

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM-54-02]

Andrew J. Spano, County of Westchester, New York; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated May 10, 2005, which was filed with the Commission by Andrew J. Spano, County Executive, Westchester County, New York. The petition was docketed by the NRC on May 13, 2005, and has been assigned Docket No. PRM-54-02. The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction.

DATE: Submit comments by (insert date 75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include *PRM-54-02* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your

comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; email [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are 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 Document 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 1-800-397-4209, 301-415-4737 or by email to [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7163 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the County Executive of Westchester County, New York. Westchester County is a political subdivision, and municipality, of the State of New York, and is located immediately north of New York City. It is 450 square miles in size. It has a southern border with New York City (Bronx County) and a northern border with Putnam County. It is flanked on the west side by the Hudson River and on the east side by Long Island Sound and Fairfield County, Connecticut. The total population of Westchester County, as measured in the 2000 Census, is 923,459. The 2000 population is over 100,000 more than it was as measured in the 1960 Census.

Westchester County is the host county for the Nuclear Generation Stations at the Indian Point Energy Facility (Indian Point or IP), located in the Village of Buchanan, Town of Cortlandt. The petitioner states that because of the presence of the Indian Point facility, Westchester County has long had an interest and concern with the environmental, emergency, and public safety issues with respect to Indian Point.

## Background

There are two nuclear power plants at Indian Point: IP2 and IP3. These are currently operated by single purpose entities controlled by the Entergy Corporation (Entergy). IP2 & IP3's operating licenses are scheduled to expire in 2013 and 2015, respectively. The petitioner believes that in accordance with industry trends, Entergy could apply for license extensions for up to an additional twenty years, provided certain operating, environmental, and safety conditions are met.

The petitioner states that he is concerned with the criteria that will be used by the Commission in deciding whether to grant license extensions. The petitioner is concerned that the scope of the Commission's current regulations is too limited and that, as a result, the safety of the residents and communities near Indian Point will be in question during any extended operating period. The petitioner states that many factors have changed (see below) since the construction of IP2 and IP3. The petitioner believes that these changes have a significant impact on the safety of the community, yet they are not considered under the current license renewal regulations.

The petitioner states that building a nuclear power plant in the United States in the 1960s and 1970s represented a mutual commitment between the utility owner and the local community for a specific and limited period of time. The atmosphere during those early days (prior to 1979), according to the petitioner, was generally positive, in which local host communities would receive significant property taxes, the public would be assured of reliable low-cost power, and utility owners had a long period of time to recover their investments. He asserts that the Indian Point facilities were located in Westchester County, after New York City sites were rejected and that the local communities perceived the benefits of siting the facilities in Westchester County to be having direct access to reliable low-cost power and positive local

economic impacts. The projects created massive numbers of employment opportunities and were initially seen as safe technical ventures. The petitioner also asserts that both the local community and the utility had long term commitments to the facility, with the public having little recourse to question safety and operational issues after plant construction started and the utility having the right to the use of the plant for the full term of the license, often 40 years.

The petitioner states that after living with nuclear power plants for the past three decades, several events have changed that landscape - Three Mile Island-2, the Browns Ferry fire, utility bankruptcies, the Chernobyl accident, delays at Yucca Mountain, Davis-Besse reactor head problems, and the events of September 11, 2001. As a result, he states that plant orders have ceased and the public has become justifiably concerned about nuclear power plant safety. The petitioner states that these concerns are particularly sensitive at Indian Point, because of its proximity to major population centers, periodic leaks of radioactive material, difficult (if not impossible) evacuation issues, and its proximity to the World Trade Center.

#### The Proposed Amendment

The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction. The petitioner also requests that § 54.29 be amended to provide that a renewed license may be issued by the Commission if the Commission finds that, upon a *de novo* review, the plant would be entitled to an initial operating license in accordance with all criteria applicable to initial operating licenses, as set out in the Commission's regulations, including 10 CFR Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 71, 100 and the appendices to these regulations. The petitioner requests that corresponding amendments be made to §§ 54.4, 54.19, 54.21, and 54.23, and that § 54.30 be rescinded. The petitioner states that the criteria to be examined as

part of a renewal application should include such factors as demographics, siting, emergency evacuation, site security, etc. This analysis should be performed in a manner that focuses the NRC's attention on the critical plant-specific factors and conditions that have the greatest potential to affect public safety.

#### Problems with the Current Process

The petitioner believes that the process and criteria currently established in Part 54 is seriously flawed. He states that the process for license renewal appears to be based on the theory that if the plant was originally licensed at the site, it is satisfactory to renew the license, barring any significant issues having to do with passive systems, structures, and components (SSCs). The petitioner states that the regulations should be broadened and sufficiently comprehensive to cover all of the facets (including consideration of a worst-case scenario) that were considered for initial construction. Alternatively, he states that the license renewal process should examine all issues related to the plant and its original license, and then concentrate on any issues that are new to that plant or have changed since the original license was issued or that deviate from the original licensing basis.

The petitioner states that many key factors that affect nuclear plant licensing evolve over time; population grows, local/state Federal regulations evolve, public awareness increases, technology improves, and plant economic values change. As a result, roads and infrastructure required for a successful evacuation may not improve along with population density, inspection methods may not be adopted or may be used inappropriately, and regulations may alter the plant design after commercial operation. The petitioner believes that all of these factors should be examined and weighed in the formal 10 CFR Part 54 relicensing process.

The petitioner states that prior to the concept of life extension for nuclear power plants, it was generally assumed that plants would exist as operating facilities for the rest of their

design life, and then would enter a decommissioning phase. In fact, the collection of decommissioning funds from ratepayers initiated in the 1970s was based on a 40-year life.

### Key Renewal Issues

The petitioner states that it is time for the NRC to review, at the end of the 40 years of life, several questions that he asserts relate to key renewal issues about nuclear power plants on a plant-specific basis. These questions include the following:

- Could a new plant, designed and built to current standards, be licensed on the same site today? For example, given the population growth in Westchester County, it is uncertain if Indian Point would be licensed today. The population in the areas near Indian Point has outpaced the capacity of the road infrastructure to support it, making effective evacuation in an emergency unlikely.
- Have the local societal and infrastructure factors that influenced the original plant licensing changed in a manner that would make the plant less apt to be licensed today? For example, three of four counties surrounding Indian Point have not submitted certified letters in support of the emergency evacuation plan. That would not be a consideration under the current licensing process. However, the inability of local governments to support the safety of the evacuation plan should, at the very least, give serious pause before the licenses of the plants are renewed.
- Can the plant be modified to assure public health and safety in a post -9/11 era? For example, Indian Point cannot be made sufficiently safe according to James Lee Witt, former head of FEMA.

- Have local/State regulations changed that would affect the plant's continued operation? For example, Indian Point must convert from once-through cooling to a closed-cycle design using cooling towers.
- The original design basis of older nuclear power plants did not include extended onsite storage of spent nuclear fuel (SNF). At Indian Point for example, the current SNF storage plan includes one or more Independent Spent Fuel Storage Installations onsite, which increases the overall risk to the local community.

### Conclusion

The petitioner believes that these key renewal issues should be considered in the license renewal process, along with safety, security, and certainly the condition of both passive and active SSCs. The petitioner believes that the current NRC license renewal analyses ignore these issues.

The petitioner also believes that it is timely for the NRC to broaden the scope of license renewal investigations to assess the viability of the plants requesting license extension on a broad scale, one at least as broad as the original license hearings, and one that is site specific and site sensitive to an appropriate degree. Accordingly, the petitioner requests that the NRC amend its regulations concerning issuance of a renewed license.

Dated at Rockville, Maryland, this 9<sup>th</sup> day of June 2005.

For the Nuclear Regulatory Commission.

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Annette Vietti-Cook,  
Secretary of the Commission.