

Lopas, Sarah

From: Lopas, Sarah
Sent: Tuesday, October 04, 2011 1:11 PM
To: 'Thomas Lovullo'
Cc: Fetter, Allen
Subject: Lee Nuclear Station environmental review

Hi TJ,

In trying to find you a statute to reference in your letter - - I'm coming across more and more evidence that FERC should be a participating agency in the Lee Nuclear Station environmental review, rather than a "coordinating agency." From everything I'm reading, it appears that coordination, as mandated by Congress in the Federal Land Policy and Management Act of 1976 (FLPMA), primarily applies to State and local governments.

Unlike cooperating agencies, neither the NRC nor CEQ have specific regulations regarding "participating agencies," however, the Federal Highway Administration (FHWA) defines participating agencies in 23 U.S.C. § 139(d), and this definition has gained some popularity. I believe FHWA's definition of a "participating agency" would be appropriate for us to adopt in this situation. FHWA guidance at <http://www.fhwa.dot.gov/hep/section6002/1.htm#Toc148770570> explains that "Federal, State, tribal, regional, and local government agencies that may have an interest in the project should be invited to serve as participating agencies. Nongovernmental organizations and private entities cannot serve as participating agencies." Specifically, 23 U.S.C. § 139(d) states:

Participating Agencies-

'(1) IN GENERAL- The lead agency shall be responsible for inviting and designating participating agencies in accordance with this subsection.

'(2) INVITATION- The lead agency shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project. The invitation shall set a deadline for responses to be submitted. The deadline may be extended by the lead agency for good cause.

'(3) FEDERAL PARTICIPATING AGENCIES- Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency--

'(A) has no jurisdiction or authority with respect to the project;

'(B) has no expertise or information relevant to the project; and

'(C) does not intend to submit comments on the project.

'(4) EFFECT OF DESIGNATION- Designation as a participating agency under this subsection shall not imply that the participating agency--

'(A) supports a proposed project; or

'(B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

Please consider this e-mail and our phone call earlier this morning as the NRC's invitation to be a participating agency on the Duke Energy Carolinas, LLC's William States Lee III Nuclear Station, Units 1 and 2 combined licenses application environmental review.

As stated during the call, after we receive a letter from FERC acknowledging acceptance of a "participating agency" role in the Lee Nuclear Station environmental review, we'll provide a copy of our pre-publication draft EIS (DEIS), and will work with you to resolve any comments and incorporate any changes into the DEIS, time permitting through October 17, 2011. Following publication of the DEIS in early December, the document will be distributed for public comment. FERC can also use this 75-day comment period as an opportunity to more thoroughly review the DEIS, and again, we'll work with you to address additional comments and incorporate any additional changes into the document before publishing the final EIS. The end result would hopefully be a NEPA document that FERC could adopt as part of any future permitting actions involving the Ninety-Nine Islands Reservoir. Although we are unable to implement the cooperating agency role at this late stage in production of the EIS, I think this level of coordination still satisfies the general spirit of CEQ regulations that encourage avoiding duplicative efforts among Federal agencies and streamlining the NEPA process in general. This also helps fulfill the NRC's scoping requirement (Sec. 1501.8(a)(1)), although a little later than is ideal, in inviting "...the participation of affected Federal, State, and local agencies..."

We look forward to working with you and let me know if you have any questions in developing the "invitation" acceptance letter. The letter can be addressed to:

U.S. Nuclear Regulatory Commission
Allen H. Fetter, Acting Branch Chief
Environmental Projects Branch 3
Office of New Reactors
Mail Stop: T-7E18
Washington, DC 20555-0001

As soon as I receive a fax or e-mailed PDF of the signed letter we can figure out the best way to quickly get you a copy of the DEIS.

Thanks and we'll be in touch,

Sarah L. Lopas
Environmental Project Manager
Office of New Reactors
U.S. Nuclear Regulatory Commission
P (301) 415-1147
F (301) 415-5399

Please consider the environment before printing this email.