



Palo Verde Nuclear
Generating Station

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January 28, 2000

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTN: Rulemakings and Adjudications Staff

DOCKET NUMBER
PROPOSED RULE **PR 72**
(64FR 59677)

Dear Sirs:

**Subject: Palo Verde Nuclear Generating Station (PVNGS)
Units 1, 2, and 3
Docket Nos. STN 50-528/529/530
Comment on Proposed Rule – 10 CFR Part 72: Clarification and
Addition of Flexibility**

Enclosed are comments from Arizona Public Service Company (APS) on the proposed rule changes to 10 CFR Part 72 for spent fuel storage published in the November 3, 1999 Federal Register (64 FR 59677).

No commitments are being made to the NRC by this letter.

If you have any questions, please contact Scott A. Bauer at (623) 393-5978.

Sincerely,

GRO/SAB/GAM

Enclosure

cc: E. W. Merschoff
M. B. Fields
J. H. Moorman

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COMMENTS ON 10 CFR Part 72 PROPOSED RULE: CLARIFICATION AND ADDITION OF FLEXIBILITY

The NRC published, and requested comments on, proposed rule changes to 10 CFR Part 72 for spent fuel storage in the November 3, 1999 Federal Register (64 FR 59677). The NRC states in the Federal Register notice that the Commission intended that the requirements imposed in Subpart K for general licensees for an independent spent fuel storage installation (ISFSI) be used in addition to, rather than in lieu of, appropriate existing requirements in Part 72. The proposed Section 72.13 identifies Part 72 sections that would be the "appropriate existing requirements" for activities associated with a general license for an ISFSI. However, some of these requirements were written for the ISFSI specific license, and their application to a general license is not clear or is inconsistent with Subpart K requirements. The following comments contain examples.

Comment 1

Section 72.44(d), under license conditions, is one of the existing Part 72 sections identified in proposed 72.13 as applying to a general licensee. 72.44(d) states:

"Each license authorizing the receipt, handling, and storage of spent fuel or high-level radioactive waste under this part must include technical specifications that, in addition to stating the limits on the release of radioactive materials for compliance with limits of part 20 of this chapter and the "as low as is reasonably achievable" objectives for effluents, require that:

- (1) Operating procedures for control of effluents be established and followed, and equipment in the radioactive waste treatment systems be maintained and used, to meet the requirements of 72.104;
- (2) An environmental monitoring program be established to ensure compliance with the technical specifications for effluents; and
- (3) An annual report be submitted to the Commission in accordance with Sec. 72.4, specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of operation and such other information as may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from effluent releases. On the basis of this report and any additional information that the Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate. The report must be submitted within 60 days after the end of the 12-month monitoring period.

The "technical specifications" are a component of a Part 50 reactor operating license, a Part 72 ISFSI specific license, and a Part 72 Cask Certificate of Compliance (CoC). However, a Part 72 ISFSI general license would not have technical specifications as a component of the license. The original Subpart K proposed rule that established general license requirements was published in the May 5, 1989 Federal Register (54

FR 19379), and the final rule was published in the July 18, 1990, Federal Register (55 FR 29181). According to the NRC discussion with the proposed Subpart K rule and the statements of consideration with the final rule, the NRC did not intend for general licensees to submit an application for a license that would include technical specifications. With this proposed rule, does the NRC intend that the cask technical specifications (written by and held by the cask vendor) would meet the requirements of 10 CFR 72.44(d) for general licensees? If so, 72.44(d) should be clarified to state that, for a general license, the required technical specifications would be those included with the cask Certificate of Compliance and would not be included with the general license. Requiring a general licensee to "include technical specifications" in their license is not clear and is subject to various interpretations.

Comment 2

Section 72.44(e), under license conditions is one of the existing Part 72 sections identified in proposed 72.13 as applying to a general licensee. 72.44(e) states:

"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."

Security requirements for a general licensee are specified in 10 CFR 72.212(4) under Subpart K. A general licensee would not prepare a security plan pursuant to 72.180 because 72.180 is not in the proposed 72.13 for applicability to general licensees. Further, a general licensee would not submit an application for an amendment pursuant to 72.56, since that section is not in the proposed 72.13 for general licensees. The general licensee would incorporate the ISFSI security requirements into their 73.55 security plan. Requiring 72.44(e) to be applicable to general licensees appears inconsistent with the existing general license requirements in Subpart K.

Comment 3

Section 72.192, operator training and certification program, is one of the existing Part 72 sections identified in proposed 72.13 as applying to a general licensee. Section 72.192 states that:

“The applicant for a license under this part shall establish a program for training, proficiency testing, and certification of ISFSI or MRS personnel. This program must be submitted to the Commission for approval with the license application.”

However, this requirement is not consistent with other requirements for a general license. Section 72.6(a) states that a general license is effective *without the filing of an application to the commission*. Therefore, application of this section to a general license creates conflicting regulations. A general licensee does not submit a license application. Further, in the Statements of Consideration (SoC) published in the July 18, 1990, Federal Register for the creation of Subpart K to Part 72 for general license requirements (55 FR 29181), the NRC response to comment no. 19 identifies what a current reactor licensee would have to do to obtain a general license. Submitting a program for training, proficiency testing, and certification of independent spent fuel storage installation (ISFSI) personnel for NRC approval is not identified as a requirement.

The proposed Subpart K rule for general license requirements was published in the May 5, 1989 Federal Register (54 FR 19379). The NRC discussion with the proposed rule states that reactor licensees would have to review their training program using procedures in 50.59 and modify it as necessary to cover the activities related to spent fuel storage under the general license. Nowhere in the NRC discussion of the proposed Subpart K rule is it suggested that the Commission intended for general licensees to obtain prior NRC approval of their program for training, proficiency testing, and certification of ISFSI personnel. This proposal should be clarified for application to a general license.