

PMFermiCOLPEm Resource

From: Thomas Stephens [thomasstephens2043@sbcglobal.net]
Sent: Saturday, March 02, 2013 6:10 PM
To: Olson, Bruce
Cc: Fermi3COLEIS Resource
Subject: Fermi 3 FEIS Comments
Attachments: FINAL FERMI 3 FEIS CMNTS.doc

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March 2, 2013

U.S. Nuclear Regulatory Commission (NRC)

Environmental Projects Branch 2

Division of New Reactor Licensing
Office of New Reactors

U.S. Nuclear Regulatory Commission

Washington, DC 20555-0001

Via e-mail to: Bruce.Olson@nrc.gov and Fermi3.COLEIS@nrc.gov

Re: **Fermi 3**

NUREG-2105, Vol. 1; *Environmental Impact Statement for the Combined License (COL) for Enrico Fermi Unit 3, Final Report*

Manuscript Completed: November 2012

Date Published: January 2013

TO WHOM IT MAY CONCERN

As a participant in the December 15, 2011 public hearing in Monroe County, I write to formally state that the Final Environmental Impact Statement's (FEIS) responses to comments do not, in my opinion, adequately or reasonably resolve the issues addressed at that public hearing. Indeed, based on my reading of the extremely

voluminous documents created by NRC, apparently in an attempt to prevent meaningful public involvement, it appears to me that NRC did not even try to meet the substance of expressed, good faith concerns. For this and other reasons the FEIS fails to adequately evaluate the risks of the proposed Fermi 3 nuclear reactor, and violates the requirements of the National Environmental Policy Act and other applicable law.

In particular support of the above opinion, I formally offer the following for the administrative record to demonstrate the FEIS' illegality under law:

- **As discussed explicitly at the December 15, 2011 public hearing, but not recognized or adequately addressed by the FEIS, the lack of an acceptable radioactive waste disposal dump for the toxic by-products of the proposed reactor is a fatal flaw that should doom this application to denial under the law, if a fair, objective and impartial regulatory evaluation were performed.**

NRC attempts to “have its cake and eat it too” on this issue, in one sentence recommending issuance of a Combined Operating License (COL), and then immediately noting in connection with that very recommendation that the license cannot lawfully be issued at this time, because of the US Circuit Court for District of Columbia's ruling in the “waste confidence decision” case and the pending NRC rulemaking. [P. xxxviii fn. (a); See also Pp. 25-26]

The gaping and direct logical contradiction simply cannot be avoided in any honest evaluation: Either the EIS is “final” or it is not. Either the recommendation to issue the COL at this time is lawful or it is not. NRC cannot have it both ways, while at the same time claiming that its decisions are objective and supported by substantial evidence. Aside from its illogic, the statutory, regulatory and public policy and health implications of NRC proceeding – yet again – with superficial, rubber-stamp issuance of nuclear power licenses, without any ability to evaluate the full, ultimate environmental and public health consequences of such decisions – because the absence of a dump for the radioactive toxic waste that will be produced as a consequence of such decisions makes those consequences unknowable at this time – is objectively ill-considered. Especially after the experiences of the last 60 years with the technological, ecological and economic debacle of nuclear energy, particularly the major accidents at Three Mile Island, Chernobyl and Fukushima, this illogical, biased and unreasoned decision might well be described as insane.

Connected to NRC's continuing, decades-long, obdurate refusal to come to grips with the problem of radioactive waste disposal from nuclear reactors that must remain secure for an unfathomable period of time - much longer than the history of all known human civilization, as well as our civilization's pre-history - is another fundamental and objectionable illegality. I refer to NRC's totally unsupported claim to be a dedicated, neutral, objective, trustworthy and reliable decision maker on such an application.

NRC states that it “*is an objective, independent regulator and is not biased toward the industry.*” (P. E-22) It later elaborates on this unsupported, self-serving statement: “*The NRC takes seriously its statutory*

responsibilities to protect the health and safety of the public and the environment in regulating the U.S. nuclear power industry.” (P. E-451) Not only do these assertions lack record support, they are contradicted by the record. NRC’s inability to adequately defend or justify its actual role as, in effect, the chief government promoter and enabler of the failed US nuclear power industry that funds 90% of its budget, renders this FEIS unlawful.

NRC’s clumsy and ineffective sleight-of-hand in attempting to defend its inevitable positive recommendation for Fermi 3 and every other proposed nuclear reactor consists in ruling out of order any and all critical evaluations of the dangers, costs, risks and disadvantages of nuclear power *per se*, by the simple and intellectually dishonest expedient of dismissing all such contentions and concerns as adding “no new information,” or stating that “They do not provide any specific information.” (See, e.g., Pp. E-369 and 402) This across-the-board regulatory policy of *a priori* approval of nuclear technology, and ruling out of order any and all evidence-based objections to the technology – particularly its inherent propensity for generating toxic substances that cannot be secured safely for the period of time they remain dangerous – is a strong indicator of bias and favoritism that renders this FEIS and recommendation for issuance of the COL unlawful, for failure to provide the Due Process of Law guarantees required in the presence of a neutral, fair and objective decision maker on the application, as well as its lack of adequate evidentiary support.

Section 6.1.6, at P. 23, explicitly admits that “*Michigan is not currently affiliated with any compact*” for nuclear waste disposal. Nevertheless, it then claims that “*Other disposal sites may also be available by the time Fermi 3 could become operational.*” It then continues:

“Detroit Edison has proposed a Solid Waste Management System for Fermi 3 that provides enough storage space to hold the total combined volume of 3 months of packaged Class A and 10 years of packaged Class B and Class C LLW generated during plant operations. If additional storage capacity for Class B and C LLW is required, Detroit Edison could elect to construct additional temporary storage facilities. Detroit Edison could also enter into an agreement with a third-party contractor to process, store, own, and ultimately dispose of LLW from Fermi 3.

The NRC staff anticipates that licensees would temporarily store Class B and C LLW onsite until offsite storage locations are available.” (p. 24)

Such ‘if-come’ reasoning is completely inconsistent with the claim that NRC is an objective and independent regulator that takes its legal responsibilities to protect the environment by regulating the nuclear power industry seriously. Even more ominously, it exposes the environment and human health to devastating damage from generating toxic radioactive waste for which there is no secure disposal site to dump it. It is a charade of regulation and a thunderous confirmation of the regulatory ‘capture’ of NRC by the industry. It renders this FEIS and COL unlawful for NRC’s failure and refusal to act as a fair adjudicator and to actually protect the environment and health from known, substantial dangers.

However, NRC's deep irresponsibility and intellectual dishonesty do not stop there. They go on to state: "Current national policy, as found in the Nuclear Waste Policy Act (42 USC 10101 et seq.), mandates that high-level and transuranic wastes be buried at a deep geologic repository, such as the proposed repository at Yucca Mountain, Nevada." (P. 24) As NRC knows perfectly well, "current national policy" definitely does not "mandate" such disposal at Yucca Mountain. The more one reads this NRC document, the greater the conclusion is compelled that NRC is not the fair arbiter it claims to be, but is instead desperately grasping at any claim, no matter how slim, frivolous, or even demonstrably false, to reach the predetermined conclusion it has dictated in lockstep with the industry. The absence of a designated dump for radioactive waste is a known fact – today, almost 70 years after the dawn of the nuclear age. NRC's refusal to even consider this fact – indeed, their denial of its reality and implications – obliterates any confidence, deference, or controlling influence NRC's decisions claim.

Yet NRC's policy of denial, evasion and courting disaster continues even further. They state "...the Commission's Waste Confidence Decision and Rule, 10 CFR Part 51.23, undergirds many agency licensing decisions involving the management of spent nuclear fuel after the licensed life of a reactor." (P. 25) NRC thus admits that their decisions are "undergirded" by the very decision that has been held to be unlawful in the DC Circuit Court case of *New York v. NRC*, as recognized in the very next paragraph. From evasion and denial to explicit, outright reliance on an NRC decision that has been expressly declared unlawful, it is delusional to claim that such an agency is being neutral, objective or fair in these matters.

- **Similarly, virtually complete absence of any compelling showing of Michigan's 'need' for another nuclear power station should require denial of the application for a COL, , if a fair, objective and impartial regulatory evaluation were performed on this issue as well.**

Given the inability to demonstrate the kind of increased energy need that might be used in an attempt to justify the Fermi 3 proposal, the FEIS resorts to inaccurate, outdated and cherry-picked data. NRC relies on the 2008 NERC LTRA analysis, although they admit that more recent data is available (P. 8-6, fn. b) The later and more accurate data eschewed by NRC reveals that Michigan and Midwest electrical power demand will either not be rising fast enough to justify this proposal, or indeed is likely to be falling during at least some of the relevant time periods.

In DTE's September 2012 filing of its 2013 Power Supply Cost Recovery Plan Application with the Michigan Public Service Commission, Case No. U-17097, (<http://efile.mpsc.state.mi.us/efile/docs/17097/0001.pdf>) **DTE forecast a 0.2% average annual decrease in electricity sales in its service area through 2017.** (P. MBL-6, Testimony of Markus B. Leuker, DTE Manager of Corporate Energy Forecasting; see also Exh. A-8) This decreasing need and demand is based on slow economic recovery from the Great Recession that commenced in 2007-8. "The massive deleveraging of both household and business debt remains a drag on growth." (P. MBL-9)

NRC's refusal to incorporate accurate and up-to-date statistics regarding the estimated future need and demand for electric power means the FEIS lacks substantial evidence in support of this crucial issue and is therefore unlawful. In an uncharacteristic moment of candor, NRC admits that there could be "*LARGE*" local environmental impacts as a result of this new power capacity. (P. 31) By cherry-picking the data to be relied on in the analysis of need and demand for electric power, NRC has effectively admitted that it cannot demonstrate sufficient economic need for such additional capacity to balance against the enormous risks.

Moreover, and in conformity with NRC's established pattern of piling one biased metric on another in an effort to reach predetermined results, the FEIS only considered coal and natural gas as 'alternatives' to the proposed nuclear power station. (P. 33) The omission of the tremendous economic and environmental benefits to be derived from other energy alternatives, such as solar, wind, geothermal and conservation, is another aspect of the FEIS' economic analysis of need and demand that demonstrates bias and partiality toward the nuclear industry, not neutral and objective decision making based on substantial evidence.

- **There is no substantial evidence to support the FEIS' conclusory claim that because Lake Erie is large, the water depletion and warm water discharges from Fermi 3 would not significantly harm the water resource.**

Unlike its illogical treatment of the radioactive waste issue, NRC's FEIS evaluation of potential harm to Lake Erie has a clear logical basis: 'Size matters.' Notwithstanding the simple logical connection between the amount of water in a) the lake; and b) a massive nuclear power plant's intake and discharge of 7.6 billion gallons per year (Pp. 43 and E-65), this basic logical connection proves nothing.

Lake ecology, the biology of Great Lakes fisheries, the origin and growth of algal blooms, the thermal effects on the Lakes from so much warm water released at a point source, as well as issues like entrainment and immediate fish kills from toxic, cold shock or other thermal discharges, may not be so easily dismissed, consistent with NRC's legal obligations to Lake Erie and the human and other biotic communities around its western shore. Indeed, NRC has not even responded to the US Department of Interior's comments on the DEIS, stating that entrainment of ducks attracted to the discharge area has been a problem at other nuclear plants, and that the depth of the water should be sufficient to keep it from attracting ducks to feed on zebra and quagga mussels and other available food sources in shallow water, where they are at risk of entrainment.

There is no substantial evidence to support NRC's conclusion that, simply because Lake Erie is a relatively large lake, withdrawals, discharges and thermal and toxic insults of this magnitude will not significantly harm its ecology.

The FEIS acknowledges that "*once-through cooling does result in a substantial consumption of water through surface evaporation of the receiving waters...*" (P. E-64) Nevertheless, such substantial consumption as well as a train of other associated effects on Lake Erie's water, fishery and plant biotic communities, are discounted

merely because it is such a large lake. This is completely unacceptable. The absence of any change to the FEIS as a result of concerns for damage to Lake Erie as a water resource is not reasonable. I formally object to the FEIS' cavalier dismissal of "*declines in water quality and habitat degradation in nearshore areas and tributaries*" with low and declining fish stocks that have already occurred, and will get worse if these same western Lake Erie waters are used for Fermi 3's discharge. (P. 11)

It is undisputed that "*During the operation of Fermi 3, aquatic habitats and biota in Lake Erie could be affected by cooling water withdrawal and consumption, discharge of heated effluent from the cooling water system, maintenance dredging, discharge of wastewater, and stormwater runoff at the Fermi site.*" (P. 15) Moreover, "*Physical impacts associated with discharge from the Fermi 3 site could include shoreline erosion, effects on lake stratification, and bottom scour in the location of the diffuser, which could result in increased turbidity and siltation.*" (P. 21) The FEIS completely fails to consider synergistic, opportunistic, invasive, and cascading damage to the Lake and its terrestrial and marine life communities. Such unmanaged risks in degraded shoreline environments – especially during hot summer weather (P. 14) - should not be undertaken based on such flimsy evidence or reasoning. Blaming them all on climate change so that Fermi 3's effects on Lake Erie are discounted is simply ridiculous.

For all the foregoing reasons I request that NRC adopt the no-action scenario and deny the COL for Fermi 3.

Respectfully submitted,

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"Our collective future is grim. Under our current political economic system, none of our major problems can be solved. Insecurity, inequality, and environmental destruction will get worse unless we take radical actions, repeatedly, for as long as necessary." - Michael D. Yates

<http://www.counterpunch.org/2013/02/27/occupy-wall-street-and-the-significance-of-political-slogans/>

Hearing Identifier: Fermi_COL_Public
Email Number: 1147

Mail Envelope Properties (1362265793.28412.YahooMailClassic)

Subject: Fermi 3 FEIS Comments
Sent Date: 3/2/2013 6:09:53 PM
Received Date: 3/2/2013 6:09:59 PM
From: Thomas Stephens

Created By: thomasstephens2043@sbcglobal.net

Recipients:
"Fermi3COLEIS Resource" <Fermi3COLEIS.Resource@nrc.gov>
Tracking Status: None
"Olson, Bruce" <Bruce.Olson@nrc.gov>
Tracking Status: None

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Files	Size	Date & Time
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FINAL FERMI 3 FEIS CMNTS.doc		52288

Options
Priority: Standard
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Sensitivity: Normal
Expiration Date:
Recipients Received: Follow up

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