



POLICY ISSUE

May 29, 1992

(NEGATIVE CONSENT)

SECY-92-198

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: 10 CFR PART 51 RULEMAKING ON ENVIRONMENTAL REVIEW FOR
RENEWAL OF NUCLEAR POWER PLANT OPERATING LICENSES

Purpose: To inform the Commission of staff plans to address major concerns received from the Council on Environmental Quality, the Environmental Protection Agency, various states, and others about the subject proposed rule.

Background: The public comment period for the subject proposed rule closed on March 16, 1992. Publication of the final rule is now scheduled for December 1992. One-hundred-and-twenty-four comment documents have been received. Many of the comment documents are extensive and detailed. In addition to extensive comments on specific environmental matters, concerns have been raised about the procedural aspects of the proposed rule. Major policy concerns on the fundamental approach have been raised by the Council on Environmental Quality (CEQ), the Environmental Protection Agency (EPA), various states, and public concern groups, including the Union of Concerned Scientists, Ohio Citizens for Responsible Energy, and Minnesota Public Interest Research Group. A summary of the comments is presented in Enclosure 1. In addition, comments from CEQ, EPA, and the state of Minnesota are enclosed for information as representative of the major policy concerns expressed by commenters (Enclosures 2, 3 and 4).

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Discussion:

The staff has considered the policy concerns, reviewed the options for resolving them, and selected an approach that it believes can go a long way toward alleviating those concerns, yet preserve to a satisfactory degree the objective of regulatory efficiency which has been the primary motivation for this rulemaking. Commenters expressing opposition to the fundamental concept and approach of the proposed rule are concerned that the rule (1) limits public and state participation in site specific license renewal reviews (public comments would not be solicited during the license renewal review), and (2) eliminates consideration of environmental issues designated Category 1 from further site-specific license renewal reviews. In addition, there are concerns, especially among the states, that generic determinations in the areas of (1) need for power, (2) alternative energy sources, and (3) radioactive waste management infringe on state authority. It should be noted that the use of Category 1 determinations was designed to be the primary source of regulatory efficiency in individual license renewal reviews. A substantial number of comments were directed toward changing many of the issues classified as Category 1 to Category 2 or 3.

Category 1 is one of the three categories of "generic" conclusions about environmental impacts used in the GEIS and the proposed rule. The three categories are:

- Category 1. "A generic conclusion on the impact has been reached for all affected nuclear power plants." Site-specific reviews will not be performed for this impact, unless initiated through a § 2.758 petition.
- Category 2. "A generic conclusion on the impact has been reached for affected nuclear power plants that fall within defined bounds." Site-specific reviews will be performed for this impact for those plants that are not within the bounds.
- Category 3. "A generic conclusion on the impact was not reached for any affected nuclear power plants." Site-specific reviews will be performed for this impact for all plants.

The staff has met separately with CEQ and EPA to better understand their policy concerns with the concept and approach to the proposed rule. It was clear that these two agencies believe that the proposed rule does not further the

purposes of the National Environmental Policy Act (NEPA) for the following reasons.

- 1) NEPA requires all environmental issues, both those addressed generically in the GEIS and those addressed in the site-specific NEPA document, to be considered, not necessarily reanalyzed, for each plant at the time of license renewal. CEQ and EPA believe that the Commission's proposed approach of issue preclusion for Category 1 issues fails to meet this requirement.
- 2) NEPA requires that the public be allowed to have meaningful involvement on the site-specific environmental review at the time of the renewal decision. CEQ and EPA believe the current approach that requires public comment on site-specific environmental issues far in advance of a renewal application does not satisfy this requirement.
- 3) The Commission cannot make decisions now for actions in the future, i.e., the Commission cannot reach a favorable cost-benefit balance now for future license renewal applications.

They further stated that the Commission's proposed public input process via 10 CFR 2.758 establishes too high a threshold and would impede meaningful public participation.

EPA has statutory responsibility to review and rate all federal environmental impact statements, under Section 309 of the Clean Air Act. EPA rated the GEIS EO-2 "environmental objection" and "insufficient information." The "environmental objection" means that, "The EPA review identified environmental impacts that must be avoided in order to provide adequate protection for the environment." The "insufficient information" means that, "The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment..." This is a low but not unacceptable rating. Also as a result of the review of the GEIS, EPA is recommending that 28 (out of 80) Category 1 issues be reclassified to Category 2 or Category 3. Although CEQ and EPA do not have approval authority over the rule or the GEIS, the staff believes it is obviously to the Commission's advantage to address their concerns in a mutually satisfactory way, if possible. In addition, the staff believes it is also to the Commission's advantage to resolve as many technical comments as possible, particularly those provided by EPA.

Both CEQ and EPA have indicated that they would be willing to review any changes to the GEIS and Part 51 rule made as a

result of comments. Thus, if their concerns can be substantially or totally eliminated, this can be documented via second letters from those agencies.

The staff has considered the comments and objections to the proposed concept and approach to the rule, and the extent of the technical comments on the GEIS, and has identified three basic options for proceeding with the final rule. Each option addresses to a varying degree the three major objectives of: (1) retaining regulatory efficiency, (2) attaining agreement of CEQ and EPA on NEPA policy aspects of the rule, and (3) resolving technical comments. Under all options the staff will attempt to resolve technical comments from EPA and other commenters. The review of technical comments is expected to result in reclassifying some Category 1 issues as Category 2 or 3.

An additional six months will be required to resolve the technical comments of EPA and other commenters. The process will involve EPA review of revised GEIS material and follow-on discussions. EPA would require yet another three months after completion of the GEIS to review it and submit another letter on technical adequacy prior to publication of the final rule. The staff proposes that this be accomplished prior to submittal of the final rule for Commission approval.

Since there are significant policy questions and numerous technical comments to resolve, the staff is going to defer any effort on revising the regulatory guide and the environmental standard review plan until the rule and GEIS are revised, receive Commission approval, and are published. The regulatory guide and the environmental standard review plan would be published approximately six months later. This approach is consistent with the approach taken in the 10 CFR Part 54 rulemaking.

Option 1: Retain Approach in Proposed Rule

Major Provisions.

- (a) Codifies and thus excludes Category 1 issues from case specific consideration, except via 10 CFR 2.758, which would allow anyone including staff or intervenors, to seek from the Commission a waiver from the rule, i.e., the rule's exclusion of Category 1 issues from case-specific review. The bases for the waiver would be site specific information, not considered in the GEIS, sufficient to show that the GEIS conclusions as applied to the site in question are substantially and materially incorrect.

- (b) Codifies findings for bounded Category 2 issues and conditional assessment of cumulative impacts, thereby allowing the staff to write a limited environmental assessment for an individual license renewal review. There would be no solicitation of public comments on any environmental issue, so long as staff concluded that there were no significant impacts from Category 2 and 3 issues and saw no need to prepare a supplemental EIS.
- (c) Proposed rule would be modified to specify the process for periodic review and update of GEIS and the rule.

Accommodation of Public Comments.

- (a) Does not address policy concerns of CEQ, EPA, various states, and other commenters.
- (b) Clarifies Commission's intent on periodic review and update of the GEIS and the rule and how the public will participate in the updating process.

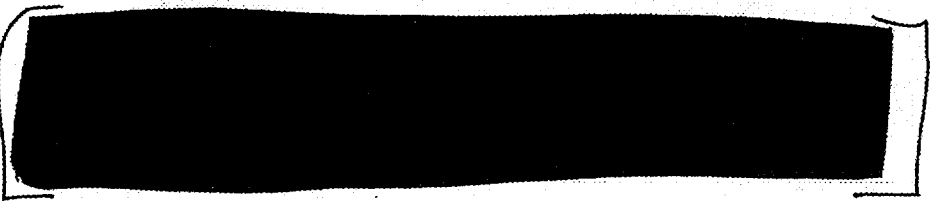
Legal Implications.

- (a)
- (b)



Ex.5

Schedule Implications.



Ex.5

Option 2: Modify Rule to Address Policy Concerns but Maintain Essential Exclusion Features.

Major Provisions.

- (a) Add provision to proposed Part 51 rulechange similar to 10 CFR 2.758, but with modified procedures that make clear that (1) new "generic" environmental information will always be considered on its merits via rulemaking petitions, and (2) new site specific information will be considered either by staff or a

hearing board or both if it is sufficient to show that the GEIS conclusions as applied to the site in question are substantially and materially incorrect. To be considered, site specific information would be required to meet the standards of § 2.758, but prior Commission approval would not be required.

- (b) Codify conclusions on individual environmental issues but not the conditional assessment of cumulative impacts, as in option 1. Perform an assessment of cumulative impacts as part of an individual plant license renewal review.
- (c) Use a draft and final supplemental EIS for individual license renewal reviews. This supplement would discuss each issue or refer to the GEIS for the basis.
- (d) Would eliminate use of an environmental assessment.
- (e) Specify the process for periodic review and update of the GEIS and the rule, as in option 1.

Accommodation of Public Comments

- (a) Less burdensome process for petitioning for the consideration of new and significant site specific information on Category 1 issues.
- (b) Possible that CEQ and EPA would see option 2 as sufficient to meet their policy objections.
- (c) Clarifies Commission's intent on periodic review and update of the GEIS and the rule and how the public will participate in the updating process.
- (d) Cumulative impact analysis done at the time of the individual license renewal decision. This would go a long way toward addressing state concerns that the proposed rule appears to intrude in cost/benefit and alternative energy source matters within their jurisdiction.
- (e) Draft supplemental EISs prepared on individual license renewal review will be published for public comment. Public comments would have to be answered as part of the final supplemental EIS issued at the time of the Commission's renewal decision.
- (f) Additional time and resources will be required to consider public comments under this option (as well as under option 3), as contrasted to option 1 which

provides, in cases of no significant new environmental information, for no solicitation of public comments.

Legal Implications.

(a)

(b)

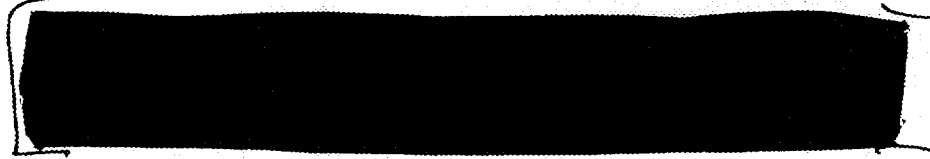


Ex. 5

Schedule Implications.

(a) The staff will attempt to complete discussions with CEQ and EPA on procedural issues within four weeks of the date of this paper.

(b)



Ex. 5

Option 3: Abandon Proposed Rule and Use GEIS as a "Tiering" (Reference) Document.

Major Provisions.

- (a) 10 CFR Part 51 would acknowledge GEIS as a tiering document to be used where applicable in individual plant license renewal reviews.
- (b) The licensee and the NRC would have to verify that the site is within the bounds of the GEIS.
- (c) All issues would have to be considered, but not reanalyzed, in an applicant's environmental report and the staff's supplemental environmental impact statement.
- (d) Would still require a process for updating the GEIS to reflect current environmental information, but would not necessarily require a rulemaking.
- (e) Eliminates use of environmental assessment. A draft and final supplemental EIS would be required and would discuss all issues. Public comments on all issues would be addressed in the final supplement.

- (f) May not meet the rulemaking objective of a significant increase in regulatory efficiency. However, some regulatory efficiency is gained from the use of the GEIS.

Accommodation of Public Concerns

- (a) Would satisfy policy concerns.
- (b) Complete resolution of all technical concerns less important than for options 1 and 2 because applicant would have to discuss site-specific application of the GEIS.

Legal Implications.

- (a)
- (b)



Ex. 5

Schedule Implications.

- (a) No need to discuss procedural concerns with CEQ and EPA nor to get second comment letters.
- (b) Greater effort and time will be required to develop the final regulatory guide and final environmental standard review plan as all issues are subject to review.

Conclusions:

For the following reasons, the staff concludes that option 2 is the preferred option:

1. It retains much of the primary objective of the rulemaking to increase regulatory efficiency in the environmental reviews for license renewal.
2. It addresses the concerns of CEQ and EPA that the rule does not further the purposes of NEPA and thus may allow the two agencies to provide more favorable comment letters.
3. By enhancing public participation and eliminating the conditional analysis of cumulative effects from the rule it should reduce state and other commenter concerns about obstacles to public participation.

4.



Ex 5

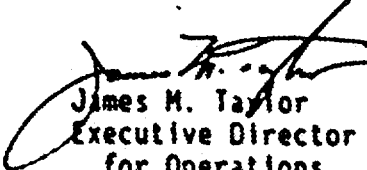
Unless otherwise directed by the Commission, the staff plans to take the following actions within 10 working days.

1. Develop option 2. Negotiate with CEQ and EPA on the major provisions of option 2. If CEQ and EPA agree with all provisions then obtain favorable letters from both agencies on the NEPA policy issues. If the staff cannot secure agreement on all NEPA policy questions, the staff will advise the Commission on what CEQ and EPA will accept, and provide recommendations for proceeding with any rulemaking activities.
2. Delays in the schedule will occur for publication of the final rule and GEIS. A final schedule will be provided following negotiations with CEQ and EPA.
3. Regardless of the option chosen, defer any effort on revising the regulatory guide and the environmental standard review plan until after publication of the final rule and GEIS and expiration of the date to challenge the rule.

Note that the staff and OGC recommend that this paper not be released.

Coordination:

The Office of the General Counsel has reviewed this paper and concurs.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. Summary of comments received
2. CEQ letter dated March 16, 1992
3. EPA letter dated March 16, 1992
4. Minnesota Department of Public Service, combined agency comments dated March 13, 1992

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Friday, June 12, 1992, that the Commission, by negative consent, assents to the action proposed in this paper.

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SUMMARY OF
COMMENTS RECEIVED ON PROPOSED CHANGE TO LICENSE RENEWAL
PROVISIONS OF 10 CFR PART 51

I) COMMENTERS

- o 124 COMMENT DOCUMENTS RECEIVED:
 - 5 FEDERAL - CEQ, EPA, DOI, DOE, ACHP
 - 32 STATE AND LOCAL GOV'T (18 STATES)
 - 21 INDUSTRY
 - 15 ENVIRONMENTAL GROUPS
 - 48 CITIZENS
 - 3 OTHER

II) SUPPORT FOR APPROACH

- o 29 GENERALLY SUPPORT (INDUSTRY PLUS 4 STATES)
- o 80 AGAINST OR STRONG CONCERNS (PUBLIC INTEREST GROUPS + 8 STATES)
- o 15 NO OPINION EXPRESSED (INCLUDING 6 STATES)

III) SIGNIFICANT COMMENTS

- o MAJOR CONCERNS
 - PUBLIC (AND STATE) PARTICIPATION LIMITED IN INDIV. LICENSE RENEWAL PROCEEDINGS
 - NRC WOULD NOT CONSIDER SITE SPECIFIC INFORMATION FOR CATEGORY 1 ISSUES
 - INFRINGEMENT ON STATE REGULATORY AUTHORITY
 - NEGATIVE LETTERS ON CONFORMANCE WITH NEPA (CEQ, EPA, SOME STATES)
- o TECHNICAL COMMENTS EXTENSIVE:
 - EPA - 28 CATEGORY 1 ISSUES SHOULD BE CATEGORY 2 OR 3
 - STATES - CHALLENGE ANALYSES WITH STATE/SITE SPECIFIC INFORMATION
 - ENVIRONMENTAL GROUPS - QUESTION ABILITY TO RESOLVE NEED, ALTERNATIVES, WASTE ISSUES GENERICALLY
 - MANY OTHER TECHNICAL COMMENTS