

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM-54-5]

**Eric Epstein;
Denial of Petition for Rulemaking**

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: Denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Eric Epstein (PRM-54-5). The petition requests that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the petitioner requests that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings. The NRC is denying the petition because the petition presents issues that the Commission carefully considered when it first adopted the license renewal rule and denied petitions for rulemaking submitted by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02), and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03). The Commission's position is that the NRC's emergency planning system is part of a comprehensive regulatory process that is intended to provide continuing assurance that emergency planning for every nuclear plant is adequate. Thus, the Commission has already extensively considered and addressed the types of issues raised in the petition. Also, the

petition fails to present any significant new information or arguments that would warrant the requested amendment.

ADDRESSES: Publicly available documents related to this petition, including the petition for rulemaking and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387-4209 or (301) 415-4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Nina Bafundo, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone (301) 415-1621 or Toll Free: 1-800-368-5642, e-mail Nina.Bafundo@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

During the 1991 license renewal rulemaking (56 FR 64943; December 13, 1991), the Commission explained that initial license-type reviews are unnecessary at license renewal

because of ongoing NRC inspections, enforcement, and upgrades: "since initial licensing, each operating plant has continually been inspected and reviewed as a result of new information gained from operating experience." 56 FR at 64945. These ongoing regulatory processes provide reasonable assurance that the licensing bases of currently operating plants provide and maintain an adequate level of safety. (60 FR at 22464, 22481-82; May 8, 1995). The license renewal rule likewise reflects the NRC's determination that issues of adequate safety and protection should be addressed when they arise. See, 60 FR at 22481. The NRC anticipated that safety issues will inevitably emerge, but concluded that its ongoing regulatory process is comprehensive and flexible enough to manage safety concerns before the license renewal process. (71 FR 74848, 74851; December 13, 2006). Also, in making revisions to the license renewal rule, the Commission reaffirmed the vitality of its regulatory process. See, 60 FR 22461.

More specifically, the NRC's emergency preparedness regulations in 10 CFR Part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations by the performance of a full-scale exercise at least once every two years, with the participation of Government agencies. These exercises are evaluated by NRC inspectors and FEMA evaluators. In the interval between these two-year exercises, licensees must conduct additional drills to ensure that they maintain adequate emergency response capabilities.

Further, the NRC actively reviews its regulatory framework to ensure that the regulations are current and effective. The agency began a major review of its emergency preparedness framework in 2005, including a comprehensive review of the emergency preparedness regulations and guidance, the issuance of generic communications regarding the integration of

emergency preparedness and security, and outreach efforts to interested persons to discuss emergency preparedness issues. These activities have informed an ongoing rulemaking effort that will enhance the NRC's emergency preparedness regulations and guidance. See, Rulemaking Plan for Enhancements to Emergency Preparedness Regulations and Guidance, (April 17, 2007) (ML070440148); SRM-SECY-06-0200, Results of the Review of Emergency Preparedness Regulations and Guidance, (January 8, 2007) (ML070080411); SECY-06-0200, Results of the Review of Emergency Preparedness Regulations and Guidance, (September 20, 2006) (ML061910707).

The Petition

This petition raises concerns nearly identical to the recent petitions by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02) and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03), which the Commission denied after public comments. In the Spano and Scarpelli petitions, the petitioners requested that the NRC amend its regulations to provide that the agency renew a license only if the plant operator demonstrates that the plant meets all criteria and requirements that would apply if it were proposing the plant *de novo* for initial construction, including an emergency planning analysis. Similarly, this petition requests the NRC to make a "new finding of 'reasonable assurance of adequate protection,'" like a *de novo* review under the initial licensing process.

In the Spano and Scarpelli denials, the NRC addressed issues it had already considered at length during its license renewal rulemaking. See, 71 FR 74848, 74851. The Commission explained that "the petitioners did not present any new information that would contradict positions taken by the Commission when the license renewal rule was established or

demonstrate that sufficient reason exists to modify the current regulations.” *Id.* Likewise, this petition does not pose any new concerns that would undermine the rationale for the current license renewal process.

For the reasons given by the Commission in the final license renewal rule (56 FR 64943; December 13, 1991) and again in revisions to the final rule (60 FR 22461; May 8, 1995), the scope of license renewal is appropriately limited to those issues which have a specific relevance to protecting the public health and safety during the license renewal period -- i.e., age-related degradation. Issues relevant to current plant operations, like emergency planning and nuclear plant security, fall within the purview of the current regulatory process and continue into the extended operation period of a license renewal. The Commission also mandates that each plant-specific licensing basis be maintained during the renewal term in the same manner and to the same extent as during the original licensing term, thereby ensuring the protection of public health and safety and the preservation of common defense and security.

The Commission has affirmed repeatedly that “emergency preparedness need not be reviewed again for license renewal.” 71 FR at 74852 (referencing 56 FR at 64966). The Commission stated that “[t]hrough its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors.” 71 FR at 78452 (quoting 56 FR at 64966). This basic determination is reflected in the NRC’s regulations at 10 CFR 50.47(a) on emergency planning requirements, in which a new finding on emergency planning issues is not required for license renewal. Further, all of the emergency planning regulations in 10 CFR 50.47, 50.54(q), 50.54(s)-(u), and Appendix E are independent of the license renewal process, and continue to apply during the extended operation term.

For these reasons, the Commission denies PRM-54-5.

Following its review of this Notice, the Commission directed that the Notice include the following comments of Commissioner Jaczko:

I disagree with the decision to deny this petition for rulemaking. Instead, I believe the review of a license renewal application authorizing, if granted, an additional twenty-years of operation, provides the opportune time at which the agency should re-evaluate emergency preparedness issues. Currently, the only time the NRC issues a comprehensive affirmative finding that both onsite and offsite emergency plans are in place around a nuclear power plant, and that they can be implemented, is at the time it grants an initial operating license. Although there are regular assessments of these plans through exercises and reviews, we do not periodically reassess that initial reasonable assurance of adequate protection of the public - even it was made decades ago - unless and until we find a serious deficiency in a biennial exercise. I believe considering emergency preparedness during the license renewal process would provide an opportunity to improve public confidence in the licensees and in all levels of government.

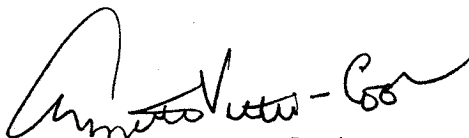
The Commission had additional views on the petition:

The Commission majority does not share Commissioner Jaczko's dissenting view. As stated in each of our votes on this matter, and in support of the Commission's responsibility to oversee the safety and security of operating reactors, we continue to support the view that issues of relevance to both current plant operation and operation during the license renewal period must be addressed as they arise within the present license term rather than at the time of renewal. Emergency planning is such an issue. Through its standards and required exercises, the Commission ensures that existing emergency plans are adequate throughout the life of any plant, even in the face of changing demographics and other site-related factors. The emergency preparedness regulations in 10 CFR Part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations through the performance of a full-scale exercise at least once every two years. These drills and independent evaluations provide a process to ensure continued adequacy of emergency

preparedness in light of changes in site characteristics. Consequently, consistent with the Commission's policy to confine the review of issues during license renewal to those uniquely relevant to protecting the public health and safety and common defense and security during the renewal period, we find no lost opportunity here and see no necessity for a review of emergency planning as part of the license renewal process.

Dated at Rockville, Maryland, this 25th day of July 2008.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke.

Annette L. Vietti-Cook,
Secretary of the Commission.