August 18, 2009

Richard A. Cairo
General Counsel
Susquehanna River Basin Commission
Harrisburg, PA 17102–2391

Dear Mr. Cairo:

The Nuclear Regulatory Commission (NRC) staff appreciates the opportunity to comment on the Susquehanna River Basin Commission's (SRBC) proposed rule, published at 74 Fed. Reg. 31647 (July 2, 2009). We wish to focus on one of the proposed changes, the one that would revise 18 CFR 806.4 to state explicitly that the SRBC has authority to review and approve "[a]ny nuclear power project regulated by the United States Nuclear Regulatory Commission and initiating a licensing, renewal, license amendment or license uprate process pursuant to 10 CFR Part 55 [*sic*; Parts 50, 52, and 54 are intended] that may affect the water resources of the basin." The change, according to the statement of considerations, is "[t]o remove any uncertainty regarding the need for approval of such projects" (74 Fed. Reg. at 31647), but also to reflect "current practice." (*Id.*) We are concerned, however, that the proposed language may suggest more than current practice.

The NRC readily acknowledges the role of the SRBC in overseeing certain projects. The Susquehanna River Basin Compact, which underlies the existing section 806.4., says clearly that, with certain exceptions, "[n]o projects affecting the water resources of the basin ... shall be undertaken by any person, governmental authority or other entity prior to submission to and approval by the [SRB] commission ...." See section 3.10 of Article 3 of the Compact. Pertinent NRC documents reflect the NRC's acknowledgement of the SRBC's authority. For example, the NRC's environmental analyses routinely cite SRBC findings and approvals; and, in a recent adjudicatory decision involving an application for a power uprate, the NRC Commissioners stated that

> ... the respective responsibilities of NRC, Pennsylvania PUC, SRBC, and the EPA in this area are clear. ... [I]t is clearly SRBC that is charged with determining whether increased water use from the Susquehanna River is permissible. The NRC's consideration of the ... application does not affect SRBC's authority to grant or deny the permit for additional water usage.

See *In the Matter of Susquehanna Steam Electric Station, Units 1 and 2*, CLI-07-25, 66 NRC 101, 106 (2007).

Thus the Compact and the existing section 806.4 are clear enough, and current practices are well-established and, as noted above, fully recognized in our proceedings. The statement of considerations for the proposed rule does not call attention to any ambiguity in the language of SRBC law, or any cause for uncertainty about the application of such law to NRC-regulated facilities. It would seem, therefore, that the proposed text is unnecessary.

More important, by calling out facilities regulated by the NRC, and by using a threshold for review -- projects that *may* affect basin waters -- that is not in the language of the Compact, the proposed text may suggest that the SRBC aims not to preserve current practice but to change it, by setting a lower threshold for review, and perhaps by indicating a view that SRBC approvals are required not only for projects listed in the Compact and the current section 806.4, but also for the NRC's own licensing of such projects. The simple assertion in the statement of considerations that the rule change only reflects current practice -- practice which is not described in the Fed. Reg. notice -- may not be enough in the future to overcome the suggestion in the proposed language that NRC-regulated facilities warrant special standards and procedures.

The NRC would therefore urge the SRBC to consider whether the proposed rule is needed. If the SRBC continues to believe that there is some uncertainty about application of the Compact and section 806.4 to NRC facilities, the SRBC perhaps should consider whether it might be better to resolve the uncertainty by a brief policy statement, rather than by a rule change. In any case, the NRC intends, for its part, to continue the pertinent practices reflected in the existing rules and policies of both commissions.

Sincerely,

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