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March 16, 1992

Mr. Samuel J. Chilk  
 Secretary of the Commission  
 Attention: Docketing and Services Branch  
 Nuclear Regulatory Commission  
 Washington, D.C. 20555

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Dear Mr. Chilk:

Re: Comments of the Council on Environmental Quality on the Nuclear Regulatory Commission's Proposed Rule for Environmental Review for Renewal of Operating Licenses (56 Fed. Reg. 47,016 (1991))

## I. INTRODUCTION

Thank you for the opportunity to provide comments on the rule proposed by the Nuclear Regulatory Commission (NRC) regarding new requirements for environmental review of applications to renew operating licenses for nuclear power plants. The NRC staff has been diligent in its efforts to involve the Council on Environmental Quality (CEQ) in this rulemaking and to seek our views on compliance with the National Environmental Policy Act (NEPA), and should be commended in that respect.

As part of this inclusive process, I spoke at a public workshop on the proposed rule in November, 1991, representing CEQ. As you know, CEQ is responsible for overseeing federal agency implementation of NEPA. The panel on which I participated was Session 12: "Compliance with 10 CFR and NEPA," and the written comments provided here are intended to be consistent with my oral remarks at the public hearing.

## II. DISCUSSION

### A. The Generic Environmental Impact Statement for the License Renewal of Nuclear Power Plants Should be Considered to be a Document Which Will Support Future License Renewal Decisions

There appears to be substantial confusion regarding the purpose of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS). At the public workshop in November, it was suggested that the GEIS supported the amendment to 10 CFR Part 51. See Transcript of Session 12 (Tr. 12) at 8 ("The GEIS, in fact, is the basis upon which the rule is going to

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be promulgated), at 29 ("the GEIS was developed to provide information that NRC then used in order to determine, in the rule, what kind of information would have to be supplied for environmental reports for individual licensing"), and at 30 (the GEIS is "not a programmatic document. The action the NRC was taking was adopting Part 51.")

However, the Federal Register notice for the proposed rule itself indicates that

"[t]he NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation."  
56 Fed. Reg. at 47,026 col. 2.

In addition, the GEIS, among other things, addresses alternatives to relicensing (see GEIS at Chapter 9, "Alternatives to License Renewal"), rather than alternative regulatory proposals. For these reasons, it would appear that the purpose of the GEIS, contrary to statements made at the public hearing, is to support future decisions on specific license renewal applications. A statement to that effect should be included in the final version of the GEIS.

The CEQ regulations implementing the procedural provisions of NEPA support the use of generic or programmatic EISs to address cumulative impacts of connected and similar actions and to reduce delay and paperwork. See, e.g., 40 CFR §§ 1500.4(i), 1502.4(c)(2), 1502.20, and 1508.18. Specifically, the CEQ regulations encourage "tiering" which is defined as

"the coverage of general matters in broader environmental impact statements...with subsequent narrower statements or environmental analyses...incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared." 40 CFR § 1508.28.

Given that the GEIS addresses, among other things, alternatives to relicensing and assesses the environmental impacts of a relicensing determination, it is more appropriately viewed as a programmatic document to examine those environmental issues which are common to the license renewal of all nuclear

power plants. Having examined the generic environmental issues in the GEIS, NRC could then be expected (and in fact has committed) to prepare site-specific NEPA documents to address site-specific environmental issues.<sup>1</sup> Using this approach, a Record of Decision (see 40 CFR § 1505.2) for a license renewal application would be issued only after the site-specific analysis was completed.<sup>2</sup>

Under the CEQ regulations, issues addressed generically in a programmatic EIS do not need to be re-analyzed in a site-specific document. See 40 CFR § 1508.28. However, all environmental issues--those addressed generically in the programmatic EIS and those addressed in the site-specific NEPA document--must be considered by the agency in reaching a conclusion on whether a particular license renewal application should be granted.

2. Under NEPA, the GEIS Should Not Be Used to Reach "Conclusions" Regarding the Acceptability of Environmental Impacts Before Site-Specific Analysis is Completed

CEQ's second comment relates to the use of the programmatic GEIS. Although CEQ supports NRC's efforts to address in a programmatic EIS as many environmental issues common to relicensing as possible, the Council does not believe that NRC should, at this point--before an application for relicensing is even pending--to reach "conclusions" regarding the environmental impact of a future relicensing decision. See 56 Fed. Reg. at

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<sup>1</sup> NRC is proposing to modify its regulations to permit the preparation of an environmental assessment (EA) or, if warranted, a supplemental environmental impact statement (EIS) to address the site-specific issues related to a particular license renewal application. 56 Fed. Reg. at 47,029 col 2. Although current NRC rules require the preparation of an EIS for such actions, an EA may well be appropriate in some instances. NRC is reminded, however, that the preparation of an EA requires public involvement in the process, although the EA need not be prepared in draft and final stages. See 40 CFR §§ 1501.4(b) ("[t]he agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1)"). The requirements of 40 CFR § 1506.6 apply to EAs as well as to EISs.

<sup>2</sup> Alternatively, NRC could simply consider the GEIS to be a technical study which is incorporated by reference in subsequent NEPA documents for particular relicensing actions.

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47,019 col. 1 ("The Commission concludes that the adverse environmental impacts of license renewal are minor compared to the benefits to be gained from continued operation for up to an additional 20 years beyond the initial license period.") and GEIS at ES-4 ("For a large number of issues, a generic conclusion was made on the potential environmental impacts.").

The NRC staff analyzed a total of 104 issues which it identified as the only environmental issues involved in the license renewal of 118 nuclear power plants (those currently operating plus those expected to operate in the near future). Of those 104 issues, 80 were placed in Category 1 ("a generic conclusion on the impact has been reached for all affected nuclear power plants"), 22 were placed in Category 2 ("a generic conclusion on the acceptability of the impact has been reached for affected nuclear power plants that fall within defined bounds"), and only two were placed in Category 3 ("a generic conclusion on the impact was not reached for any nuclear power plant"). GEIS at ES-4. The two Category 3 issues are the existence of threatened or endangered species and the transportation impacts of refurbishment.

In addition, based on its "conclusions" regarding the environmental impacts of relicensing, NRC has developed a cost-benefit analysis which it "concludes" favors relicensing. This preliminary or conditional cost-benefit analysis is subject to an evaluation of the Category 2 and 3 site-specific issues which may change the cost-benefit balance.

In sum, the NRC staff has developed a cost-benefit analysis--having weighed environmental consequences against economic benefits--and proposes to have the agency make a regulatory decision based entirely on that cost-benefit analysis. While such a scheme may be attractive from a purely mechanical or engineering standpoint, it does not adequately account for environmental costs and benefits because such costs and benefits are difficult, if not impossible, to quantify. See Tr. 12 at 61 (the GEIS did not take into account "environmental externalities," e.g., the environmental costs of coal emissions).

### 3. NRC's Proposed Use of the GEIS Does Not Further the Purposes of NEPA

Finally, CEQ notes that the purpose of NEPA is two-fold: to encourage public involvement in the NEPA process and to encourage environmentally-aware decisionmaking by federal agencies. These purposes are not furthered by the proposed rules.

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Should the rule be finalized as proposed, the "conclusions" reached in the GEIS regarding the 80 generic environmental issues would be codified in NRC's body of regulations. Members of the public would be virtually precluded from challenging the application of generic conclusions for a particular license renewal application: either a party to the relicensing adjudicatory proceeding must file a petition under 10 CFR § 2.758 (a party "may petition that the requirements applicable to renewed licenses under this title should be waived or an exception made for the particular proceeding" on two stated grounds) or a member of the public may file a petition under 10 CFR § 2.206 to amend the regulation. See 56 Fed. Reg. at 47,019 col. 1 and Tr. 12 at 82.

Similarly, codifying the environmental "conclusions" reached in the GEIS allows the Commission to put on blinders with respect to those 80 Category 1 issues, and at least some of the 22 Category 2 issues. Under this proposed scheme, having reached "conclusions" on those Category 1 and applicable Category 2 issues, the Commission is not required to re-examine them in a subsequent determination on whether to grant a license renewal application, but rather is only required to examine whether the few site-specific issues are enough to tip the conditional cost-benefit scale. This scheme does not allow for the consideration of the accumulation of "small" Category 1 impacts or the accumulation of all Category 1, 2, and 3 impacts.

I recognize that, in accordance with NRC policy, other rules have been promulgated regarding the environmental impacts of the transportation of radioactive waste and nuclear fuel, the environmental impacts of the nuclear fuel cycle, the need for power, and alternative energy sources for nuclear reactors. Like the proposed Part 51 rules, those rules declare that these issues have been adequately analyzed and do not need to be re-analyzed for each operating license proceeding. See 56 Fed. Reg. at 47018 col 2. To the extent that the existing rules do not require generic issues to be addressed in each proceeding and in each NEPA document, they are consistent with NEPA and the CEQ regulations. To the extent that those rules allow the agency to ignore those generic environmental issues as having been resolved before their decision on a license application, they are not in furtherance of the purposes of NEPA.

### III. CONCLUSION

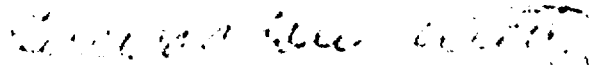
In conclusion, the tiering of NEPA documents allows an agency to discuss generic impacts in one programmatic document

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and does not require that discussion to be repeated for each subsequent site-specific NEPA document. Allowing (even encouraging) an agency to evaluate generic environmental impacts only once, does not relieve the agency of the obligation to consider the generic environmental impacts, along with the site-specific impacts, for each agency action.

In other words, the GEIS is a legitimate means for addressing the many environmental issues which are common to the relicensing of all currently or soon-to-be operating nuclear power plants. In reaching a decision on a particular license renewal application, however, NRC must take into account both the broad environmental issues addressed in the GEIS and the narrower environmental issues addressed in a site-specific NEPA document. Under NEPA, the agency may not determine, on the basis of the GEIS, that the generic environmental issues addressed are finally resolved and, absent a reconsideration of the regulation itself, refuse to consider those generic issues in a particular relicensing proceeding.

Sincerely,

  
Lucinda Low Swartz  
Deputy General Counsel