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Chief, Rules Review and Directives Branch  
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Dec. 18<sup>th</sup>, 2004

9/17/04  
69 FR 56104 (169)

RE: Docket No. 70-3103 National Enrichment Facility, Eunice NM

To whom it may concern:

I am writing to express profound concern about the regulatory review currently underway regarding the proposed N.E.F project near Eunice, NM.

I have serious concerns relating to what appears to be the functional barriers to public participation and scrutiny of this project, arising from: 1) General inaccessibility of technical information both directly related to this project and reference information used as tier supporting information for this application; 2) Inadequate solicitation of comment and/or incomplete consultation with appropriate regulatory, governmental, tribal and public stakeholders; 3) Incorrect, out-dated and misleading information disseminated via official NRC websites regarding the actual closing date for public comment/participation.

From what information I have been able to access, I have noted numerous apparent deficiencies in the scoping/D.E.I.S. process to-date, specifically relating to: 1) Inconsistent and general exclusion of implicit security risks and other security-related issues associated with the project; 2) Connectivity and critical dependency of this facility on associated radioactive source and waste material transportation issues; 3) Connectivity of this action with power transmission lines intended to supply the project; 4) Water and Wastewater management impacts on ground/surface water resources; 5) Legal issues associated with relevant existing interstate and international compacts concerning government, energy, economy, etc.

**Barriers to public review and scrutiny:**

As you well know, access to the NRC website supporting this permit action has been commonly closed to the general public for due to security concerns. In denying access to this information, the effect has been to deflect inquiry and delay investigation. As a result, both myself and the general public are deprived of an adequate opportunity to access and scrutinize information, and therefore, denied both the right and ability to fully-engage in the public review process.

More disturbing is the continued reliance of this permitting action upon dated references and questionably relevant studies which are practically and effectively unavailable for independent review. For example, within the transportation analysis sections, requirements for additional detailed scrutiny into several potentially relevant issues were dismissed based on existence NRC-EIS documents that were prepared in 1977 and 1980. I was personally unable to retrieve these documents through the NRC website to be sure, but given the interim growth in population, associated problems with air quality, and numerous sensitive environments along the interstate routes connected with the project, I am suspicious that such dated information is relevant today. I question true compliance with N.E.P.A. in this regard. To functionally "tear off" previous studies, such documents must at least be both accurate and timely. Referenced documents are over 20 years old! The public relies on certain assumptions regarding appropriate standards of "freshness" and accuracy when consuming information presented by its government in such proceedings.

SFSR Review Complete  
Template = ADM-013

E-2 FDS = ADM-03  
Ced = A. Mulford (AHB1)  
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Inadequate notification and solicitation of comment: Pursuant to 10 CFR 51.71 (d) as referenced in the D.E.I.S. "due consideration will be given to compliance with Federal, State, regional and local agencies having responsibilities for environmental protection." I question whether due consideration has in fact been given to the solicitation of necessary stakeholders and/or consultation with appropriate regional authorities. In view of the extensive regional/interstate and tribal issues potentially involved in power supply transmission routes, as well as transportation routing of both nuclear source and waste materials, it seems highly inappropriate that the comment of obvious regional and State authorities, as well as other stakeholders were not solicited for input.

Additional factors which serve to create a barrier to public participation in this action include the incompetent operation of official NRC website: For example, when accessed via "google" or other popular internet search engines, the link to NRC website provides information that has not been updated to reflect the extension of the public comment period to December 18<sup>th</sup>. Even as of the evening of Friday December 17, 2004, when accessing the site: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1790/>, one is provided the following message, beneath the official NRC logo:

"Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico (NUREG-1790) Draft Report for Comment This NUREG publication has been issued for public comment. The public comment period closed November 6, 2004."

Because significant press regarding potentially controversial issues such as interstate nuclear waste transportation didn't occur outside New Mexico until after November 28, (see Denver Post: West Wary of Nuclear Waste Route)-any citizen using the internet to investigate this matter has been incorrectly informed that the public comment period was closed Nov. 6<sup>th</sup>. Only if you were to follow links listed well-below the official website listing would internet users find notice that the comment period was extended. In addition to the general difficulties arising from sporadic closure and limited access to the NRC website, I believe that **failure to reliably update the content of official information** has served to functionally confuse and deflect additional public scrutiny of this project.

#### Deficiencies in project scoping and D.E.I.S. process:

Significant ambiguity exists regarding the overall purpose and need of this facility. The stated basic premise for the N.E.F. is to supply domestic demands, with many scenarios illustrating potential reliance on foreign source material for power generation if the project is not constructed. However, the applicant suggests in the D.E.I.S. that the plant will supply continuing demand "both in the U.S. and **abroad**". Definitive uses for all material produced by this facility must be provided. It should be very clear if any material produced by the facility will be used outside the U.S., or for any other purpose than power generation within the U.S. This raises basic questions regarding actual production from U.S. enrichment facilities as compared to actual demand from existing generating facilities. Is there an as yet 'unstated' administration policy which seeks to dramatically expand the construction of nuclear generators in the near future?

Regarding security concerns, I find it curiously paradoxical that information necessary to a basic review of this project is sufficiently sensitive as to warrant shutting down web access to shield it from the public eye, yet throughout the process, general concerns of terrorism (i.e. at the plant and the potential hijacking of source and waste shipments for dirty bombs) have been completely dismissed from consideration. It would seem that if

security issues are a rationale to dismiss for any aspect of this project, security concerns must be addressed with regard to all other issues. Clearly, there are very real issues associated with security of the plant, and the security of transported source/waste materials that have been simply dismissed in this process. It is only fair that if a decision is made to open this door on security for one aspect of analysis, security should be open to discussion for all other concerns as well. Lastly, if construction and operation of the project is accomplished in "phases", what has been done to address the special security issues associated with the presence of construction crews near operating nuclear facilities?

I have serious concerns that this application process has effectively segmented many activities that are directly connected to this permit action. For example, basic management plans for interstate transport of nuclear source and waste materials are left completely vague. Obviously, the plant cannot operate without the transportation of source material to supply it, and without waste material eventually hauled away. It seems equally obvious that those activities are connected actions -necessary to meet the purposes and need of the N.E.F. In recent press, LES Spokesperson April Wade has confirmed that even the multiple modes and routes currently described in the D.E.I.S. may change in the future. How is it possible to adequately scope, much less perform an environmental review for this project with so many critically important components left unresolved? How is it possible to solicit the input of affected communities at some future point when the 'option' of 'no-action' is no longer available to them?

Similarly, the construction of power transmission lines are critically necessary to the operation of the facility, and should therefore also be considered connected actions to this application. The same case can be made regarding water supply and wastewater infrastructures for the project. In both instances, detailed plans do not exist, and management strategies are, at best, vague. What is the source of the 'municipal' supply? What investigations have been performed to assure protection of the quantity and quality of aquifer/surface waters in the area? Environmental reviews for the construction and maintenance of utility infrastructure cannot be segmented from this project and should be included as part of this action.

Lastly, I question whether this project will be reviewed by existing regional entities. The existence of very important regional government organizations (i.e. Western Governor's Association, Western Interstate Energy Board, State/Regional Departments of Transportation, Economic Development and Utility Commissions) has been brought to the attention of the NRC by myself previously in scoping documents. Continued exclusion of these vested regional entities calls into question the good faith and discretion of both the applicant and the reviewing agency. To simply ignore the existence of both relevant interstate and international legal compacts in this action is at best dangerously arrogant, and at worst, unseemly and functionally prejudicial.

Thank you for the opportunity to submit these comments.

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