

November 7, 2007 (12:53pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RAS E-175

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11/7/07

Honorable Chairman Klein
Nuclear Regulatory Commission
Washington, DC 20555
chairman@nrc.gov

Lawrence G. McDade, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Lgml@nrc.gov

Cc: Senator Hillary Clinton
Senator Charles Schumer
Congressman John Hall
Congressman Eliot Engel
Congresswoman Nita Lowey
Congressman Maurice Hinchey

RE: ADDITIONAL EXTENSION REQUEST TO FILE
FORMAL REQUESTS FOR HEARING and PETITIONS TO
INTERVENE WITH CONTENTIONS, DUE TO DOCUMENT
ACCESS ISSUES

Dear Honorable Chairman Klein & Chairman McDade:

Respectfully, Friends United for Sustainable Energy USA, Inc. (FUSE USA) and the undersigned Stakeholders, formally requests that the NRC grant the citizen Stakeholders and other interested parties an extension of time to file our Formal Requests for Hearing, and Petitions to Intervene with

TEMPLATE= SECY-037

DS-03

contentions for 60 days from the date that all the document access issues stated below are fully and completely resolved.

It is conceded, that the NRC Commissioners granted a similar request that pushed the original deadline back to November 30th, 2007. However, there continues to be serious problems relating to the NRC withholding access to the documents needed by Stakeholders to adequately review Entergy's License Renewal Application for IP2 and IP3, as outlined below:

1. ADAMS electronic reading room is restored for web based access without requiring users to take down all firewall protection;
2. Design Basis Records for Indian Point 2 and Indian Point 3;
3. Leak maps and Leak reports are Indian Point, including the updated version to be released by Entergy Fall of 2007;
4. Un-redacted copy of Entergy's Safety Analysis and Aging Management plans;
5. Safety Analysis, as well as all versions of the FSAR's, UFSAR's and a full and complete list of ALL EXEMPTIONS, DEVIATIONS and EXCEPTIONS that Entergy wishes to carry over into the new superceding license (as is required in 10 CFR 54);
6. FOIAed DOE documents which were supposed to be delivered on October 27, 2007, but have not yet been received.

Each of these issues is more fully documented below:

1. ADAMS, the NRC's internet web document research service has been intermittently off line many times during the past few weeks, thereby preventing Stakeholders from accessing relevant to public documents needed to prepared intervenor contentions.

“ADAMS System Notices:

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working to restore service and apologize for any inconvenience you may experience. If you require immediate assistance, please contact the Public Document Room (PDR) staff at pdr@nrc.gov or 1-800-397-4209".

ADAMS has been down due to an extensive system crash for days as is reported by members from the NRC PDR room, the AGs office, and others besides FUSE. As of the date of this letter, ADAMS is not fully restored.

Currently the only way Stakeholders can use ADAMS is through Citrix, on a computer on which all firewalls are removed. Thereby exposing citizens Stakeholders to potential corruption by electronic virus' and unwanted exposure.

2. FUSE's expert witness, Ulrich Witte, made a FOIA request on Sept 25, 2007 for the 1968 FFDSAR for Unit 2, which is relevant to contentions associated with Design Basis Criteria issues. On October 18, 2007 the NRC staff sent a fax stating it would cost \$846.50 for copying costs. On the same day, Mr. Witte then requested in writing that the document be made available in the electronic reading room. The NRC staff responded by writing "The document is still being reviewed by our analysts for possible release." As of October 31, 2007, and after more than five weeks, the request that was apparently approved subject to payment of fees, was "still being reviewed" as Mr. Witte was informed by a member of the PDR room, and that an actual date for placing the document in the electronic reading room was unknown. Given that FSARs do not contain safeguards information or security information, it is difficult to understand why it takes weeks to review a document for "possible release."

3. Efforts by FUSE USA to gain access to a un-redacted copy of Entergy's Safety Analysis that all Aging Management plans, Leak Reports and Leak Maps have been predicated upon has so far been unsuccessful, with the NRC, simply stated, less than cooperative. The crux of the problem is that Entergy is claiming said document is proprietary in nature. FUSE USA has requested that the NRC make a decision that the Public's Right to see the Safety Analysis and Leak Reports and Maps, out weighs any claim by the licensee to Proprietary protection of the document.

On 6/29/07 FUSE requested the maps of the ongoing underground leaks of tritium, strontium and cesium radiation, under the nuclear plants Indian Point 1, 2 and 3 that both the NRC and Entergy have displayed at various public meetings.

To date, FUSE has not received said maps, and instead has only received the NRC's maps, which are unclear, and differ from the maps used by the NRC in meeting with Stakeholders.

Richard Barkley of the NRC has told FUSE that the maps are proprietary property of Entergy. They will not become available until after the NRC receives Entergy's leak report later this fall, yet as of November 1, 2007 such documents are still unavailable, thereby making the November 30, 2007 deadline to file Intervener Petitions highly prejudicial in favor of the licensee at the expense of the Stakeholders and other citizens whose best interests are supposed to be served by this Federal regulatory body.

Clearly, these leak maps and the upcoming leak report contain vital information directly related to potential environmental impacts and infrastructure aging issues, and consequently Entergy's License Renewal Application ("LRA"). The maps are necessary for Stakeholders to file properly and fully documented Intervener contentions.

In fact, the NRC used these maps to discuss the leaks in public meetings with representatives of Riverkeeper, Clearwater and IPSEC. In addition these maps, minus the Cesium map, were displayed in the lobby of a public meeting, however copies for inspection are unavailable.

§ 51.3 Resolution of conflict.

In any conflict between a general rule in subpart A of this part and a special rule in another subpart of this part or another part of this chapter applicable to a particular type of proceeding, the special rule governs.

§ 51.16 Proprietary information.

(a) Proprietary information, such as trade secrets or privileged or confidential commercial or financial information, will be treated in accordance with the procedures provided in § 2.390 of this chapter.

(b) Any proprietary information which a person seeks to have withheld from public disclosure shall be submitted in accordance with § 2.390 of this chapter. When submitted, the proprietary information should be clearly identified and accompanied by a request, containing detailed reasons and justifications, that the proprietary information be withheld from public disclosure. A non-proprietary summary describing the general content of the proprietary information should also be provided.

§ 2.390 Public inspections, exemptions, requests for withholding. *(pertinent parts)*

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure under this paragraph:

(i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

(i) Whether the information has been held in confidence by its owner;

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefore;

(iii) Whether the information was transmitted to and received by the Commission in confidence;

(iv) Whether the information is available in public sources;

(v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(5) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position, and whether the information should be withheld from public disclosure under this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it will be returned to the applicant.

Withholding from public inspection does not affect the right, if any, of persons properly and directly concerned to inspect the document. Either before a decision of the Commission on the matter of whether the information should be made publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government officials other than NRC officials, by the presiding officer in a proceeding, and under protective order by the parties to a proceeding. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.

5. FUSE USA has on numerous occasions pointed out to the NRC that it is our contention that the Public's Right to be fully apprised of the risks involved in Entergy's License Renewal Application Request, that we must be given unfettered access to any and all documents that compromise the CLB (Current Licensing Basis), as well as all documents (including a un-redacted copy of Chapter 14 Safety Analysis) used in ascertaining risks for the site, and creating the proposed Aging Management Plans. FUSE USA, our expert, and all those wishing to intervene cannot gauge the adequacy of Aging Management plans without being able to review the Safety Analysis, as well as all versions of the FSAR's, UFSAR's and a full and complete list of ALL EXEMPTIONS, DEVIATIONS and EXCEPTIONS that Entergy wishes to carry over into the new superceding license (as is required in 10 CFR 54) with justifications why they should be carried over.

6. Instead of cooperating with the Public in document discovery, instead of obeying the FOIA law, the NRC has instead chosen to ignore public safety, ignore our rightful access to documents, and instead, do everything within the agency's power to impede our rightful access to the necessary documents needed to adequately review Entergy's License Renewal Application and submit comments. FUSE's Vice President, Sherwood Martinelli, received the following correspondence from NRC staff, in the rare examples where NRC staff have tried to cooperate with FUSE USA and it's staff (both volunteer and paid), it has become apparent, that we cannot get access to the documents in a timely fashion, as is witnessed by a email from a member of NRC staff dated 10/23/2007:

In a message dated 10/23/2007 8:45:10 A.M. Eastern Daylight Time,
PDR@nrc.gov writes:

Good Morning,
I'm beginning to look through the attached listing now, and this could take me several days or weeks - I will probably not make your deadline.
If you pick out a few documents from the attached, then I can look through them quicker, and locate the section titled "Monitoring Reactor Coolant Leakage".

Sincerely,
Karen
USNRC/PDR

This email correspondence makes it abundantly clear, that even if disagreements between the parties (stakeholders, NRC and Entergy) could be resolved without litigation, internal document review protocols of the NRC make it impossible to get FUSE USA, and other interested Stakeholders documents in a timely fashion. These documents are absolutely necessary for us to complete our review of the License Renewal Applications for IP2 LLC and IP3 LLC. We have similar email letters from NRC staff, including Richard Barkley that make similar admission to delays caused by internal review of documents

The DOE promised to attempt document delivery of needed documents from a FOIA filed by Sherwood Martinelli Vice President of FUSE USA,

by November 1, 2007. Unfortunately, as of November 5th, 2007 neither FUSE USA or Mr. Martinelli have received the DOE documents, which are under review by EPRI for proprietary information. We are attempting to get a commitment date for delivery of these documents.

7. Further, Sherwood Martinelli has received a letter from the FOIA office denying him his rightful access to certain crucial documents necessary to adequately review Entergy's License Renewal Applications for IP2 LLC and IP3 LLC. Said letter states categorically, that said FOIA denial was a final order that can be instantly appealed into the Second District Court, or other court of appropriate jurisdiction. FUSE USA is in the process of preparing a formal filing for review of the decision. Forward movement before on Entergy's License Renewal Application before these issues have been resolved wrongfully deny citizen stakeholders their rightful opportunity to thoroughly and completely review the adequacy of the application, and properly form and support their contention.

NRC ISSUED MULTIPLE EXTENSIONS FOR THE BACK-UP POWERED SIREN SYSTEM REQUIRED UNDER THE ENERGY POLICY ACT OF 2005 and POSTPONED AN INSPECTION OF INDIAN POINT 3 ON 9/11, 2007:

Recently, the NRC has issued extensions to Entergy to install the required back-up powered siren system, that is required under the Energy Policy Act of 2005 to protect public health and safety.

The NRC issued a Confirmatory Order in January 2006 requiring the installation of back-up power for the siren system at Indian Point by Jan. 30, 2007. In January 2007, Entergy requested and received an extension but missed that deadline of April 15, 2007. The NRC merely fined Entergy \$130,000 and extended the deadline to August 24, 2007, this new deadline has also been missed.

FURTHER, on September 11, 2007 the NRC suspended an augment inspection at Indian Point 3 due to the numerous unplanned shutdowns. The inspection audit was postponed because the Licensee could not produce the Design Basis Records relevant for the inspection. To date the postponed inspection has not been rescheduled.

. If Entergy and the NRC cannot find Design Basis Records, how are Stakeholders suppose to properly assess the License Renewal Application's technical adequacy. Therefore, until Entergy and the NRC produce and make available the Design Basis Records, that are a critical and important subset of the license basis, Stakeholders must be granted an extension.

These \above examples are clear evidence that the NRC often grants extensions for Entergy.

CONCLUSION:

. The requested additional extension is in the best interest of the public health and safety. A denial of this extension request would result in interference with Stakeholders' rights to equal protection and would be clearly discriminatory.

Therefore, FUSE USA and the under signed Stakeholders, do hereby Formally Request that the Commission grant an extension of time to file Formal Petitions to Intervene, Formal Request for Hearing, and contentions for all Interveners of 60 days from the date that all document access issues have been fully and completely resolved, and FUSE USA has been provided copies of the documents, design basis, maps, charts, and studies necessary to adequately review and comment on Entergy's License Renewal Application.:

We respectfully request a prompt response to this request.

Sincerely yours,

Susan Shapiro
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21 Perlman Drive, Spring Valley, NY 10977

Sherwood Martinelli
Vice President, FUSE
351 Dykman Street, Peekskill, NY 19566

Deb Katz
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Box 83, Shelburne Falls, MA 01370

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Consumers Health Freedom Coalition
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Bill Clark

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Tony LaMonte
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Apt. 3, Bronx, NY 10464

Madeline Wilson
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Hearing Docket

From: <Palisadesart@aol.com> [Palisadesart@aol.com]
Sent: Wednesday, November 07, 2007 12:53 PM
To: GeriShapiro@aol.com; Johnjosephhall@aol.com; RoycePenstinger@aol.com; judith.enck@chamber.state.ny.us; bill.weitz@mail.house.gov; justin.wein@mail.house.gov; susan.spear@mail.house.gov; CHAIRMAN@nrc.gov; Lawrence McDade; john.sipos@oag.state.ny.us; luckytown@optonline.net; cieccplee@verizon.net
Subject: RE: Additional Extension Request to File due to Document Access Issue
Attachments: Nov7 Extension Request.pdf

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Senator Charles Schumer
Congressman John Hall
Congressman Eliot Engel
Congresswoman Nita Lowey
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Governor Eliot Spitzer
Attorney General Cuomo

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(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in

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In a message dated 10/23/2007 8:45:10 A.M. Eastern Daylight Time, PDR@nrc.gov writes:

Good Morning,

I'm beginning to look through the attached listing now, and this could take me several days or weeks - I will probably not make your deadline.

If you pick out a few documents from the attached, then I can look through them quicker, and locate the section titled "Monitoring Reactor Coolant Leakage".

Sincerely,

Karen

USNRC/PDR

This email correspondence makes it abundantly clear, that even if disagreements between the parties (stakeholders, NRC and Entergy) could be resolved without litigation, internal document review protocols of the NRC make it impossible to get FUSE USA, and other interested Stakeholders documents in a timely fashion. These documents are absolutely necessary for us to complete our review of the License Renewal Applications for IP2 LLC and IP3 LLC. We have similar email letters from NRC staff, including Richard Barkley that make similar admission to delays caused by internal review of documents

The DOE promised to attempt document delivery of needed documents from a FOIA filed by Sherwood Martinelli Vice President of FUSE USA, by November 1, 2007. Unfortunately, as of November 5thst, 2007 neither FUSE USA or Mr. Martinelli have received the DOE documents, which are under review by EPRI for proprietary information. We are attempting to get a commitment date for delivery of these documents.

7. Further, Sherwood Martinelli has received a letter from the FOIA office denying him his rightful access to certain crucial documents necessary to adequately review Entergy's License Renewal Applications for IP2 LLC and IP3 LLC. Said letter states categorically, that said FOIA denial was a final order that can be instantly appealed into the Second District Court, or other court of appropriate jurisdiction. FUSE USA is in the process of preparing a formal filing for review of the decision. Forward movement before on Entergy's License Renewal Application before these issues have been resolved wrongfully deny citizen stakeholders their rightful opportunity to thoroughly and completely review the adequacy of the application, and properly form and support their contention.

NRC ISSUED MULTIPLE EXTENSIONS FOR THE BACK-UP POWERED SIREN SYSTEM REQUIRED UNDER THE ENERGY POLICY ACT OF 2005 and POSTPONED AN INSPECTION OF INDIAN POINT 3 ON 9/11, 2007:

Recently, the NRC has issued extensions to Entergy to install the required back-up powered siren system, that is required under the Energy Policy Act of 2005 to protect public health and safety.

The NRC issued a Confirmatory Order in January 2006 requiring the installation of back-up power for the siren system at Indian Point by Jan. 30, 2007. In January 2007, Entergy requested and received an extension but missed that deadline of April 15, 2007. The NRC merely fined Entergy \$130,000 and extended the deadline to August 24, 2007, this new deadline has also been missed.

FURTHER, on September 11, 2007 the NRC suspended an augment inspection at Indian Point 3 due to the numerous unplanned shutdowns. The inspection audit was postponed because the Licensee could not produce the Design Basis Records relevant for the inspection. To date the postponed inspection has not been rescheduled.

. If Entergy and the NRC cannot find Design Basis Records, how are Stakeholders suppose to properly assess the License Renewal Application's technical adequacy. Therefore, until Entergy and the NRC produce and make available the Design Basis Records, that are a critical and important subset of the license basis, Stakeholders must be granted an extension.

These \above examples are clear evidence that the NRC often grants extensions for Entergy.

CONCLUSION:

. The requested additional extension is in the best interest of the public health and safety. A denial of this extension request would result in interference with Stakeholders' rights to equal protection and would be clearly discriminatory. Therefore, FUSE USA and the under signed Stakeholders, do hereby Formally Request that the Commission grant an extension of time to file Formal Petitions to Intervene, Formal Request for Hearing, and contentions for all Interveners of 60 days from the date that all document access issues have been fully and completely resolved, and FUSE USA has been provided copies of the documents, design basis, maps, charts, and studies necessary to adequately review and comment on Entergy's License Renewal Application.: We respectfully request a prompt response to this request.

Sincerely yours,

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