

RAS 14788

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

DOCKETED
USNRC

December 11, 2007 (8:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**Before Administrative Judges:
Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop**

**In the matter of
ENTERGY NUCLEAR OPERATIONS, INC.
(Indian Point Nuclear Generating Units
2 and 3)**

**DOCKET NOS.
50-247-LR
50-286-LR
December 10, 2007**

**CONNECTICUT RESIDENTS OPPOSED TO RELICENSING OF INDIAN POINT AND
ITS DESIGNATED REPRESENTATIVE'S
10 CFR §2.335 PETITION**

Pursuant to 10 CFR §2.335(b), Connecticut Residents Opposed to Relicensing of Indian Point ("CRORIP") and its designated representative, Nancy Burton (collectively "the Petitioners"), petition herewith for a waivers, for purposes of the pending relicensing proceedings, of the NRC's Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS") with regard to (a) its exclusion of radiation exposures to the public and occupational radiation exposures during the license renewal term as Category 1 excluded issues which do not require site-specific analysis and (b) its use of the "Reference Man" dose models from 1980.

The Petitioners respectfully submit that special circumstances with respect to the subject matter of the instant proceeding are such that the application of the categorical exclusion rule would not serve the purposes for which it was adopted. An affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule would not serve the purposes for which the rule was adopted is attached hereto. The affidavit states with particularity the special

TEMPLATE SECY-037

SECY-02

circumstances alleged to justify the waiver is attached hereto.

**CONNECTICUT RESIDENTS OPPOSED TO
RELICENSING OF INDIAN POINT
NANCY BURTON**

By:

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**AFFIDAVIT IN SUPPORT OF CONNECTICUT RESIDENTS OPPOSED TO
RELICENSING OF INDIAN POINT AND ITS DESIGNATED REPRESENTATIVE'S
10 CFR §2.335 PETITION**

I, Nancy Burton, having been duly sworn, do declare as follows:

1. I am above the age of eighteen (18) years and I believe in the obligation of an oath.

2. I submit this Affidavit in support of the foregoing 10 CFR §2.335 Petition of Connecticut Residents Opposed to Relicensing of Indian Point ("CRORIP") and Nancy Burton as petitioners to intervene in these proceedings, in accordance with the provisions of 10 CFR §2.335.

3. Pursuant to 10 CFR §2.335(b), CRORIP and its designated representative, Nancy Burton ("the Petitioners"), petition for a waiver, for purposes of the pending relicensing proceedings, of the NRC's Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS") with regard to (a) its exclusion of radiation exposures to the public and occupational radiation exposures during the license renewal term as Category 1 excluded issues which do not require site-specific analysis and (b) its use of the "Reference Man" dose models from 1980.

4. The Petitioners respectfully submit that special circumstances with respect to the

subject matter of the instant proceeding are such that the application of the categorical exclusion rule and archaic "Reference Man" dose models would not serve the purposes for which they were adopted.

5. The purpose of this Affidavit is to identify the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule would not serve the purposes for which the rule was adopted and to state with particularity the special circumstances alleged to justify the waiver.

6. In 1996, the NRC prepared a generic Environmental Impact Statement for license renewal: NUREG-1437, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* ("GEIS").

7. On its website at <http://www.nrc.gov/reactors/operating/licensing/renewal/process.html>, the NRC provides an explanation of the purpose underlying its adoption of the GEIS as follows:

The Generic Environmental Impact Statement (GEIS) examines the possible environmental impacts that could occur as a result of renewing any commercial nuclear power plant license and, to the extent possible, establishes the bounds and significance of these potential impacts. For each type of environmental impact, the GEIS attempts to establish generic findings covering as many plants as possible. When plant- and site-specific information is used in developing an envelope of generic findings, the NRC does not intend for the GEIS to be a compilation of individual plant environmental impact statements. Instead, this report may be incorporated, by an applicant, into a license renewal application environmental report. The GEIS makes maximum use of environmental and safety documentation from original licensing procedures, and

information from state and Federal regulatory agencies, the nuclear utility industry, the open literature, operating experience and professional contacts. It allows the applicant to concentrate on those impacts that must be evaluated on a plant-specific basis.

Information provided on the plant-specific issues will either disposition the issue as not applicable or present an analysis of the issue using site-specific information. Mitigation and alternatives to reduce adverse impacts must also be discussed. This approach, the use of generic environmental impact statement with a plant-specific supplement, improves the efficiency of the licensing process for licensees and the NRC.

8. Thus, NRC's own description of the process that produced the GEIS does not includes components such as public input and operational conditions occurring post-adoption of the GEIS, that is, post-December 18, 1996, nor progress in the evolution of standards to better protect the public health and safety from radiological exposures to workers and the public off-site.

9. NRC regulations adopting the GEIS characterize environmental impacts as either "Category 1" or "Category 2." See Table B-1 of Appendix B to 10 CFR Part 50.

10. The NRC applies Category I conclusions generically and allows license renewal applicants to reply on those conclusions, generally disallowing challenges to the conclusions in individual license renewal proceedings. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 12 (2001).

11. In recognition of the National Environmental Policy Act ("NEPA") requirement that it consider new and significant information or changed circumstances bearing on the environmental impact of its licensing decision, the NRC, through 10 CFR §2.335,

makes provision for individual waivers or generic changes to its environmental regulations. Id. The NRC also requires license renewal applicants to address new and significant information or changed circumstances in their Environmental Reports ("ERs"). 10 CFR §51.53(c)(3)(iv).

12. In the application at hand, the GEIS relegates the important topic of "Human Health" vis-a-vis radiation exposures to the public and occupational radiation exposures during the relicensing term to Category I exclusion.

13. Thereby, the GEIS excludes consideration of site-specific conditions involving human health impacts from radiological exposures to workers and the public during the public license renewal proceedings.

14. With regard to conditions at the Indian Point Nuclear Power Station, this is clearly an mistaken course to follow. Factors which demonstrate that the exclusion of Human Health as a Category I issue in these proceedings would not serve the purposes for which the rule was adopted include the following:

A. It entirely removes from the proceedings arguably the most critical issue involved in continuation of operations during the license renewal term: the very health of the plant's workers and the public surrounding the plant. Thus, rather than effectuate the purposes underlying enactment of the GEIS - to assist the NRC and the applicant in complying with NEPA in an efficient way - it simply buries the issue so that the true environmental impacts cannot and will not be probed nor evaluated in the public proceedings.

B. The Petitioners respectfully represent that Indian Point's radiological emissions cannot be completely disregarded as a possible factor in the high levels of strontium-90

found in baby teeth near the plant and the correlation found between high strontium-90 levels and elevated cancer incidences in the communities closest to the plant. (See Declaration of Joseph J. Mangano, November 30, 2007, and attachments thereto, filed by Petitioners in support of their December 10, 2007 intervention petition and incorporated by reference herein.)

C. It is a fact that even the applicant recognizes that substantial leaks of radioactive material have occurred at the plant since GEIS was enacted in 1996: the occurrence of such leakages and the prospect for continued and/or worsening leakages in the relicensing term are issues which need be considered for their environmental impact to human health.

15. The Petitioners also seek a waiver of the NRC's use of "Reference Man" - a healthy white male - in its dose calculations.

16. In 2005, the Committee to Assess Health Risks from Exposure to Low Levels of Ionizing Radiation (National Research Council of the National Academies) issued a report that concluded that women have a 52 per cent greater chance than men of getting cancer from radiation exposure. Seven years ago the Environmental Protection Agency had reached similar conclusions. Yet, radiation protection regulations applicable to U.S. nuclear power plants is still stuck in the past - their "reference" person is a man.

17. Thus, a central principle of environmental health protection - protecting those most at risk - women, children and fetuses - is missing from the regulatory framework.

18. As a consequence, the true health effects of Indian Point on the community and workers and their children from exposure to plant-generated radiation to date and in the

projected relicensing period has been under-assessed.

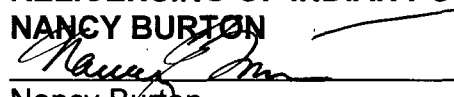
19. Children and fetuses are at the highest risk: they suffer far higher doses from the same exposures adults receive. See "Science for the Vulnerable: Setting Radiation and Multiple Exposure Environmental Health Standards to Protect Those Most at Risk" at 35-37, 78 ("... current dose limits, unchanged since the late 1980s and early 1990s need to be re-evaluated in light of today's knowledge regarding radiation risks and the recognition that the most vulnerable populations should be the focus of protective actions." (<http://www.ieer.org/campaign/report.pdf>) (October 19, 2006)(Arjun Makhijani, Ph.D. et al.)

20. Radiation releases - planned and unplanned, monitored and unmonitored are likely to increase as Indian Point's physical plant ages. See Declaration of Helen M. Caldicott, M.D. (filed by Petitioners on December 10, 2007 in support of their intervention petition and incorporated by reference herein).

21. Correspondingly, the true environmental impact of radiation exposures on human health - to the public and plant workers - in the projected relicensing period should be examined on a site-specific basis as a Category II issue.

**CONNECTICUT RESIDENTS OPPOSED TO
RELICENSING OF INDIAN POINT
NANCY BURTON**

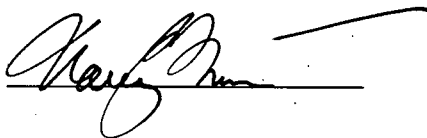
By:


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OATH

I, Nancy Burton, having been duly sworn, do hereby declare that the statements set

forth in the foregoing Affidavit are true to the best of my knowledge, information and belief.

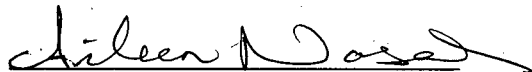


STATE OF CONNECTICUT

ss: Redding

COUNTY OF FAIRFIELD

Sworn to and subscribed before me this 10th day of December, 2007.



Notary Public

My commission expires: _____

AILEEN NOSAL
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2012

UNITED STATES OF AMERICA
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ATOMIC SAFETY AND LICENSING BOARD
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Docket Nos.

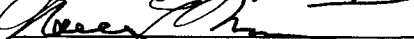
50-247-LR and 50-286-LR

December 10, 2007

CERTIFICATE OF SERVICE

I hereby certify that copies of the "**CONNECTICUT RESIDENTS OPPOSED TO RELICENSING OF INDIAN POINT AND ITS DESIGNATED REPRESENTATIVE'S 10 CFR §2.335 PETITION**" and attached Affidavit were served on this 10th day of December, 2007 upon the persons listed below, by first class mail and by email as shown below.

Original signed by Nancy Burton



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