



# Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

## ON NRC'S RULEMAKING PROCESS <sup>1</sup>

### **BACKGROUND**

At the 2008 Regulatory Information Conference session on Rulemaking, the NRC staff pointed to the recent emergency planning rulemaking process as a shining example of how to conduct rulemakings. UCS had a different perspective – believing it was a shining example of how NOT to conduct rulemakings.

UCS later learned from the NRC staff that this EP rulemaking had been something new, featuring more outreach conducted earlier in the process.

UCS isn't challenging the staff's veracity, but we honestly had not discerned any difference in any regard and would have sworn on a stack of Bibles (or a stack of hotcakes to satisfy Church/State separatists) that it was the same as other rulemakings conducted in the past decade.

Thus, while we may all be on the same page, those pages are in two totally different books.

### **FOREGROUND**

UCS believes we are on the same page in the same book with the NRC staff regarding desire for a rulemaking process that is fair and effective for all participants. In that belief, we offer the following recommendations to address problems we have encountered:

1. **Rulemaking tags** – At the point when the NRC has determined to pursue a pathway likely to lead to rulemaking (although not necessarily a new or revised rule, since pathways don't always yield that destination), that effort should be tagged with some unique label that is then attached to all documents placed into ADAMS related to that effort. Such tagging facilitates compiling and reviewing the available record associated with individual rulemaking efforts.
2. **Rulemaking programs** – The rulemaking process is a lengthy effort comprising multiple phases consisting of many steps. For even those rulemakings that I was extensively involved (like the working hour limits one), it is not obvious what has transpired, what is happening now, and what is on the horizon. Several times in the past, the daunting and time-consuming task of figuring out the status of an ongoing rulemaking effort prevented me from even trying to get involved. In the EP arena, at both the fall 2005 workshop and May 2006 public meeting, I did not know what questions the NRC staff sought to answer until partway through the meetings. I had no clue from materials available prior to the meetings and arrived ill-prepared to provide the input the NRC wanted. To reduce this

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<sup>1</sup> Hand-out prepared by David Lochbaum for a public meeting conducted June 12, 2008, between the NRC and representatives of public interest groups.

unnecessary burden, the NRC staff could provide a better overall picture for each rulemaking effort as well as a better description of what current activity seeks to accomplish and where that activity fits in the bigger picture. During a telephone call arranging this meeting, Jake Zimmerman asked if the website information for new reactor application reviews and/or license renewal application reviews provided suitable formats for the rulemaking big picture. They are good models of how to convey the status of individual rulemaking efforts.

NRC Webpage – License renewal applications under review				NRC webpage – Working schedule for Indian Point license renewal application			
	<b>Facility and Location</b>	<b>Applicant</b>	<b>ADAMS Accession Number</b>	<b>Expected Date of Submittal</b>	<b>Milestone</b>	<b>Schedule</b>	<b>Actual</b>
	Cooper Nuclear Station Brownville, NE	Nebraska Public Power District	ML050940243	September 2008	Receive License Renewal (LR) Application	4/30/07	4/30/07
	Kewaunee Power Station Green Bay, WI	Dominion Energy Kewaunee, Inc.	ML071490454	September 2008	Federal Register Notice (FRN) Published - Receipt & Availability	5/14/07	5/11/07
	Palo Verde Nuclear Generating Station Units 1, 2, and 3	Arizona Public Service Company	ML081420365	October- December 2008	Public Meeting - LR Overview	6/27/07	6/27/07
	Duane Arnold Energy Center	Nuclear Management Company, LLC	ML050310351	October- December 2008	FRN Published - Notice of Acceptability/Opportunity for Hearing	8/1/07	8/1/07
	Crystal River Nuclear Generating Plant, Unit 3; Crystal River, FL	Progress Energy Florida, Inc.	ML030660515	January-March 2009	FRN Published - Notice of Intent to Conduct Environmental Scoping	8/10/07	8/10/07
	Salem Generating Stations Unit 1 and 2	PSEG Nuclear, LLC	ML063620086	September 2009	Audit - Aging Management Programs (AMPs/TLAAs)	8/27-31/07	8/27-31/07
	Hope Creek Generating Station	PSEG Nuclear, LLC	ML063620086	September 2009	Audit - Environmental	9/10-13/07	9/10-13/07
	Strategic Teaming and Resource Sharing (STARS) Plant	STARS	ML052630407	October- December 2009	Public Meeting - Environmental Scoping	9/24-27/07	9/10-13/07
	Columbia Generating Station	Energy Northwest	ML063320557	January 2010	Audit - Scoping & Screening Methodology	9/19/07	9/19/07
	Grand Gulf Nuclear Station	Entergy Nuclear, Inc.	ML072890548	January 2010	Environmental Scoping Period Ends	10/9-12/07	10/9-12/07
	Seabrook Station	FPL Energy	ML073381282	April - June 2010	Audit - Aging Management Reviews (AMRs)	10/12/07	10/12/07
	Davis-Besse, Unit 1, Toledo, OH	FirstEnergy Nuclear Operating Company	ML062290261	August 2010	Audit - 3rd AMP/TLAA/AMR	10/22-26/07	10/22-26/07
	Strategic Teaming and Resource Sharing (STARS) Plant	STARS	ML062680307	October- December 2010	Deadline for Filing Hearing Requests and Petitions for Intervention	11/27-29/07	11/27-29/07
	River Bend Station - Unit 1	Entergy Nuclear, Inc.	ML072890548	January 2011	Environmental Requests for Additional Information (RAIs) Issued	11/30/07	11/30/07
	Waterford 3	Entergy Nuclear, Inc.	ML072890548	August 2011	Environmental RAIs - Response Received	12/10/07	12/05/07
	Evelon Plant	Evelon Generating Company, LLC	ML063630037	September 2011	Inspection - Scoping Screening/AMP	1/14/08	1/5/08-3/07/08
					Audit - 4th Optional AMP/TLAA/AMR	2/19-21/08	2/19-21/08
					Safety RAIs - Issued	3/28/08	
					Safety RAI - Responses Received	4/28/08	
					Entergy Commitment to install SBO/Appendix R Diesel Generator for Unit 2	04/30/08	
					Inspection - Scoping Screening/AMP - Exit Meeting	6/18/08	
					Draft Supplemental Environment Impact Statement (SEIS) Issued	9/19/08	
<i>UCS comment: Good template for overall status report of current rulemakings</i>				<i>UCS comment: Good template for status report of individual rulemaking</i>			

3. **Rulemaking players** – The NRC has list serves for out-going documents like press releases and generic communications. Any one wishing to receive such documents when the NRC issues them can easily sign up online to be added to the electronic distribution list. When the NRC embarks down a rulemaking path, it would aid communicating meeting notices, etc. to all interested parties if there was a comparable process for people to subscribe to a list serve for that rulemaking effort.
4. **Rulemaking receipts** – It is routine for the public to get receipts in exchange for their investments, except when they invest time in an NRC rulemaking process. NGO representatives invested considerable time in the EP rulemaking process, yet they have no receipts to show for it except for perhaps names on meeting attendance lists – hardly a suitable return for the investment. None, or at best few, of the many recommendations made by the NGO representatives are reflected in the language drafted by the NRC staff. Nor is there any explanation why our recommendations didn't make the cut. In fact, had we mistakenly wandered into McDonalds instead of the NRC meetings, we would have had essentially the same to show for it – except, of course, we would have receipts from McDonalds for those investments. As it stands, there is no publicly available evidence to even suggest that the input the public provided during the EP public meetings was considered at all by the NRC staff. When external stakeholders invest time reviewing materials and attending NRC public meetings to provide recommendations, the NRC has an obligation to provide receipts for those investments. The best receipts would be comment-by-comment breakdowns of how stakeholder inputs were considered by the NRC staff showing which inputs were incorporated into the draft and reasons why the remaining inputs were not incorporated.

5. **Rulemaking access equity** – Interest in a rulemaking effort varies widely among stakeholders. Some will attend every public meeting, some will attend an occasional meeting, and some will merely monitor the process. Consequently, the NRC staff's level of engagement with stakeholders can also vary. UCS understands that the out-going communication from NRC to stakeholders can also vary, except in one crucial area – access to information. In the EP arena, UCS experienced a situation where we provided comments to the NRC staff. We later discovered through documents obtained via a FOIA request that NRC immediately forwarded our comments to NEI soliciting their rebuttal. Because NEI is a very active participant in EP issues, the NRC's action was close enough to the line for us to accept, albeit with raised eyebrows. But what is unacceptable was the NRC's unilateral distribution of this information to a single stakeholder. Whenever NRC feels that information related to a rulemaking effort it generates or receives warrants review by an external stakeholder, the NRC should place copies in public ADAMS of anything provided to and received from that external stakeholder.
6. **Rulemaking integrity** – The sanctity of the working hours rulemaking process was corrupted when the NRC staff posted a notice on its website that no additional public comments would be considered and then entertained a series of *ex parte* drop-in visits from industry representatives urging the Commissioners to change the so-called final rule. With no additional public meetings or opportunities for public comment, the NRC staff revised the rule language to reflect industry's secret wishes. FOUL! UCS equates the public meetings, public comment periods, etc. of the rulemaking process to open court where parties present their cases to the NRC staff (the jury). The jury then retires to vote on the final rulemaking package based on evidence it received from all parties. The jury provides the final rulemaking package to the Commission (the judge) to either accept as is or remand back to the jury for reconsideration. It was absolutely improper for the Commissioners to invite a single party into their chambers to assist them redraft the verdict. A rigged process does not attract stakeholders, except those controlling the outcomes.