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Nuclear Group Headquarters
965 Chesterbrook Boulevard
Wayne, PA 19087-5691

OFFICE OF
PUBLIC
ADJUDICATION

January 13, 2000

Secretary
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR 72**
(64FR59677)

Subject: Comments Concerning Proposed Rule 10CFR72, "Clarification and Addition of Flexibility" (64FR59677, dated November 3, 1999)

Dear Sir/Madam:

This letter is being submitted in response to the NRC's request for comments concerning Proposed Rule 10CFR72, "Clarification and Addition of Flexibility," which was published in the Federal Register (i.e., 64FR59677, dated November 3, 1999). The NRC is proposing to amend its regulations on spent fuel storage to specify those sections of 10 CFR Part 72 that apply to general licensees, specific licensees, applicants for a specific license, certificate holders, and applicants for a certificate.

PECO Energy appreciates the opportunity to comment on this proposed rule. We believe that the proposed rule provides for increased clarity and minimizes ambiguity as to which portions of Part 72 apply to the various activities. However, the proposed rule would apply portions of Part 72 to the general licensee which are inconsistent with existing requirements in Subpart K of Part 72.

Specific comments on the Proposed Rule are provided in Attachment 1.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

James A. Hutton, Jr.
Director - Licensing

Attachment

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ATTACHMENT 1

The Proposed Rule adds Section 72.13 to identify the sections of 10CFR72 that apply to the activities associated with a specific license, a general license, or a certificate of compliance. The following changes are necessary to eliminate inconsistencies:

1. 72.44(b) and 72.50(a) are designated as applying to a general license. 72.44(b)(1) and 72.50(a) both require consent in writing prior to a license being transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly. 72.44(b)(1) and 72.50(a) are inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. It follows that if a transfer of the license to possess or operate a nuclear power reactor is approved under 10CFR50.80, the general license issued by 72.210 is also transferred without additional action. Section 72.13 should be revised to eliminate applicability of 72.44(b)(1) and 72.50(a) to a general license.
2. 72.44(b) and 72.60 are designated as applying to a general license. 72.44(b)(2) and 72.60(a) both state that a license is subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason, rules or regulations. 72.44(b)(2) and 72.60(a) are inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. 10CFR50.54(e) contains a similar requirement to that of 72.44(b)(2) and 72.60(a). It follows that a general license issued by 72.210 is subject to amendment, revision, or modification by reason of amendments to the Atomic Energy Act of 1954, as amended, or by reason, rules or regulations through 10CFR50.54(e). Section 72.13 should be revised to eliminate applicability of 72.44(b)(2) and 72.60(a) to a general license.
3. 72.44(b) is designated as applying to a general license. 72.44(b)(3) requires, "Upon request of the Commission, the licensee shall, at any time before expiration of the license, submit written statements, signed under oath or affirmation if appropriate, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked. 72.44(b)(3) is inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. 10CFR50.54(f) contains a similar requirement to that of 72.44(b)(3). It follows that a general license issued by 72.210 is subject to providing requested information through 10CFR50.54(f). Section 72.13 should be revised to eliminate applicability of 72.44(b)(3) to a general license.
4. 72.44(e) is designated as applying to a general license. 72.44(e) requires, "The licensee shall make no change that would decrease the effectiveness of the physical security plan prepared pursuant to 72.180 without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the license pursuant to 72.56. A licensee may make changes to the physical security plan without prior Commission approval, provided that such changes do not decrease the effectiveness of the plan. The licensee shall furnish to the Commission a report containing a description of each change within two months after the change is made, and shall maintain records of changes to the plan made without prior Commission approval for a period of 3 years from the date of the change." 72.180 and 72.56 are designated as applying only to a specific license and not applying to a general license. Therefore,

- applying 72.44(e) to a general license is inconsistent with the remainder of the Proposed Rule. Additionally 72.44(e) is inconsistent with 72.212(b)(5) in Subpart K which invokes the requirements of 10CFR73.55 and the change control requirements of 10CFR50.54(p). Section 72.13 should be revised to eliminate applicability of 72.44(e) to a general license.
5. 72.44(f) is designated as applying to a general license. 72.44(f) requires in part, "A licensee shall follow and maintain in effect an emergency plan that is approved by the Commission." 72.44(f) is inconsistent with 72.212(b)(6) in Subpart K which requires, "Review the reactor emergency plan, quality assurance program, training program, and radiation protection program to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals." 10CFR50.54(q) contains the change control requirements for the emergency plan. Section 72.13 should be revised to eliminate applicability of 72.44(f) to a general license.
 6. 72.52 is designated as applying to a general license. 72.52(c) states, "Any Creditor so secured may apply for transfer of the license covering spent fuel by filing an application for transfer of the license pursuant to 72.50(b). The Commission will act upon the application pursuant to 72.50(c)." 72.50 (b) and (c) are designated as applying only to a specific license and not applying to a general license. Therefore, applying 72.52(c) to a general license is inconsistent with the remainder of the Proposed Rule. Additionally, 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. It follows that if a transfer of the license to possess or operate a nuclear power reactor is approved under 10CFR50, the general license issued by 72.210 is also transferred without additional action. Section 72.13 should be revised to eliminate applicability of 72.52(c) to a general license.
 7. 72.54(d) through (m) is designated as applying to a general license. Applying any of 72.54, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas," to a general license is inconsistent with existing Subpart K requirements in 72.218, "Termination of licenses." 72.218 relies upon requirements contained in 10CFR50 which are adequate to ensure that spent fuel is disposed of properly and that decommissioning is completed so that the license may be terminated. Section 72.13 should be revised to eliminate applicability of 72.54(d) through (m) to a general license.
 8. 72.60 is designated as applying to a general license. 72.60(b) enumerates reasons that a license may be modified, revoked, or suspended in whole or in part. 72.60(b) is inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. 10CFR50.100 requirements are similar to those of 72.60(b). Section 72.13 should be revised to eliminate applicability of 72.60(b) to a general license.
 9. 72.60 is designated as applying to a general license. 72.60(c) states in part, "Upon revocation of a license, the Commission may immediately cause the retaking of possession of all special nuclear material contained in spent fuel held by the licensee." 72.60(c) is inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. 10CFR50.101

requirements are similar to those of 72.60(c). Section 72.13 should be revised to eliminate applicability of 72.60(c) to a general license.

10. 72.80(f) is designated as applying to a general license. 72.80(f) states, "If licensed activities are transferred or assigned in accordance with 72.44(b)(1), the licensee shall transfer the records required by 20.2103(b)(4) and 72.30(d) to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated." 72.80(f) is inconsistent with 72.210. 72.210 issues a general license to persons authorized to possess or operate nuclear power reactors under 10CFR50. It follows that if a transfer of the license to possess or operate a nuclear power reactor is approved under 10CFR50.80, the general license issued by 72.210 is also transferred without additional action. 10CFR50.71 requires that records be retained until the facility license is terminated unless otherwise specified. Section 72.13 should be revised to eliminate applicability of 72.80(f) to a general license.