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FPL
FLORIDA POWER & LIGHT COMPANY

July 12, 1985
L-85-269

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

Attention: Docketing and Service Branch

Dear Mr. Chilk:

Florida Power & Light Company would like to take this opportunity to submit its comments on the Proposed Rule - Decommission Criteria for Nuclear Facilities (50 Fed Reg. 5600-5625, 11 February 1985). The Company has reviewed the proposed rule and is submitting its comments in two sections: General Position and Specific Issues.

Very truly yours,

J. W. Williams, Jr.
Group Vice President
Nuclear Energy

JWW/DAB/eab

Attachment

GENERAL POSITION

The Nuclear Regulatory Commission (NRC) has primary responsibility for ensuring public health and safety with respect to the construction, operation, and decommissioning of nuclear power plants. Working within the guidelines established by the NRC, Florida Power & Light is justifiably proud of its accomplishments in providing safe, reliable, nuclear power. As such, Florida Power & Light does not question the legitimacy of the NRC's desire to assure that decommissioning will proceed in a safe, complete manner.

Our primary contention with the proposed NRC rulemaking exists only to the extent that the NRC prescribes specific decommissioning criteria, such as financing methods, funding levels and decommissioning methods, on the utility industry. The full responsibility for developing and implementing the details of decommissioning criteria should be between each utility and its regulatory authority of primary jurisdiction. The NRC should have the authority to review these criteria, but only directly intervene if it can be demonstrated that public health and safety will be adversely affected because a utility or its primary regulatory agency have failed to establish any decommissioning policy.

There are several reasons why it is appropriate for utilities and their principal regulatory commissions, rather than the NRC, be given the responsibility for implementing their own decommissioning criteria. First, with respect to financial assurances, state public service commissions (PSCs) and the Federal Energy Regulatory Commission (FERC) have traditionally been responsible for ensuring that utilities are financially capable of meeting all their costs and service obligations. In this context, decommissioning should be treated no differently than other utility obligations. Second, State PSCs and FERC have the jurisdictional responsibility for all rate making matters. Many regulatory agencies, including the NRC, impose quality of service obligations on utilities. However, the imposition of quality of service standards does not extend the authority to interfere in the process by which the costs for this service are recovered from customers. The final authorities on the price for utility services are State PSCs and FERC. Third, each utility and its principal regulatory agency are in the best position to determine the decommissioning criteria which will best suit their unique needs. Provided that the criteria selected will assure public health and safety, the costs and benefits of each decommissioning alternative as evaluated by each utility and regulatory agency will determine the optimal decommissioning criteria for the nation as a whole. The NRC should not interfer in this process beyond health and safety issues. Finally, it is likely that NRC intervention into decommissioning criteria will lead to regulatory conflicts with State PSCs and FERC. This would only act to delay adequate decommissioning planning, and jeopardize timely implementation.

In particular, financing methods and funding for decommissioning activities can best be developed between State PCSs and utilities. The ability of State PSCs to act in a manner that will allow utilities to collect sufficient funds has been reviewed by the NRC. The NRC, in the proposed rulemaking for eliminating financial qualification review for utilities applying for operating licenses (49 Fed. Reg. 13044-13040, 2 April 1984), stated in the Supplementary Information:

> The Commission believes it reasonable to conclude that, as a general rule, the rate regulation process assures for regulated electric utilities (or those able to set their own rates) the ability to meet the costs of safe operation of a nuclear power facility. (p. 13045)

The fact that nearly all utilities with nuclear facilities have or will shortly initiate collection activities for decommissioning costs under their State PSCs authority testifies to the fact that the present state rate regulation process is capable of accumulating the necessary funds.

Florida Power & Light has already been required by its PSC to fund a reserve for decommissioning of its licensed units. That fund, which is an amount less than required in the proposed rule, is an internal reserve being funded by revenue collected through retail rates. The Florida PSC, through its rate setting function, is completely advised as to our financial condition and has statutory authority to require such reports respecting the financial viability of Florida Power & Light as it deems necessary. The jurisdiction examined by the PSC respecting retail rates is parallel for wholesale rates by the jurisdiction of the FERC.

While the NRC has developed a series of NUREG/CR reports on studies of the technology, safety, and costs of decommissioning various kinds of nuclear facilities, the information base for rulemaking is incomplete. Missing from this data base is the existing State PSCs and FERC regulatory framework for developing decommissioning funds and the kind and amount of existing (or planned) decommissioning funds. This information will reveal to the Commission that utilities have taken specific actions in assuring that adequate funding will be available.

As was stated earlier, our contention wih the proposed rulemaking is the extent to which specific decommissioning criteria are being proposed for the utility industry. While utilities are developing and implementing decommissioning plans with State PSCs, there are other licensees for whom the NRC is the regulatory authority of primary jurisdiction or secondary jurisdiction through the State Agreement Program. As stated in the proposed rulemaking "Regulatory Analysis", the NRC must "determine which licensees need to provide financial assurance" (p. 8). The staff has stated that ". . . the historical record indicates that relatively small licensees (that do not require a radiological contingency plan) may default and may have the potential for a substantial contamination problem" (pp. 8-9). If the concern is the default or abandonment by small companies of their facilities, the proposed rule should be designed to address that problem. Unless the Commission can provide documentation on the likelihood of utilities not having funds available for decommissioning, the proposed rule should only address those

types of licensees who have a high risk of defaulting or abandoning their facilities.

Another concern Florida Power and Light has with the proposed rule is that the Commission has incorrectly focused the purpose of this rulemaking. Rather than delineating the requirements for a licensee to terminate its license, the proposed rulemaking is concerned with the financing of decommissioning, which is only part of the process in terminating a license. The NRC is responsible for developing decontamination, standards, ensuring the proper handling and disposal of radioactive waste, and setting safety standards, but the proposed rulemaking does not address these issues. The proposed rule would not assist a licensee who would choose to begin actions to terminate its license within the next three years. This proposed rulemaking should be redirected toward clearly defining a licensee's responsibilities and setting specific safety standards for license termination.

SPECIFIC ISSUES

Generic Prescribed Funding Level of $100 Million

The establishment of a prescribe funding level of $100 million (1984 dollars) is counter-productive relative to the NRC's concern that utilities be financially capable of satisfying their decommissioning obligations. State PSCs and the FERC determine the costs utilities can charge to customers for decommissioning. Despite the fact that utilities may be able to justify that decommissioning cost will exceed $100 million in the future, state regulators will likely use the NRC prescribed level as an upper limit. Similarly, an NRC sponsored inflation rate, which may or may not approximate the changes in decommissioning costs in the future, may also be treated by State PSCs in a similar manner. If shareholders are to be expected to pay for the difference between the customer funded level and actual costs, there is a risk that decommissioning may not proceed in a safe, timely manner. Therefore, any prescribed funding level and inflation rate may undermine the NRC objective of financial assurance. Florida Power & Light recommends that proposed Sections 50.33 and 50.54 (cc) be removed from the proposed rulemaking.

Funding Mechanisms

The NRC's discussion of the appropriate method of recovering for decommissioning costs stems from the concern that utilities provide sufficient financial assurance of the availability of funds at the time nuclear reactors are decommissioned. The NRC's concern with this matter is unwarranted for two reasons:

- The choice of the appropriate funding mechanism lies outside the NRC's jurisdictional responsibilities.

- Financial assurance is an inapproprite and incomplete basis for evaluating the various funding mechanisms.

Intervention into the method of funding for decommissioning costs is clearly outside the jurisdictional responsibility of the NRC. State PSCs and FERC are responsible for approving the timing and method of cost recovery for all utility costs. Decommissioning does not warrant unique treatment in this regard. Ratemaking entails more complexity than simply providing financial assurance. The NRC is correct in identifying that many funding mechanisms do exist. It would be entirely inappropriate and unprecedented for the NRC to impose a specific funding mechanism on a utility, its regulators, and customers. Individual utilities and states are in the best position to determine the funding options which best suit their needs. Also, imposing a specific funding mechanism would be contrary to the conclusion reached in NUREG/CR-3899, "Utility Financial Stability and the Availability of Funds for Decommissioning": ". . . from an economic and financial standpoint, any method of funding decommissioning, i.e., external reserves or internal reserves, is acceptable and provides excellent assurance of the availability of funds." (p.13)

The NRC's evaluation of funding mechanisms, with respect to the degree of financial assurance provided, is also inappropriate. Assuming that all funding mechanisms are designed to recover the appropriate dollar amount with accurate monitoring, decommissioning costs will be met. The risk that funds will be insufficient to safely decommission a nuclear unit if it experiences premature shutdown can be alleviated through insurance.

There are two possible scenarios, however, which may present risks with respect to adequate cost recovery. First, in the event that the NRC prematurely shuts down a safely operating nuclear plant due to an accident at a comparable plant owned by that utility or another utility, insurance coverage would not be sufficient to cover premature decommissioning costs for the utility that owns the safe plant. In this scenario, any shortfall between the funds actually recovered for decommissioning and actual costs will have to be covered by shareholders (barring emergency rate relief). The assumption that prepayment (immediate) funding would eliminate this risk would be incorrect. In light of the NRC proposal to establish a generic funding level of $100 million, it is almost certain that prepayment will be insufficient to recover the actual costs of decommissioning. In effect then, the non-accidental shutdown problem is a risk associated with all the funding options. There would be no preferred option should this scenario occur. Second, in the event a utility goes bankrupt, adequate cost recovery may be jeopardized if the internal reserve method is used. However, the potential risk of utility bankruptcy is unlikely and should not be used by the NRC as a basis for selecting a particular funding option. The question of safisfying the financial requirements of decommissioning during periods of financial distress has been examined by the NRC ("Utility Financial Stability and the Availability of Funds for Decommissioning", NUREG/CR-30999) and it was found:

> The market value of utilities, even those involved in the most extreme financial crises, is still far in excess of decommissioning costs. Therefore, even if the worst fears of investors are borne out, and the Public Utility Commissions do not allow substantial CWIP [Construction Work in Progress] to be included in the rate base, the value of the remaining assests, both tangible and intangible, are more than adequate to cover future projected decommissioning costs. (p. 13)

For example, at Florida Power & Light, the cash and accounts receivable balance as of year end December 1984 would cover approximately two times the expected decommissioning costs.

Florida Power & Light recommends that section 50.33 (k) be removed from the proposed rulemaking.

License Conditions

Proposed Section 50.54 would impose submission of decommissioning funding plans and retention of records as conditions of operating licenses. There are several reasons why operating licenses should not contain conditions for decommissioning activities.

- -- It permits a person to request a hearing any time a utility submits a modification to an approved financial assurance plan or requests an exemption under the notice and hearing procedures of 42 U.S.C.-82239. Hearings are not only costly and time consuming, but should be restricted to matters of nuclear safety.

- -- Allowing a hearing would provide a means for people who were not successful at the State PSC to reargue their case about the decommissioning funding plan with the NRC.

- -- Modifications to a license condition (e.g. deadline for environmental qualification) can cause difficulties both for the NRC and licensees.

- -- Section (dd) does not provide information regarding reporting requirements, updating requirements, type of records (i.e., Quality Assurance verified) or storage requirements.

- -- Decommissioning has little to do with nuclear plant operation. Criteria for decommissioning activities should be associated with termination of the operating license.

Florida Power & Light recommends that Sections 50.54 (cc) and (dd) be eliminated from the proposed rulemaking.

Submittal of Decommissioning Plan

Under proposed Section 50.82, a licensee must submit a proposed decommissioning plan within two years after ceasing operation, but no later than one year prior to license expiration. This section is unnecessarily restrictive and should be rewritten to allow utilities up to five years after ceasing operation to submit their decommissioning plan.

NRC has the responsibility under the Atomic Energy Act to ensure that all nuclear facilities are safely and completely decontaminated by the license holders and has the authority to require a decommissioning plan from its licensees. The submitted plan should be accurate, realistic, and feasible so that the NRC can effectively evaluate the proposed actions. Only after core unloading and other termination activities can the plant staff take measurements, inspect equipment and review records so that they may make decisions on decontamination strategies. It is at this time a licensee can develop a plan that will identify what techniques will be undertaken. Requiring a licensee to submit a decommissioning plan after cessation of operation does not negatively impact the public, since the site will

remain restricted, but favorably impacts the potential to decrease the exposure to employees and reduce decontamination costs since more data is available in developing an effective decommissioning plan.

Florida Power & Light recommendes that Section 50.82 (a) be rewritten to allow a decommissioning plan to be submitted independently from an application for termination of license and each licensee be allowed up to five years after ceasing operation to submit their decommissioning plan.

Decommissioning Methods

Under proposed Section 50.82 (b), a method for decommissioning which delays completion will be considered acceptable "if sufficient benefit results". This standard of acceptability is vague and may be interpreted too narrowly. The supplementary information to the proposed rule implies that the decay of radioactivity is the sole consideration in determining if a delay is beneficial. While this is an important consideration, other situtions may also be determined to be acceptable, such as:

-- waiting for a "newer" plant at a two unit site to cease operation so that both units can be decontaminated at the same time

-- delay in the development of high or low level burial site

-- development of new decontamination techniques.

Florida Power & Light recommends that the proposed rule should be redrafted to allow for health, economic, and safety benefits to be co be considered acceptable reasons for delaying completion of decommissioning.

Florida Power & Light would like to express its appreciation in allowing us to comment on this proposed rule.