52
Petition for rulemaking
by Marvin Lewis

Sec'y - NRC
ATT: DOCKETING & SERVICE BRANCH

Gentlemen -

Despite Mr Lewis' speculations about the potential shut-down of Limerick 2 (which we'll bet you won't accept), he makes a strong case for the necessity for financial stability of utilities involved in nuclear power.

We feel you should give his petition a fair hearing, admit you used poor judgment in issuing a final rule on Sept 12-84 - which eliminated financial qualifications during license review - and rescind that ruling.

E. Nemethy

DS10

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Docket No. PRM-50-52

Marvin Lewis; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Petition for Rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated June 6, 1988, that was submitted by Marvin I. Lewis. The petition was docketed on June 8, 1988, and assigned Docket No. PRM-50-52. The petition requests that the Commission amend its regulations in 10 CFR Parts 2 and 50 to reinstate financial qualifications as a consideration in the operating licensing hearings for electric utilities.

DATE: Submit comments by October 28 , 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC, 20555. Attention: Docketing and Service Branch.

For copies of the petition for rulemaking, write: Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Nuclear Regulatory Commission, Washington DC, 20555.

DS10

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Nuclear Regulatory Commission, Washington DC, 20555, Telephone (301) 492-8926.

SUPPLEMENTARY INFORMATION:

Background

The Commission published a final rule on September 12, 1984 (49 FR 35747) that eliminated financial qualifications from consideration during the operating license review and hearings for electric utilities. The petitioner states that issuance of this final rule prevents the financial condition of a utility from being investigated during licensing hearings, that the "... rule requires the assumption of financial adequacy...," which has resulted in several problems that could pose a danger to the public health and safety.

Petitioner's Interest

The petitioner, Marvin I. Lewis, is a resident of Philadelphia, Pennsylvania, and is concerned about the financial stability of the Philadelphia Electric Company (PECO). PECO is the parent utility for Limerick and Peach Bottom nuclear power plants located in Pennsylvania. Mr. Lewis believes that Limerick 2 may go critical and eventually have to shutdown and that he and residents of the surrounding area will be adversely affected by the shutdown. In addition to being exposed to radiation from the radioactive waste produced by Limerick 2, Mr. Lewis is also concerned about the many costs associated with health risks, rate hikes, and other unknown potential problems.

Grounds for the Petition

Mr. Lewis cites several long-standing operating problems at Limerick 1 and 2 and Peach Bottom plants that he claims have placed a financial burden on PECO. Mr. Lewis asserts that PECO has admitted to being under financial pressure and that the cost of Limerick 1 and 2 has placed the company billions of dollars in debt. Mr. Lewis indicates that the financial problems facing PECO will lead to a situation such as the shutdown of Shoreham nuclear power plant after it became radioactive. Mr. Lewis states that Shoreham was granted a license despite the shaky financial condition of the parent utility, Long Island Lighting Company (LILCO). He claims that LILCO has admitted that it does not have sufficient monies to pay for decommissioning of the nuclear power plant.

General Solution to the Problem

The petitioner requests that NRC reinstate financial qualifications as a requirement for electric utilities and suspend the licensing proceedings for Limerick 2 until the parent utility, PECO, can demonstrate to the NRC that it is financially qualified to safely proceed with Limerick 2 and its other nuclear operations. The petitioner requests that the 30-day comment period for this petition be reduced in order to prevent further financial hardship on PECO.

Conclusion

Mr. Lewis believes that Limerick 2 is going "critical," i.e., will begin to generate power, and may be closed. Even if the plant stays open, Mr. Lewis states that the shipment of radioactive waste will expose him to radiation without corresponding benefit, which he claims is in violation of the Atomic Energy Act. Mr. Lewis states this Act exhorts the Federal Government to protect health and safety of the public and that the Nuclear Regulatory Commission has been charged with enforcing this mandate.

Notice Regarding Petitioner's Request to Reduce 30-day Comment Period

The staff has read the petitioner's letter to waive the 30-day comment period for this notice of petition for rulemaking and determined that it is impractical to do so, therefore we are publishing this notice of receipt of the petition for rulemaking with an opportunity for the public to comment.

Petitioner's Proposal

Part 2

The petitioner requests that Part 2 be amended to revise §§2.4(s), 2.104(c)(4), and paragraph VII.(b) (4) of Appendix A to reflect the language prior to issuance of the final rule published September 12, 1984 (49 FR 35747).

Part 50

The petitioner requests that Part 50 be amended to revise §§50.2(x), 50.33(f), 50.40(b), and 50.57(a)(4) to reflect the language prior to issuance of the final rule published September 12, 1984 (49 FR 35747).

Dated at Rockville, MD. this 23d day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

PRM-50-52

Marvin J. Lewis
7801 Roosevelt Blvd. #62
Phila., PA 19152

Secretary
USNRC
Washington, D. C.
Attention: Chief, Docketing and Service Branch

Dear Secretary:

Please accept this petition related to 10CFR 2.802(a) . 10 CFR 2.802.(a) states," Any interested person may petition the Commission to issue, amend or rescind any regulation."

I respectfully petition the Commission to rescind the rule which has eliminated financial qualifications from consideration in the licensing of "electric utilities (10CFR 50.2(x) Definitions.") We are presently faced with the very problems which I stated or predicted in my 5-28-84 comments on the rule. 10CFR 2.104(c)(4) and 50.33(f) eliminated financial qualifications from consideration in the electric utility operating license hearings. These problems are a danger to the health and safety of the public.

STATEMENT OF PROBLEM:

The financial qualification rule does not allow the financial condition of the utility to be investigated during licensing hearings. The rule requires the assumption of financial adequacy. This assumption of financial adequacy has led to several real problems which lead to unnecessary and unneeded radiation exposures.

In the case of the Shoreham shutdown, the plant was granted a license despite the shaky financial condition of the parent utility, Long Island Lighting Co. Lilco has admitted that it does not have sufficient monies to pay for decommissioning. The State of New York has agreed to pick up part of the decommissioning costs.

Another cost besides financial is the cost in added radiation exposures. Increased radiation exposure increases cancer and other health risks. These added health risks involve added costs which would not have occurred if Shoreham had not gone critical.

Shoreham workers and public are exposed to radiation during past operation, future cleanup and transportation of the radioactive wastes. The exposures are necessary during clean up and decommissioning of the radioactive plant. The Shoreham reactor produced negligible commercial electricity. Commercial electricity is the only benefit which Shoreham operation would have produced.

In sum, Shoreham operation has produced no benefit but has increased health costs.

A similar situation is occurring with the Limerick and Peachbottom Nuclear Power Plants. These plants are part of PECo, the same utility. They all have sizeable problems related to financing.

Peachbottom has suffered long shutdowns due to many violations. The latest shutdown may go past January 1989 according to statements in the PECo in-house newsletter, the Susquehanna Light (See all April and May issues.)

Limerick 1 has faced many shutdowns since starting low power operation. The personnel who are qualified to work on Limerick (Susquehanna Light, May and April 1988 issues) have instead been pressed into service to return Peachbottom to operation. Due to lack of personnel, the PECo organization has experienced 70% overtime rate in selected labor forces. All these problems increase the financial burden.

Both Limerick 1 and 11 receive cooling water from the Susquehanna River. The Delaware River Basin Commission controls the variances under which Limerick 1 has obtained cooling water. A major probability exists that the Susquehanna will fail to provide sufficient water for either or both Limerick plants. The subsequent shutdown will reflect poorly upon the earning power of the PECo organization.

The situation in the PECo service area mimics the situation which has occurred in the LILCo service area.

1. The service area is grossly overbuilt. If Limerick 11 comes on line, Limerick 11 will increase the capacity of the system to 60% more capacity than is needed for summer peak load (PA PUC rate case 865.)

2. The market for out of service area sales is problematical. Canada presently sells power at a very low rate, and the rules of the Federal Energy Commission require utilities to buy lowest available electrical power available from the grid. Therefore, PECo's electric sales suffer from competition with Canadian electric imports.

3. The Federal PURPA requires PECo to buy cogenerated electricity at least cost. Sales required by PURPA are booming, and threaten the need for additional electric supply.

4. PECo has admitted to being under financial pressure. The cost of Limerick 1 and 11 has left PECo with billions of dollars in debt. The rules and regulations of both the PA law and the PA PUC require that unnecessary and unneeded capacity may not be charged in the rate base. Capital recovery is near impossible.

The financial problems facing PECo will lead to a situation mimicking the Shoreham situation. A shutdown of one or more of the PECo nuclear power plants will lead to a situation much like Shoreham. Decommissioning a radioactive power plant will expose many workers and residents to unnecessary and unneeded radiation exposures. These added health risks involve added costs which will occur if Limerick II goes critical.

General Solution to the Problem.

The problem is that another nuclear power plant will be closed after becoming radioactive. Limerick II is the plant very likely to be chosen. The General Solution is to require PECo to demonstrate financial qualification sufficient to decommission a nuclear power plant. Also, Limerick II low power license and operating license hearings need to stop now. The stop of hearings for Limerick II will allow time to determine financial qualification before Limerick II goes critical and becomes radioactive.

Action Requested to Suspend Licensing Proceeding.

The present financial condition of PECo requires a suspension of licensing to determine adequate financial qualification. The new situation facing PECo requires that NRC finds PECo financially qualified to proceed with Limerick II and its other nuclear operations in safety. The petitioner requests an immediate stop in all PECo hearings to allow time for the NRC to determine that PECo is financially qualified to proceed without endangering the health and safety of the public.

Request for Speed.

Petitioner respectfully requests that the 30 day notification in 2.802(e) be reduced for good cause. Additional time will only place PECo in greater financial hardship reducing PECo's ability to protect the health and safety of the public.

Petitioner's grounds for the action requested:

If the Limerick II plant goes critical, the Petitioner will be endangered by the radioactive wastes shipped thru Philadelphia. The radwaste produced by a nuclear power plant adds to the danger and exposure of residents. The petitioner nor area residents will receive no benefit as the area has a vast overcapacity of electric production. The grounds are simply that the petitioner will be exposed to many costs; health risks, rate hikes, and unknown problems, while receiving negligible corresponding benefit.

Petitioner's interest in the action requested.

My interest is that a nuclear power plant in this area going critical and subsequently closing will expose me to radiation without corresponding benefit and in violation to the requirement of the Atomic Energy Act. The Atomic Energy Act exhorts the Federal Government to "protect the health and safety of the public." The Charter of the Nuclear Regulatory Commission charges the Commission with the responsibility to enforce parts of the Atomic Energy Act. Specifically the Commission is charged with enforcing the requirement stated nine times in the Act to "protect the health and safety of the public." The petitioner is a member of the public who will be adversely affected by the above shutdown of an radioactive nuclear power plant.

Respectfully submitted,

6.6.88.

Marvin I. Lewis
7801 Roosevelt Blvd.#62
Phila., PA 19152
(215)624 1574
6-6-88.

PRM-50-52

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USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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