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August 10, 2007

**Draft Statement of Policy  
on Conduct of New Reactor  
Licensing Proceedings  
(72FR32139)**

Ms. Annette Viette-Cook  
Office of the Secretary  
United States Nuclear Regulatory Commission  
Washington, DC 2055

By email: [secy@nrc.gov](mailto:secy@nrc.gov)

Ms. Viette-Cook:

Beyond Nuclear at the Nuclear Policy Research Institute submits its endorsement of the attached comments as provided by the legal office of Harmon, Curran, Spielberg & Eisenberg, LLP with regard to the Draft Policy Statement on New Reactor Licensing as published in the Federal Register, June 11, 2007. We are likewise very concerned that the proposed draft policy statement would unduly and unreasonably undermine the public's effective participation in NRC licensing hearings on applications for new reactor construction.

DOCKETED  
USNRC

August 13, 2007 (9:06am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Sincerely,

Paul Gunter  
Director of Reactor Oversight

Attached: 08/10/2007 Comments of Diane Curran, Esq.

Template = SECY-067

SECY-02

**SECY - Comments of Beyond Nuclear on NRC Draft Policy Statement on New Reactor Licensing**

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**From:** <paul@beyondnuclear.org>  
**To:** <SECY@nrc.gov>  
**Date:** 08/10/2007 10:26 PM  
**Subject:** Comments of Beyond Nuclear on NRC Draft Policy Statement on New Reactor Licensing  
**CC:** <linda@beyondnuclear.org>

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Dear Ms. Viette-Cook, Office of the Secretary, US NRC:

Attached please find the comments of Beyond Nuclear and its endorsement of attached comments as submitted to NRC by Ms. Diane Curran, Esq. with regard to NRC Draft Policy Statement on New Reactor Licensing as published in Federal Register Notice June 11, 2007.

Sincerely,

Paul Gunter  
Director of Reactor Oversight  
Beyond Nuclear at NPRI  
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# HARMON, CURRAN, SPIELBERG & EISENBERG, LLP

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August 10, 2007

Annette Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
By e-mail to: [SECY@nrc.gov](mailto:SECY@nrc.gov)

SUBJECT: *Comments on Draft Statement of Policy on Conduct of New  
Reactor Licensing Proceedings*

Dear Ms. Vietti-Cook:

As a lawyer who practices regularly before the U.S. Nuclear Regulatory Commission ("NRC"), I am submitting comments on the NRC's Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings, 72 Fed. Reg. 32,139 (June 11, 2007). I am very concerned that the policy statement, as currently drafted, threatens to undermine the effectiveness of public participation in NRC licensing proceedings for new reactors by requiring interested members of the public to waste precious resources on piecemeal litigation with uncertain results.

As you are undoubtedly aware, throughout the NRC's history the public has performed an important role in the oversight of NRC-licensed operations. As members of the NRC's former Appeal Board observed in 1974:

Public participation in licensing proceedings not only can provide valuable assistance to the adjudicatory process, but on frequent occasions demonstrably has done so. It does no disservice to the diligence of either applicants generally or the regulatory staff to note that many of the substantial safety and environmental issues which have received the scrutiny of licensing boards and appeal boards were raised in the first instance by an intervenor.

*Gulf States Utility Corp.* (River Bend Units 1 and 2), ALAB-183, 7 AEC 222, 227-28 (1974) (citation omitted). In 1981, the then-chief of the NRC's Atomic Safety and Licensing Board (ASLB) Panel, B. Paul Cotter, Jr., described the benefits of public participation in NRC licensing decisions:

(1) Staff and applicant reports subject to public examination are performed with greater care; (2) preparation for public examination of issues frequently creates a new perspective and causes the parties to reexamine or rethink some or all of the questions presented; (3) the quality of staff judgments is improved by a hearing process which requires experts to state their views in writing and then permits oral examination in detail . . . and (4) staff work benefits from two decades of hearings

and [ASLB] decisions on the almost limitless number of technical judgments that must be made in any given licensing application.

B. Paul Cotter, Memorandum to NRC Commissioner Ahearne at 8 (May 1, 1981).

Citizen intervenor groups, however, do not have limitless time and resources with which to carry out their work. Because of the limitations on their resources, in order to participate effectively in NRC licensing proceedings they must carefully prioritize the most serious safety and environmental issues that should be raised. As currently written, the NRC's proposed policy would seriously undermine their effectiveness in using their limited time and resources, by forcing them to participate in licensing hearings in the abstract, before a license applicant has committed to building a plant in a given location or according to any particular design. In effect, the policy would allow nuclear power plant license applicants to bleed the resources of citizen intervenors before submitting a completed application for a plant.

There are a number of ways in which the policy statement would undermine intervenors' ability to participate effectively in COL proceedings, and even invite serious abuse. First, although the policy statement asserts that the Commission is not in favor of holding hearings on piecemeal applications, it would allow exemptions if even one completed application is filed. Any other applicant who sends in a partial application referencing the single completed application can force intervenors to waste resources by submitting an incomplete license application that references some aspect of another applicant's completed application. For example, even if a prospective applicant for Site X was not committed to using a particular design for Site X, it could submit a partial application to use Design A for Site X, if Design A had been submitted by another applicant in an application for Site Y. Any neighbor of Site X who was concerned about the adequacy of Design A would be forced to participate in the hearing for site Y or otherwise lose the opportunity to challenge that design in the eventual COL proceeding for Site X. But the neighbor of site X would have no opportunity to prioritize the most important safety and environmental issues that should be raised with respect to a new nuclear plant on Site X, because the entire application for Site X would not yet exist. And if the applicant for Site X later decided to drop Design A from the actual completed application for Site X, the neighbor would have expended its scarce resources for no purpose.

The proposed policy also appears to relax or abandon the requirement for reliance on design certifications, allowing license applicants to depart from certified designs in their license applications, and then forcing the consolidation of hearings where the applications appear to have something in common. In this respect, the policy seems intended to maximize the rigidity of design certification where intervenors' interests are at stake, and maximize flexibility where license applicants' interests are at stake. The policy should be consistent for both intervenors and applicants.

Annette Vietti-Cook, NRC Secretary  
August 10, 2007  
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The Commission has previously recognized the unfairness of piecemeal litigation governed by a license applicant's indecision about whether to pursue a project. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 29 (2001). The Commission should redraft its policy statement to ensure that COL hearings will be conducted in a manner that is fair to all parties.

Finally, the draft policy statement instructs licensing boards to tailor hearing schedules to accommodate limited work authorizations, by holding hearings on environmental matters and portions of the Safety Evaluation Report that are "relevant" to environmental matters. 72 Fed. Reg. at 32,141. Given that compliance with safety regulations is the principal means by which the NRC protects the environment, it is difficult to conceive of any safety-related issues whose resolution could lawfully be considered unrelated to compliance with the National Environmental Policy Act. Therefore, the Commission should eliminate this instruction from the policy statement.

Sincerely,

Diane Curran

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