



POLICY ISSUE **(Notation Vote)**

February 9, 1993

SECY-93-032

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 request Commission approval regarding the
resolution of comments about the procedural aspects of
the subject proposed rule raised by the Council on
Environmental Quality and the Environmental Protection
Agency, and to inform the Commission of additional
policy issues associated with comments on NRC's
treatment of need for generating capacity, alternative
energy sources, economic costs, and cost-benefit
balancing, and the overall status and schedule of the
rulemaking.

Background: In SECY-92-198, dated May 29, 1992, the staff informed
the Commission of plans to address major concerns
received from the Council on Environmental Quality
(CEQ), the Environmental Protection Agency (EPA),
various states, and others about the subject proposed
rule. A summary of CEQ and EPA concerns about the
adequacy of procedural provisions of the proposed rule
was provided. The staff identified three basic
options for proceeding with the final rule. These
options were: 1) retain the approach in the proposed
rule, 2) modify the rule to address policy concerns
but maintain essential exclusion features, and 3)
abandon the proposed rule and use the Generic
Environmental Impact Statement (GEIS) as a "tiering"
(reference) document. The staff informed the

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WHEN THE FINAL SRM IS MADE
AVAILABLE

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Commission of its intent to discuss the major provisions of option 2 with CEQ and EPA. These discussions have been concluded. Letters setting forth the proposed provisions of the rule and responding letters from CEQ and EPA are enclosed (Enclosures 1, 2, 3 and 4). The staff is working toward resolution of the remainder of the EPA comments within the next several months. The Commission was also informed that delays in the schedule would occur for publication of the final rule and the GEIS and that a final schedule would be provided following negotiations with CEQ and EPA. Finally, the Commission was informed that efforts to revise the regulatory guide and environmental standard review plan would be deferred until after expiration of the final date to challenge the final rule.

Discussion:

I. Agreement Reached with CEQ and EPA on Modifications to Certain Procedural Aspects of the Proposed Rule

CEQ and EPA agree that the proposed changes to the procedural elements of the rule, described below, should accommodate their concerns about limiting public comment and about the consideration of significant new information in individual license renewal environmental reviews. Both agencies reserve final judgement until their review of the final rule and final GEIS, to determine whether the NRC proposals have been satisfactorily implemented.

As a consequence of these agreements, the staff proposes to make the following changes to the proposed rule:

1. A supplemental site-specific environmental impact statement (EIS), rather than an environmental assessment, will be required in each license renewal proceeding. The EIS will be supplemental to the GEIS.
2. The final rule and GEIS will not include conditional cost-benefit conclusions. Conclusions on the overall cumulative impacts will be made in each site-specific supplemental EIS.

3. To accommodate EPA's concern that relevant information be easily available to the public, the supplemental EIS will summarize the discussion in the GEIS and reference the specific sections of the GEIS being relied upon.
4. The supplemental EIS will be published in draft form for public comment, consistent with 10 CFR § 51.73.
5. All comments will be reviewed by the staff regardless of whether the comment is directed to impacts in category 1, 2, or 3. The result of the staff review will be reported in the final supplemental EIS, in accordance with 10 CFR § 51.91(a)(1).
6. Comments on unbounded category 2 issues and category 3 issues and factual challenges as to whether a category 2 issue is bounded or unbounded for the particular site will be addressed in the final supplemental EIS.
7. Comments on category 1 issues and bounded category 2 issues, the assessments of which are codified in the rule, will be handled in the following manner:
 - a. The staff may determine that the information furnished is not new and significant and therefore the analysis codified in the rule stands. A commenter dissatisfied with such a response may file a petition for rulemaking under 10 CFR § 2.802 or seek a waiver under 10 CFR § 2.758 in order to pursue the matter in a hearing.
 - b. If the staff determines that the information furnished is new and significant, and

relevant both to the plant and to other plants, the staff will seek Commission approval to either suspend the application of the rule with respect to that analysis or to delay granting the renewal application (and possibly other renewal applications) until the rule can be amended.

- c. If the staff determines that the information furnished is new and significant, but relevant only to the specific plant, the staff will seek Commission approval to waive the appropriate section of the rule in that renewal proceeding.
- 8. Litigation of environmental issues in a hearing will be limited to unbounded category 2 and category 3 issues unless the rule is suspended or waived.
- 9. The GEIS and rule will be reviewed by the NRC on a schedule that allows revisions every 10 years, if necessary. The review will be accomplished in accordance with existing procedures for rulemakings and the specific procedures applicable for preparation of EIS's in 10 CFR Part 51.

Also as always allowed, a petition for rule making under the existing 10 CFR § 2.802 may be submitted by a member of the public at any time, requesting that the Commission modify the GEIS and 10 CFR Part 51 on the basis of significant new information.

II. Additional Policy Issues Arising from Public Comments on the Proposed Rule and Draft GEIS

Over one-hundred-and-twenty-five comment documents on the proposed rule have been received and reviewed. The two contractors supporting the GEIS have drafted responses to the purely technical comments. The staff is reviewing these draft responses. The staff is

developing proposed responses to comments that involve NRC policy and practice for environmental reviews. Ultimately Commission review and approval of these responses will be necessary. However, at the present time it is our desire to inform the Commission only of the comments involving policy issues. These are discussed below.

Public comments have raised significant issues of NRC policy and practice relative to the need for generating capacity, alternative energy sources, utility costs, and cost-benefit balancing. A number of states commented that the proposed rule and the draft GEIS would preempt or at least adversely affect state regulatory authority over the need for generating capacity, alternative energy sources, and utility costs. Some states and federal agencies and other commenters also expressed specific concerns with how these subjects and the cost-benefit balancing were analyzed in the GEIS. The staff is identifying options for addressing these concerns, and will report to the Commission when this effort is completed.

The staff intends to consult with EPA and CEQ in the process of developing the options. In addition, the staff is considering discussing the options with the states that expressed the concerns. Although these discussions are not required, they would provide greater assurance that the options presented to the Commission are based on a full understanding of state concerns. For example, it is clear from a legal standpoint that no NRC discussion in the GEIS of need for generating capacity or relative economics of license renewal could preempt any state decision on these issues, but further discussion with state officials could emphasize this point and avoid state perceptions to the contrary. Discussions would take place prior to reporting to the Commission and would add about 3 months to the schedule provided below. The staff desires Commission guidance on whether to hold discussions with the states at this time.

In the meantime the Commission should be aware of the potential that resolution of these comments could require a revision to the provisions of the existing 10 CFR Part 51 regarding the role of the need for generating

capacity, alternative sources of energy, utility costs, and cost-benefit balancing in NRC environmental reviews. A summary of the public comments concerned with NRC policy and practice in these areas follows:

1. Need for Generating Capacity

State commenters expressed concerns about the treatment of need for generating capacity in the proposed rule and the draft GEIS. These concerns include: 1) the states and not the NRC have the authority to determine whether there is a need for generating capacity, 2) the NRC forecasts of the need for generating capacity included in the GEIS and in 10 CFR Part 51 would preempt or interfere with a state's right and responsibility to determine need, 3) accurate forecasts can not be made so many years in advance, 4) to provide for meaningful state and public participation, need for generating capacity should be made a category 3 issue rather than category 1, and 5) if the NRC does address need for generating capacity it should defer to the states determination of need.

2. Alternative Energy Sources

Concerns were expressed by state and federal commenters about the treatment of alternative energy sources in the proposed rule and the draft GEIS. These concerns include: 1) the determination of energy mix is a state responsibility, 2) the comparison of alternatives should emphasize environmental consequences rather than economic costs, 3) an economic threshold test to trigger a further consideration of alternatives is inappropriate in a NEPA analysis, and 4) if a cost-benefit analysis is to be performed it is more appropriately used to compare and select among alternatives rather than just to demonstrate a favorable balance for license renewal.

3. Economic Costs

Concerns were expressed by state, federal, and utility commenters about the use of economic costs in the proposed rule and the draft GEIS. These concerns include: 1) the regulatory authority over utility economics which resides in the states, and to some extent in the Federal Energy Regulatory Commission, is preempted by NRC's heavy emphasis on economic analysis and use of economic decision criteria, and 2) for a NEPA review process, it appears that undue emphasis is given to economic costs.

4. Cost-Benefit Balancing

State, federal, and utility commenters expressed concerns with the use of cost-benefit balancing in the proposed rule and the draft GEIS. These concerns include: 1) the analysis is incomplete in its coverage of both environmental impacts and economic costs, 2) a cost-benefit analysis should be used to compare alternatives rather than just to demonstrate a favorable balance for license renewal, 3) there is double counting in the items included in direct costs and avoided costs, and 4) a cost-benefit balancing goes beyond the requirements of NEPA and of CEQ regulations, 40 CFR Part 1500. NEPA, as interpreted by CEQ regulations, requires only an assessment of the cumulative effects of a proposed federal action on the natural and man-made environment.

III. Status of Rulemaking and Schedule

Work on responding to comments on the proposed rule and accompanying documents is progressing on a broad front. However, the staff has given the highest priority to resolving those concerns that could affect the basic structure of the rule and that involve significant policy issues. With the discussions with CEQ and EPA and exchange of correspondence regarding the basic structure of the rule now completed, the staff is giving priority to completing responses to all EPA comments--technical as well as policy.

EPA has agreed to provide an assessment of the extent to which their comments are resolved within a month of receiving the proposed responses from NRC. The staff is working to complete these responses by early March 1993. Discussions with EPA and CEQ about the issues related to NRC policy and practice that are covered in Section II above will have the highest priority.

Because EPA and CEQ will take a final position on the extent to which their concerns have been addressed only after reviewing the final rule package, the staff intends to send them the draft final rule package to review prior to submittal to the Commission. This review adds 3 months to the schedule.

In SECY-92-198, the staff informed the Commission that any effort on revising the regulatory guide and the environmental standard review plan would be deferred until after publication of the final rule and GEIS and expiration of the date to challenge the rule. This is still the staff's intention.

The staff has developed the following schedule for the remainder of this rulemaking:

- o Brief Commission on status of rulemaking 02/19/93
- o Provide EPA with staff responses to its comments 03/05/93
- o Receive EPA assessment of satisfaction with responses 04/05/93
- o Commission paper on proposed resolution of policy concerns 05/14/93
- o Final rule package ready for Office review 09/24/93
- o Send final rule package to CRGR 11/10/93
- o Brief EDO 12/09/93
- o Send final rule package to EPA and CEQ for review 12/13/93

- o EPA and CEQ review letters received by 03/11/94
- o Submit final rule package to EDO 03/28/94
- o Submit final rule package to Commission 04/08/94
- o Final rule published by 06/10/94

Recommendation:

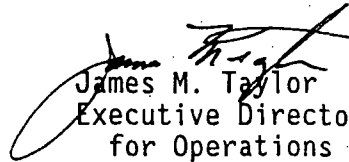
That the Commission:

- (1) Approve the modifications to the proposed rule negotiated with CEQ and EPA described in this paper and the enclosed letters.
- (2) Instruct the staff as to whether it should discuss the options for addressing concerns about preemption of state regulatory authority relative to need for generating capacity, alternative sources of energy, and utility costs with those states that expressed these concerns. This will add about 3 months to the schedule presented in this paper.
- (3) Note:
 - (a) Resolution of concerns raised in public comments about preemption of state regulatory authority could require a revision to the existing provisions of 10 CFR Part 51 regarding the role of the need for generating capacity, alternative sources of energy, utility costs, and cost-benefit analysis in NRC environmental reviews.
 - (b) The staff intends to consult with CEQ and EPA while developing the options to resolve the issues noted in (a).
 - (c) The staff will seek Commission approval on resolution of items of a policy nature.
 - (d) The schedule change will lead to publication of the final rule in June 1994.
 - (e) The staff intends to complete the revisions of the regulatory guide and the environmental standard review plan after

publication of the final rule and the
GEIS, and expiration of the date to
challenge the rule.

Coordination:

The office of the General Counsel has reviewed this
paper and has no legal objection.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. Letter to Lucida Low Swartz dated November 3, 1992
from Martin G. Malsch.
2. Letter to Martin G. Malsch dated November 5, 1992
from Lucinda Low Swartz.
3. Letter to Anne Norton Miller dated December 30, 1992
from Martin G. Malsch.
4. Letter to Martin G. Malsch dated December 31, 1992
from Anne Norton Miller.

Commissioners' comments or consent should be provided directly
to the Office of the Secretary by COB Thursday, February 25, 1993.

Commission Staff Office comments, if any, should be submitted
to the Commissioners NLT Thursday, February 18, 1993, with an
information copy to the Office of the Secretary. If the paper
is of such a nature that it requires additional review and
comment, the Commissioners and the Secretariat should be apprised
of when comments may be expected.

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H. Sipton

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

NOV 03 1992

Lucinda Low Swartz
Deputy General Counsel
Executive Office of the President
Council on Environmental Quality
Washington, D.C. 20503

Dear Ms. Swartz:

Thank you for meeting with us on April 22, 1992 and again on July 1, 1992 to discuss the Council on Environmental Quality (CEQ) March 16, 1992 comments on the NRC's Draft Generic Environmental Impact Statement (GEIS) for License Renewal (NUREG-1437) and the proposed 10 CFR Part 51 environmental protection rulemaking for nuclear power plant license renewal (56 FR 47016, September 17, 1991). After consideration of CEQ's comments, the NRC proposes to accommodate these concerns in the final GEIS and Part 51 rule as follows:

1. The final rule and GEIS will not include any conditional cost-benefit conclusions. The final rule and GEIS retain the concept of Category 1 and Category 2 issues, by codifying the analyses of the impacts of each individual Category 1 and bounded Category 2 issue. Conclusions on the overall cumulative impacts for each license renewal application would be made in the site-specific supplemental EIS. The individual analyses of the impacts contained in the GEIS and which are codified in the rule for Category 1 and bounded Category 2 issues will be used in this cumulative impact assessment, along with the site-specific impacts for unbounded Category 2 and Category 3 issues.
2. The proposed rule's option of preparing an EA will not be adopted in the final Part 51 rule. Instead, the final rule will require the preparation of a supplemental site-specific EIS for each license renewal proceeding. The analyses and impacts for unbounded Category 2 and 3 issues will be discussed individually in the applicant's environmental report and the supplemental EIS. The analyses and impacts for Category 1 and bounded Category 2 issues will not be discussed individually in the applicant's environmental report or in the supplemental EIS, although the analyses and the impacts for each issue, as codified in the rule, would be referenced. The supplemental EIS would be a supplement to the GEIS, and would be published in draft form for public comment.

3. The final rule will be modified to make it clear that when a draft supplemental EIS is issued for a particular plant, the public may file comments on the supplemental EIS and on whether the analyses of impacts codified in the rule are applicable to the plant in question. Such comments will be considered by the NRC in the following manner:

- a. All comments submitted with respect to the applicability of the analyses of impacts codified in the rule and the analysis contained in the draft supplemental EIS will be addressed by NRC in the final supplemental EIS in accordance with 40 CFR 1503.4.

NRC's response to a comment regarding the applicability of the analysis of an impact codified in the rule to the plant in question may be a statement and explanation of its view that the analysis is adequate including, if applicable, consideration of the significance of the new information. A commentator dissatisfied with such a response may file a petition for rulemaking under 10 CFR 2.802 or waiver under 10 CFR 2.758, seeking to have the rule suspended, amended or waived based upon significant new information. If the commentator is successful in persuading the Commission that the new information does indicate that the analysis of an impact codified in the rule is incorrect in significant respects (either in general or with respect to the particular plant), then a rulemaking proceeding will be initiated or, in the case of waiver under Section 2.758, the merits of the new information will be considered in the renewal review and, if properly raised as an issue for adjudication, in any hearing held in accordance with 10 CFR Part 2, Subpart G.

- b. If the commentator provides new information which is relevant to the plant and is also relevant to other plants (i.e., generic information) and that information demonstrates that the analysis of an impact codified in the final rule is incorrect, the NRC staff will seek Commission approval to either suspend the application of the rule on a generic basis with respect to that analysis or to delay granting the renewal application (and possibly

other renewal applications) until the rule can be amended.

- c. If a commentator provides new, site-specific information which demonstrates that the analysis of an impact codified in the rule is incorrect with respect to the particular plant, then the NRC staff will seek Commission approval to waive the application of the rule with respect to that analysis in that specific renewal proceeding.
 - d. The environmental issues to be litigated in any renewal hearing that is held will be limited to those addressed in the supplemental EIS (i.e., unbounded Category 2 and Category 3 impacts), absent a suspension of the rule or a ruling under Section 2.758 that the application of the rule should be waived or an exception be made for the particular proceeding.
4. The final rule will be modified to require the NRC to review the rule every 10 years and update it as necessary. The NRC would initially perform a review to determine what, if anything, in the rule requires updating. A scoping notice would be published in the Federal Register indicating the results of the NRC's review, and inviting public comments and proposals for other areas that should be updated. Established procedures for rulemaking would be utilized if the rule needs to be changed.

We believe that these proposals adequately address all of the substantive concerns raised by CEQ, while retaining much of regulatory and licensing efficiency benefits of the GEIS and 10 CFR Part 51 rulemaking which were envisioned by the NRC. We look forward to CEQ's response to our proposals.



Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking,
Office of the General Counsel



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

November 5, 1992

Mr. Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Malsch:

Thank you for your letter dated November 3, 1992 in which you describe the efforts of the Nuclear Regulatory Commission (NRC) to address the concerns raised by the Council on Environmental Quality (CEQ) regarding NRC's Generic Environmental Impact Statement for License Renewal (GEIS). On behalf of CEQ, I sincerely appreciate the way in which the NRC staff has tried to understand and to accommodate our concerns.

As outlined in your letter, NRC is proposing to issue a final rule which codifies factual summaries of the analyses of environmental impacts presented in the GEIS. Further, NRC is now proposing to eliminate the conditional cost-benefit analysis, to require the preparation of a site-specific environmental impact statement (EIS) (supplementing the GEIS) for each license renewal proceeding, and to address all comments submitted with respect to the generic and site-specific analyses. In my view, the proposal as modified is in keeping with the goals and requirements of the National Environmental Policy Act (NEPA) and the CEQ regulations implementing the procedural provisions of that statute.

CEQ raised three issues in its March 16, 1992, comments on the GEIS. First, I questioned whether the purpose of the GEIS was to provide support for NRC's proposed rule on relicensing or to provide support for a future decision on a specific license renewal application. It is now clear that the analysis found in the GEIS, along with site-specific analysis to be contained in a supplemental EIS prepared for a particular license renewal application, will be considered by the Commission in its decision on whether to grant or deny that application. In this way, all the potential environmental impacts of a relicensing decision will be considered by the agency.

Second, I noted that the GEIS should not be used to reach "conclusions" regarding the acceptability of environmental impacts before a site-specific analysis was completed. As noted

Letter to Martin G. Malsch
November 5, 1992
Page Two

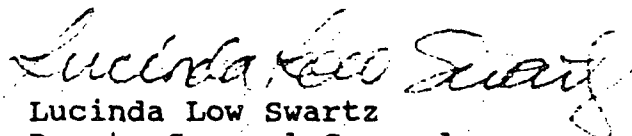
above, NRC has now decided to eliminate the conditional cost-benefit analysis and will consider the generic environmental impacts analyzed in the GEIS and the site-specific impacts analyzed in the site-specific supplemental EIS in its decisionmaking process.

Finally, I found fault with NRC's proposal to codify "conclusions" regarding the acceptability of many generic environmental impacts and to limit public comment on the applicability of the generic conclusions to a specific site. NRC is now proposing to codify a summary of the analyses contained in the GEIS on the Category 1 and bounded Category 2 environmental impacts, but will not be drawing conclusions as to the acceptability of those impacts until completion of the supplemental EIS. In addition, NRC will accept and address comments on the site-specific EIS, as well as on whether the analyses contained in the GEIS and codified in the final rule are applicable to the site at issue.

In sum, I believe that the procedural changes which NRC now proposes to adopt satisfy the concerns CEQ raised in its comments on the GEIS. This belief, however, is based upon the information you provided in your letter and I would reserve final judgment until a final GEIS and final rule are available for review.

Again, I thank you for your courtesy and cooperation.

Sincerely,


Lucinda Low Swartz
Deputy General Counsel



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 30, 1992

Ms. Anne Norton Miller, Director
Federal Agency Liaison Division
Office of Federal Activities
U.S. Environmental Protection Agency
401 M Street SW
Washington DC 20460

Dear Ms. Miller:

Thank you for meeting with us on December 3, 1992 to discuss the U.S. Environmental Protection Agency (EPA) March 16, 1992 comments on the NRC's Draft Generic Environmental Impact Statement (GEIS) for License Renewal (NUREG-1437) and the proposed 10 CFR Part 51 environmental protection rulemaking for nuclear power plant license renewal (56 FR 47016, September 17, 1991). The first two EPA concerns on public participation and future reviews (pp. 2-3 of March 16, 1992 EPA letter) appear to be coincident with the concerns of the Council on Environmental Quality (CEQ). The NRC has made an informal proposal to CEQ to address CEQ's concerns (Enclosure A), which CEQ has tentatively accepted (Enclosure B). The NRC believes that this proposal, as supplemented in response to specific EPA concerns raised at the December 3, 1992 meeting and in subsequent telephone conversations between EPA and NRC, responds to the first two EPA concerns on public participation and future review of the GEIS and Part 51 rulemaking¹. NRC's proposal consists of the following elements:

1. The final rule will require the preparation of a supplemental site-specific EIS for each license renewal proceeding; the option in the proposed rule of preparing an EA would not be adopted. The supplemental EIS would be a supplement to the GEIS, and would be published in draft form for public comment. Under existing requirements (10 CFR §§ 51.73, 51.92(d)(1)), a minimum of 45 days would be provided for public comment on the draft supplemental EIS².

¹The third concern, with respect to NRC utilization of local public notice procedures recommended by CEQ in 40 CFR 1506.6(b)(3), will be addressed separately by the Staff in its responses to EPA's technical comments on the GEIS.

²It is the NRC's intention that the notice of availability of the draft supplementary EIS which is published in the Federal Register will also refer to the public availability of the GEIS then in effect.

2. The final rule will be modified to make it clear that the public may file comments on the draft supplemental EIS regarding whether the GEIS' analyses of impacts which are codified in the rule are applicable to the plant in question, regardless of whether the comment is directed to impacts in Categories 1, 2 or 3.
3. All comments on the applicability of the analyses of impacts codified in the rule and the analysis contained in the draft supplemental EIS will be addressed by NRC in the final supplemental EIS in accordance with 40 CFR § 1503.4, regardless of whether the comment is directed to impacts in Categories 1, 2 or 3.

Such comments will be addressed by the NRC in the following manner:

- a. NRC's response to a comment regarding the applicability of the analysis of an impact codified in the rule to the plant in question may be a statement and explanation of its view that the analysis is adequate including, if applicable, consideration of the significance of the new information. A commentator dissatisfied with such a response may file a petition for rulemaking under 10 CFR § 2.802³. If the commentator is successful in persuading the Commission that the new information does indicate that the analysis of an impact codified in the rule is incorrect in significant respects (either in general or with respect to the particular plant), then a rulemaking proceeding will be initiated (as discussed below).
- b. If the commentator provides new information which is relevant to the plant and is also relevant to other plants (*i.e.*, generic information) and that information demonstrates that the analysis of an impact codified in the final rule is incorrect, the NRC staff will seek Commission approval to either suspend the application of the rule on a generic basis with respect to that analysis or to delay granting the renewal application (and possibly other renewal applications) until the rule can be amended. The updated GEIS would reflect the corrected analysis and any additional consideration of alternatives as appropriate.

³The NRC's procedures in 10 CFR Part 2, Subpart H with respect to petitions for rulemaking will be set forth in an appendix to the GEIS.

- c. If a commentator provides new, site-specific information which demonstrates that the analysis of an impact codified in the rule is incorrect with respect to the particular plant, then the NRC staff will seek Commission approval to waive the application of the rule with respect to that analysis in that specific renewal proceeding. The supplemental EIS would reflect the corrected analysis and any additional consideration of alternatives as appropriate.
4. The analyses and impacts for unbounded Category 2 and 3 issues will be discussed in the supplemental EIS. Although the GEIS's analyses and impacts for Category 1 and bounded Category 2 issues will not be discussed in detail in the supplemental EIS, summaries of the GEIS's analyses and impacts together with cross-references to the specific sections of the GEIS will be provided in the supplemental EIS.
5. The final rule and GEIS will not include any conditional cost-benefit conclusions. Conclusions on the overall cumulative impacts for each license renewal application would be made in the site-specific supplemental EIS. The conclusions on overall cumulative impacts in the supplemental EIS would be based upon the GEIS's generic analyses for Category 1 and bounded Category 2 issues, as well as the site-specific analyses of unbounded Category 2 and Category 3 issues in the supplemental EIS⁴.
6. The final rule will be modified to require the NRC to review the rule and update it as necessary every 10 years (i.e., the review will be initiated in advance of the 10 year period, such that any final rule necessary to update


⁴NRC agrees that in assessing the significance of an impact, c.f. 40 CFR 1508.27(b)(7), the cumulative impact will be considered, as that term is defined in 40 CFR 1508.7, viz.:

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (emphasis added).

the GEIS will be effective 10 years from the last update)⁵. The NRC would initially perform a review to determine what, if anything, in the rule requires updating due to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, consistent with 40 CFR 1502.9. A scoping notice would be published in the Federal Register indicating the results of the NRC's review, and inviting public comments and proposals for other areas that should be updated.

7. The statement of considerations (SOC) will make clear that a petition for rulemaking under 10 CFR 2.802 may be submitted by a member of the public at any time between the 10 year updates, if there is significant new generic or site-specific information suggesting that the analyses or conclusions in the GEIS and the Part 51 rule are substantially incorrect (i.e., more than de minimis errors).

We believe that these proposals adequately address EPA's concerns on public participation and future review of the analyses in the GEIS, while retaining much of regulatory and licensing efficiency benefits of the GEIS and 10 CFR Part 51 rulemaking which were envisioned by the NRC. We look forward to EPA's response to our proposals.



Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking,
Office of the General Counsel

⁵The statement of considerations for the final Part 51 rule will provide the rationale for revising and updating the rule every 10 years.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 31

OFFICE OF ENFORCEMENT

Mr. Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking
Office of General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Malsch:

Thank you for your letter dated December 30, 1992, which provides a Nuclear Regulatory Commission (NRC) response to the Environmental Protection Agency's (EPA) initial concerns on public participation and future reviews contained in its comment letter dated March 16, 1992 (pp. 2-3) on the Draft Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants and proposed rulemaking.

The EPA commends the NRC on its development of additional public participation procedures which will allow the public to comment on both the generic and site specific concerns in future, tiered, National Environmental Policy Act (NEPA) documentation.

Your response letter focused on the first two items listed under our general comments, public participation and future reviews section (pp. 2-3), addressing NEPA tiering and the NRC petitioning process.

EPA recommended that subsequent NEPA documents be tiered to the GEIS and that the Category 1 and bounded Category 2 issues in the GEIS be summarized and incorporated by reference into the tiered, site-specific documents. Your letter indicates that you will incorporate these recommendations into the NEPA process for license renewal of nuclear plants. We endorse the NRC's decision to prepare supplemental, site-specific environmental impact statements (EISs) for all sites as the process will provide more public participation than typically occurs when environmental assessments are prepared.

We also recommended a public commenting period of 60 days because of the need for the public to reference the GEIS during site-specific NEPA reviews. In the paragraph one of your proposal, it provides for a minimum of 45 days for public comment on the draft EIS. EPA concurs with the 45 day period since the NRC will summarize and incorporate by reference the GEIS findings, and the 45 day period is in accordance with the Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of the NEPA (40 CFR Section 1506.10(c)). Your letter states that the NRC will refer to the public availability of the GEIS during the notice of availability for the supplemental, site-specific EISs. The NRC's commitment to making the GEIS readily available to the public is important because of the substantial and technical nature of the material that will be incorporated by reference in the supplemental EISs.

In our draft GEIS comments, we requested that the NRC describe the petitioning process that the public would use if individuals were to comment on a site-specific relicensing action and your letter reflects that the NRC's rulemaking petitioning process will be included in an appendix for public accessibility and reference. We understand that the public may comment on both the GEIS and site-specific issues during the NEPA review for the individual renewal applications and that the NRC will meet the response to comments requirements under 40 CFR Section 1503.4. As indicated in paragraphs 3.b. and 3.c. of your letter, this may include evaluating alternatives not previously considered and modifying the analysis, where the NRC agrees that it is appropriate (40 CFR Sections 1502.9 and 1503.4).

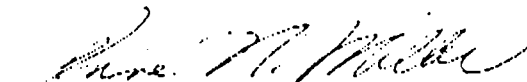
Paragraph 4 in your proposal indicates that the cumulative impact analysis will be consistent with 40 CFR 1508.7, to include the incremental impacts of relicensing when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.

We support your decision to include in the statement of considerations accompanying the Part 51 rule the rationale for choosing to update the GEIS every 10 years instead of every five years, as recommended in the CEQ Forty Most Asked Questions Concerning CEQ's NEPA Regulations. Furthermore, we support your decision to acknowledge your responsibility to supplement the analysis in the GEIS, if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR Section 1502.9). We understand this includes Category 1 and 2 issues.

In conclusion, the additional procedures described in the NRC proposal further expand and define the NRC policy for public participation which EPA endorses. The NRC proposal addressed part of one section of the EPA general comments. We look forward

to the NRC response to the other general comments, the recommended issue category changes, and technical comments provided in our draft GEIS comment letter. We will reserve judgement on the GEIS and proposed rulemaking until we review the final documents. In the interim, we look forward to continuing our dialog and interactions with you on the GEIS revisions. If you have any questions on our comments, please contact me on (202) 260-5071 or have your staff contact Susan Offerdal on (202) 260-5059.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne N. Miller".

Anne Norton Miller, Director
Federal Agency Liaison Division
Office of Federal Activities