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October 12, 2007

Dr. Pao-Tsin Kuo, Program Director
License Renewal and Environmental Impacts Division
Chief, Rules and Directives Branch,
Division of Administrative Services
Office of Administration, Mailstop T-6D59,
U.S. Nuclear Regulatory Commission
Washington, DC, 20555-0001

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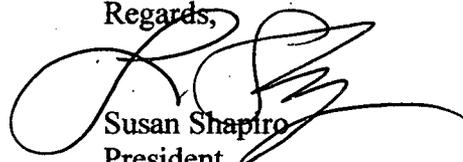
Re: Federal Register 45076, Vol. 72, No. 154, August 10, 2007/Notices

Subject: Comments on Scope of Environmental Impact Statement and Scoping Process Indian Point Energy Center Unit 2 and Unit 3

Dr. Pao-Tsin Kuo,

For your convenience, please find enclosed a courtesy CD copy of Friends United for Sustainable Energy USA, Inc. (FUSE) of our Comments on Scope of Environmental Impact Statement and Scoping Process Indian Energy Center Unit 2 and Unit 3, which was electronically filed on October 12, 2007.

Regards,


Susan Shapiro
President

SUNSF Review Complete
Template = ADM-013

ERFDS = ADM-03
Add = J. Convery (Jsc1)
Bo Plann (bnp)

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Subject: Comments on Scope of Environmental Impact Statement and Scoping Process Indian Point Energy Center Unit 2 and Unit 3

Dr. Pao-Tsin Kuo,

In accordance with the above notice as well as the federal rules promulgated under 10 C.F.R. §51.26, and §51.28, Friends United for Sustainable Energy (FUSE) sets forth comments regarding the scope of the environmental impact statement submitted under Appendix E by Entergy.

The review by FUSE examines federal regulations including NRC regulations contained in CFR 51, 10 CFR 54, the National Environmental Protection Act contained in 36 CFR 800.8, as well as xxxx, the President's Council on Environmental Quality, and applicable case law.

FUSE examined guidance documents promulgated by the Commission including NUREG 1850, "xxxx", NUREG 1437, "generic environmental impact statement," NUREG 1550, xxxxxx, and Supplement 1 to Regulatory Guide 4.2, "Preparation of Supplementary Environmental Reports.

The comments provided in this report establish six fundamental and distinct areas for consideration in establishing scope for the EIS associated with the new superseding license for Indian Point 2 LLC and Indian Point 3 LLC.

First, FUSE examined each of the 92 issues contained in CFR 51 Appendix A subpart B, regardless of how the issue was originally classified. This in part was predicated on generic issues contained in the GEIS report having not substantially changed since 1996. The approach taken was to use then invoked criteria provided in 10 CFR 51 to confirm exclusion from scope, or, based upon our findings, request that the Commission address certain generic issues by including, as a minimum, that the issue be included in the site specific environmental statement, and by sufficient coordination and substantial clarity to the stake holders indicate precisely how the issue was being addressed if Commission excluded the issue in favor of it being handled by another agency. Where possible, due to the limited time the format under NUREG 1850, including issue numbers or FAQ numbers are used to assist in more clearly communicating the specific content of the requested scope addition.

Second, FUSE examined the scope of site specific issues for completeness, given the dated list published in Appendix A subpart B, and as appropriate, provided additional emergent issues that, after review of all federal regulatory agency requirements, appear to be incomplete or absent in the present guidance documents. There appears to be a potential coordination failure between agencies, such as the one found under the recent 9th circuit appellate review of *Mothers of Peace v. PG&Exxxx*

Third, the scope of these comments include emergent issues relevant to previously approved EIS¹ based upon assumptions that will no longer be valid if based upon Entergy's Renewal Application to operate the facility under a new license for an additional 20 years. An example of this is the dry cask storage pad design, and proposed configuration of the spent fuel casks considered as a Category 1 issue in 10 CFR51. However, given the multiple emergent issues, including (1) long term permanent storage issues remaining unresolved, (2) known multiple spent fuel pool leakage issues, (3) requiring design load changes to the pad and cask storage changes, (4)

¹ In accordance with §51.12 post June 7, 1984.

closing of the Barnwell storage facility, (5) fissures in the pad that were unanticipated, (6) potential mixing of fuels from different units including Unit 1, and finally the extent of contaminated soil requiring remediation and removal, as well as new seismology studies are each relevant to the EIS for the renewal license itself and probable environmental consequences. associated with these issues are germane to the SEIS process.

Fourth, an examination of Entergy's License Renewal Application Appendix E first for in scope issues and the second in specific criteria derived from federal regulations in particular 10 CFR 51.20. CFR 51.20 was completed. Criteria provided in regulatory guidance and federal rules were verified for those items that are required to be addressed were confirmed as actually included in the appendix, and the commitments made by Entergy were confirmed and reviewed against the reasonable assurance standard provided by NEPA.

Fifth, examination of cumulative changes to the facility including plant modifications, operational procedural changes, and fuel cycle management, and compliance to maintenance rules including 10 CFR 50.65 were examined for conformance with aggregation of environmental impact, and compliance with federal regulations. In particular, changes to the facility under 10 CFR 50.59 apparently did not aggregate environmental impact analysis and provide necessary comprehensive EIS review as required under section 102(C) of NEPA, which warrants detailed site specific assessment environmental impact analysis and additional scope.

Finally it is observed that Entergy's site specific environmental analysis is actually word for word identical in content to other Entergy plants *regardless of the distinct site specific characteristics*. For example, the final SEIS report for Vermont Yankee and Pilgrim and preliminary SEIS for Indian Point are confirmed identical. In fact a brief examination of seven plants contained word for word precisely the same language. An equally troubling concern, is that in each case, no changes were made from preliminary SEIS to final SEIS. The regulatory authorities apparently were satisfied with the *generic versions of what was supposed to be a site specific SEIS* for each site as was originally submitted.

One is compelled to ask why? Close examination as provided in Section VI reveals that in each SEIS, Entergy's assertions of no environmental impact turns on their claim that there are no refurbishment

issues anticipated for, or during the period of license extension. The argument collapses on a fact analysis alone. Refurbishment issues are predicted, and in fact required for many active components, and the consequences of rationalizing not performing them are immediately obvious. One only has to look at Entergy's Vermont Yankee cooling tower collapse after a lengthy environmental intervention by the stakeholders to include the cooling towers within scope where the ALSB ultimately ruled against the petitioner.

Closer examination reveals more disturbing activities that appear to deliberately circumvent disclosure of refurbishment of equipment during the relevant license renewal period, by upgrading or refurbishing the equipment prior to the renewal period. This apparently deceptive approach to refurbishment directly controverts regulations targeted specifically to include as in scope, all refurbishment done in anticipation of license renewal. Examples are provided in section VI including the refurbishment plans for both Indian Point Plant reactor vessel heads scheduled for 2011 and 2012, and the refurbishment of equipment during power up rate initiatives. In addition, one only needs to examine substantial historical design basis events such as the Unit 2 Steam Generator Tube rupture that show no signs of simply disappearing over the extended operation.

A recently published report by the Office of the Inspector General confirms related weaknesses in the Commissions role in license renewal. In particular, three of the five findings are relevant including: (1) license renewal reporting efforts need improvements; (2) consistent evaluation of operating experience would improve NRC reviews; (3) license renewal issues need evaluation for back fit application. See Exhibit 5.

Each of these six scoping elements is addressed in the following attachment.

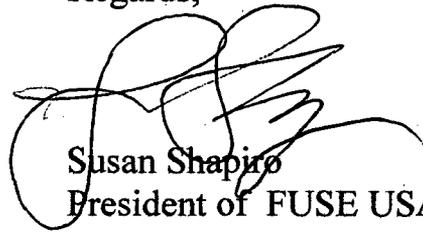
Further, FUSE formally requests a timely response by the Nuclear Regulatory Commission during the initial EIS Scoping process specific to each scope issue in writing, reasons for denying inclusion in the EIS any of the issues set forth by FUSE or others within 30 days of the closing of Scoping Comment acceptance. The NRC simply stating something is out of scope, or fails to bring up new information are inadequate answers in explaining their reasoning for denial.

It is noted herein and on record that the New York State Attorney General's office made a similar request at the public EIS Scoping meeting held on September 19th, 2007. FUSE supports and endorses the comments on scope of Environmental Impact Statement and Scoping Process Indian Point Energy Center Unit 2 and Unit 3 by Riverkeeper and Gary Shaw, a member of FUSE.

FUSE reserves the right to amended the attached comments as permitted in 10CFR 51.45.

The entire document and attachments are being sent electronically by email to the address cited in the above reference Federal Registry notice.

Regards,

A handwritten signature in black ink, appearing to read 'Susan Shapiro', is written over the typed name and title.

Susan Shapiro
President of FUSE USA, and lead counsel