

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Kristine L. Svinicki
George Apostolakis
William D. Magwood, IV
William C. Ostendorff

In the Matter of)
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)

PETITION FOR RULEMAKING)
TO AMEND 10 C.F.R. § 54.17(c))
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)
)

Docket No. PRM-54-6

CLI-11-01

MEMORANDUM AND ORDER

Individuals and groups in proximity to the Seabrook Nuclear Generating Station have submitted a petition for rulemaking¹ pursuant to 10 C.F.R. § 2.802. Petitioners request that the NRC amend its regulations at 10 C.F.R. § 54.17(c) to permit a reactor licensee to file a license renewal application no sooner than 10 years before the expiration of the current license.

Though their concerns are aimed principally at the Seabrook plant, Petitioners would have NRC apply their amended rule to all license renewal applications that have not yet been issued an

¹ See *Petition for Rulemaking Pursuant to 10 CFR § 2.802; Seeking to Amend 10 CFR § 54.17(c)* (Aug. 17, 2010) (ML102380379) (Petition for Rulemaking). Petitioners are Earth Day Commitment/Friends of the Coast, Beyond Nuclear, Seacoast Anti-Pollution League, C-10 Research and Education Foundation, Pilgrim Watch, and New England Coalition. Later, by letter dated August 18, 2010, Robin Read, State Representative for New Hampshire, requested to be included as a petitioner (ML102380380). The NRC has docketed the petition as PRM-54-6. See *generally* Earth Day Commitment/Friends of the Coast, Beyond Nuclear, Seacoast Anti-Pollution League, C-10 Research and Education Foundation, Pilgrim Watch, and New England Coalition; Notice of Receipt of Petition for Rulemaking, 75 Fed. Reg. 59,158 (Sept. 27, 2010).

NRC staff Final Safety Evaluation Report (FSER). Essentially, Petitioners assert that the NRC's current regulation at 10 C.F.R. § 54.17(c), by allowing a licensee to seek renewal 20 years prior to license expiration, results in unreliable application information with respect to environmental considerations, aging analysis and management, regulatory compliance and other factors.

Related to their petition, Petitioners have also requested that the Commission suspend license renewal reviews pending disposition of their rulemaking petition. Recognizing that they are not "parties" to a proceeding because the license renewal proceeding for the Seabrook plant, while noticed,² has yet been formally convened,³ Petitioners nonetheless ask us to treat their circumstances as analogous to those contemplated by 10 C.F.R. § 2.802(d), and to "suspend[] review of all license renewal applications submitted more than ten years in advance of current license expiration until resolution of this petition."⁴

As Petitioners recognize, their request for relief does not fall within the terms of 10 C.F.R. § 2.802(d). But even if it did,⁵ our "longstanding practice has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission's dual goals of

² After the NRC staff determined that the application was sufficiently complete to be acceptable for docketing, the staff noticed the opportunity for hearing and request for intervention in the license renewal proceeding at 75 Fed. Reg. 42,462 (July 21, 2010).

³ Some petitioners in this proposed rulemaking have requested a hearing and petitioned for intervention in the Seabrook license renewal proceeding. But the Atomic Safety and Licensing Board has not yet determined whether Petitioners have standing and have filed admissible contentions.

⁴ Petition for Rulemaking at 12. Petitioners state that of 32 license renewals already granted by the NRC, most were filed within 10 years of original license expiration. A survey of Appendix A of NUREG-1350, the Commission's Information Digest, shows that six license renewal applications were submitted more than 18 years before expiration of their existing licenses. Further, of the fifteen pending license renewal applications, four (including Seabrook's) were submitted 15 years or more before expiration of the existing license, and one was submitted 13 years in advance.

⁵ Even absent an express provision authorizing such relief, "we have occasionally considered similar requests to suspend proceedings or hold them in abeyance in the exercise of our inherent supervisory powers over proceedings," *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484-85 (2008), and we do so here.

public safety and timely adjudication.”⁶ Ours is a dynamic regulatory process and we constantly re-evaluate our rules and procedures, both on our own initiative and at the suggestion of others. Absent extraordinary cause, however, seldom do we interrupt licensing reviews or our adjudications – particularly by an indefinite or very lengthy stay as contemplated here – on the mere possibility of change. Otherwise, the licensing process would face endless gridlock. As we recently summarized in *Vermont Yankee*, “we generally have declined to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications.”⁷

Just a few years ago, we denied a general stay of license renewal proceedings pending proposed rulemaking when intervenors in the *Oyster Creek* and other pending license renewal cases urged upon us their proposal for changes in the license renewal process.⁸ As we stated in *Oyster Creek*, we continue to consider “suspension of licensing proceedings a ‘drastic’ action that is not warranted absent ‘immediate threats to public health and safety.’”⁹

Our reasoning is supported by the Commission’s refusal to suspend the combined license (COL) proceeding for the Shearon Harris plant pending completion of our design certification review of the AP1000 reactor, Revision 16.¹⁰ There, we pointed out that lack of finality in the design certification process had been anticipated in the COL rulemaking, and that hearing procedures could be adjusted to account for any new or amended contentions based on

⁶ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381 (2001).

⁷ *Entergy Nuclear Vermont Yankee, L.L.C.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC___ (July 8, 2010) (slip op. at 10 & n.36) (citing authorities).

⁸ See Petition for Rulemaking: Denial, 71 Fed. Reg. 74,848 (Dec. 13, 2006).

⁹ *Id.* at 484 (citing *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000) (refusing to suspend all license transfer proceedings pending analysis of limited liability companies)).

¹⁰ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1 (2008).

information relating to design certification.¹¹ Accordingly, we found “no basis to hold [the *Shearon Harris*] notice of hearing in abeyance pending completion of the design certification rulemaking.”¹² We likewise took the same approach years ago in declining to stay dry cask storage proceedings pending requested rule changes.¹³

Here, as in those earlier cases, Petitioners’ concerns are untested and remain to be examined after receipt of comments on the rulemaking petition. If, upon closer examination, the NRC determines that proposing changes in its current rules and noticing a proposed rulemaking are warranted,¹⁴ we can revisit whether Seabrook or other reviews should be held in abeyance pending the outcome of the rulemaking. Petitioners have not shown that interim docketing and staff review of the Seabrook and similarly situated renewal applications would “jeopardize the public health and safety, prove an obstacle to fair and efficient decisionmaking, or prevent appropriate implementation of any pertinent rule or policy changes that might emerge from our important ongoing evaluation” of licensing policies,¹⁵ as ample time exists to decide this rulemaking before the Seabrook license may be renewed.

Thus, because we will have an opportunity to take a fresh look at the concerns Petitioners have expressed once the particulars of their rulemaking petition have been

¹¹ *Id.* at 4. Consistent with *Shearon Harris*, we likewise declined to suspend the *Fermi* proceeding pending outcome of the ESBWR design certification process. See *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 85 (2009).

¹² *Id.* When intervenors there renewed their request, we found “no new justification as to why these decisions deserve reconsideration,” nor any changed circumstances that could not previously have been brought to us, and we therefore declined to disturb our ruling. *Shearon Harris*, CLI-10-9, 71 NRC ____ (Mar. 11, 2010) (slip op. at 9).

¹³ *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant ISFSI), CLI-03-4, 57 NRC 273, 277 (2003); *Private Fuel Storage*, CLI-01-26, 54 NRC at 380-81.

¹⁴ We observe that, apart from individual license renewal proceedings, an update to the environmental GEIS is ongoing. See “Proposed Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses,” 74 Fed. Reg. 38,117 (July 31, 2009).

¹⁵ *Private Fuel Storage*, CLI-01-26, 54 NRC at 380.

scrutinized by public comment and agency review, “holding up these proceedings is not necessary to ensure that the public will realize the full benefit of our ongoing regulatory review.”¹⁶ Conversely, the interim relief requested by Petitioners would upset the status quo by effectively overturning a rule – for a period of indefinite duration – that was the product of carefully considered rulemaking.¹⁷ No harm, much less irreparable harm, will occur to Petitioners or others by mere continuation of the staff’s customary license renewal review process. Nor does the ordinary burden to parties in pursuing litigation pending rulemaking justify disrupting our ongoing review.¹⁸

We therefore *deny* Petitioners’ request for an interim suspension of operating license renewal applications and review pending resolution of their rulemaking petition.

IT IS SO ORDERED.

For the Commission

[NRC SEAL]

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of January, 2011.

¹⁶ *Id.* at 383.

¹⁷ See Final Rule: Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,487-88 (May 8, 1995); Final Rule: Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991).

¹⁸ See *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), CLI-09-6, 69 NRC 128, 135 & n.25 (2009).