

**PR 2, 50, 51 and 52
(71FR61329)**

DOCKETED
USNRC

From: Andrew Kugler
To: JXB5@nrc.gov,HBC@nrc.gov,GSM@nrc.gov
Date: Thu, Nov 16, 2006 7:07 PM
Subject: Re: NRC Supplemental Proposed Rule - RIN 3150-AG24

November 20, 2006 (11:15am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Geary, Jerry

I don't really know who the right person is. But I wanted to get this to somebody there. As I understand it today is the deadline for comments on the supplemental proposed rule is today. I'm not aware of anybody on the NRR/NRO staff who's been involved in it. Although I'm inside NRC, I figured I'd better get comments in by the same date. I haven't had a lot of time to review what's been proposed. But I'd be putting mildly if I said I see a lot of problems with it, both technical and in terms of logistics.

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If neither of you is the right person, can you forward this to the appropriate contact? I'll be back in the office on Monday.

Andy Kugler, Sr Environmental PM
New Reactors Env. Projects Branch
DSER/NRO
(301) 415-2828

>>> <Rountree.Marthea@epamail.epa.gov> 11/16/06 3:40 PM >>>

All,

Attached are EPA's comments on NRC's Supplemental Proposed Rule - Licenses, Certifications, and Approvals for Nuclear Power Plants, (10 CFR Parts 2, 50, 51 and 52).

Please do not hesitate to contact me if you have any questions.

(See attached file: NRC-LWA.pdf)

Regards,

Marthea Rountree
Environmental Engineer
Environmental Protection Agency
OFA, NEPA Compliance Division, OECA
1200 Pennsylvania Ave., NW
AR Bld., Rm 7235 D (MC 2252A)
Washington, DC 20460

Phone - 202-564-7141
Fax - 202-564-0072

Template = SECY-067

SECY-02

Comments on Supplemental Proposed Rule

What has changed?

1. The impacts of the construction activities you now propose to exclude from NRC regulations have been a part of the NRC regulations since 1972. What has changed that you now have decided they will no longer be part of your environmental review? Has NRC been doing it wrong for more than 30 years (including the 3 early site permits that are either completed or near completion)?

What about common sense?

2. The impacts of the construction of a nuclear power plant that you now propose to exclude from NRC regulations are probably 90 percent of the true environmental impacts of construction. Before even talking to the NRC, a power company can clear and grade the land, build roads and railroad spurs, erect permanent and temporary buildings, build numerous plant structures (e.g., cooling water intake and discharge, cooling towers), and build switchyards and transmission lines. After potentially doing all of that, THEN the company would come to the NRC and ask permission to build the power plant for which all of this work was done. How does this comply with NEPA? You're going to ignore almost all of the construction impacts of the proposed action.
 - a. Your rule says you won't consider the sunk costs of all of this work in your decision whether to approve the request to build the plant. But you've allowed the company to do most of the environmental damage. Who cleans up the mess if you say no? Because you've excluded from your review all of this work that's specifically for the purpose of building the plant, you also can't require any redress plan for the site for those impacts.
 - b. You say you won't consider the sunk costs in your review. But it also sounds like the "baseline" for your environmental review will include the environmental damage done by a company in terms of "pre-application" activities. In other words, if an applicant for an LWA, CP, or COL has done all of the things you'll now allow without NRC review, the condition of the cleared and partially built site is now you're starting point for the environmental review. In terms of comparing this partially built site to any alternative site, you've essentially "pre-selected" the site chosen by the applicant. Clearly there will be less environmental impacts at a site that has already had most of the damage done to it as compared to any other site. So you've handed your responsibility for the site suitability determination over to the applicant.
 - c. How can NRC tell the world in an EIS that the only real impacts of construction of a nuclear power plant will be related to digging a big hole and a few other straggling items that will occur while the structures described in the FSAR are being built?
 - d. How are applicants and NRC going to divide impacts if some of the construction activities now outside the NRC's scope are going on at the same time as activities inside NRC's scope. For example, traffic impacts of the construction

workforce are often an issue. But how do you deal with it if part of the workforce is building cooling towers and intake systems, and part is building FSAR-listed structures? Another case is property taxes. The property taxes paid by the company are a significant item in the socioeconomic review. Is the applicant and the NRC now going to have to differentiate between taxes paid for FSAR-related facilities and taxes paid for other facilities? I'm pretty sure that's not possible. There are probably a number of examples like this.

3. The rule says that if an LWA is issued, the EIS to build and operate a nuclear power plant will be a supplement to the EIS for the LWA. In essence this means that the EIS that evaluates the impacts of building and operating a large commercial power plant will be a supplement to the EIS for digging a big hole. Now assuming the EIS for the big hole ignores all of the other impacts of construction that may already have taken place, it's going to be pretty limited in scope. So this EIS of very limited scope will now become the base document, and the EIS that considers ALL of the impacts of operations will be a supplement to it. Does this make sense to anybody? Does NEPA really allow this?
4. The LWA EIS, as I read it, will only be looking at the impacts of digging the big hole and pouring the foundation. So at what point does the staff evaluate the impacts of construction and operation to determine whether the site is SUITABLE for the construction and operation of a nuclear power plant? Is that done later? Does that mean you could authorize digging the hole at a site that could later be determined by NRC to be unsuitable?

What about key stakeholders?

5. Have you discussed these changes with key stakeholders like EPA, CEQ, and FERC? What do they think of this change? This is a major shift by the NRC away from its NEPA responsibilities. And other agencies may have real problems with it beyond the basic NEPA issues. For example, will FERC commence a review for transmission lines if the power company hasn't even submitted an application to NRC to build the plant for which its needed? Similarly, will the Corps of Engineers issue Section 404 permits to damage wetlands and dredge if there's no request to build a plant yet? Has anybody talked to them?
6. How does this change affect the current early site permit applicants? For example, Exelon and Dominion submitted redress plans for all of the impacts of construction they'd be allowed to carry out before receiving a license to build and operate a plant. (What a concept!) I believe Southern did too. Future applicants won't have to do this. What happens to the Exelon and Dominion redress plans? Do they get out of them now? If so, how do you explain that to all of the folks involved in those reviews who relied on the NRC's representations that a redress plan was required (e.g., the public, Federal and State environmental regulatory agencies)? What happens to Southern, which is early in its review?

What about resources?

7. The NRC expects over 15 applications for COLs in the next 3 years or so. Perhaps it can staff up to meet the challenge of preparing those 15 EISs. But can it possibly

handle 30? If most or all of the COL applicants choose to submit an LWA application too, which would seem likely, the staff will have to prepare 2 EISs for each site. Has anybody considered the resource implications? (And if an applicant chooses to go the ESP route for some reason, there will be three EISs.)

8. It appears that this new process will require major changes to NRC guidance documents such as regulatory guides and the environmental standard review plan. Almost everything related to the impacts of construction will have to be completely rewritten. Has anybody thought about whether this can be done before the first applicant uses the new rule?

From: Jerry Bonanno
To: SECY
Date: Mon, Nov 20, 2006 9:25 AM
Subject: Fwd: Re: NRC Supplemental Proposed Rule - RIN 3150-AG24

This is a timely filed comment that we received from Andy Kugler of the NRR staff on the above referenced rulemaking.

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Jerry Bonanno
Attorney
Office of the General Counsel
11555 Rockville Pike
Mail Stop O15 D21
Telephone: 301-415-1328
Fax: 301-415-3725

CC: Geary Mizuno

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From: Jerry Bonanno

Created By: JXB5@nrc.gov

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Subject: Re: NRC Supplemental Proposed Rule - RIN 3150-AG24
Creation Date Thu, Nov 16, 2006 7:07 PM
From: Andrew Kugler

Created By: ajk1@nrc.gov

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nrc.gov

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 HBC (Brent Clayton)

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