

November 17, 2006

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December 12, 2006 (3:23pm)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Supplemental Proposed Rule for Licenses, Certifications, and Approvals for Nuclear Power Plants

Public Citizen and the Nuclear Information and Resource Service (NIRS) submit the following comments on NRC's Supplemental Proposed Rule for Licenses, Certifications, and Approvals for Nuclear Power Plants that amend the regulations applicable to limited work authorizations (LWA), which was published in the Federal Register (Vol. 71, No. 200) on October 17, 2006. Public Citizen is a 35-year-old consumer advocacy organization with more than 100,000 members nationwide. NIRS is the 28-year-old information and networking center for citizens and environmental organizations concerned about nuclear power, radioactive waste, radiation, and sustainable energy issues. We apologize that the comments are one day late; however, we do expect that it is still "practical" to consider them.

Phased application and approval process

Public Citizen and NIRS strongly oppose any regulations that would allow the NRC to approve LWA activities before completion of a construction permit or combined license at the site. From the public's perspective, this proposal is yet another artificial segmentation of the licensing process that makes public participation even more arduous. The ESP and COL application process is already an artificial parsing of what should be a comprehensive analysis. In its Part 52 proposed rule published on March 13, 2006 (71 FR 12782), the NRC is proposing to further segment the process by allowing the COL to be submitted in multiple subparts. This supplemental proposed rule will add yet another layer of licensing that will only add to the perplexity of the process, and as a result, further disenfranchise the public.

We strongly oppose these piecemeal applications. A "phased application and approval process" does not facilitate public participation, because it makes the licensing process more opaque, increases the number of legal deadlines for intervening, parses what should be a comprehensive analysis into artificial pieces, and potentially increases the cost for intervenors if there is more than one ongoing intervention at a site.

The motivation for this "phased application and approval process" is to "add efficiencies to the licensing/construction process by preventing unnecessary delay in construction schedules." It is nonsensical to claim that there is an "unnecessary delay" if construction cannot begin until the plant is actually licensed to be built. Granting a LWA before the plant is licensed confirms to the public that the licensing process is a sham.

Excavation

We strongly support the NRC's decision to include "excavation" and "driving of piles" in the definition of "construction." We agree with the NRC in its Federal Register notice that excavation is a safety issue, and therefore it is covered by the NRC's radiological health and safety and common defense and security responsibilities under the Atomic Energy Act of 1954.

At the November 1 public meeting at the NRC on this supplemental proposed rule, nuclear industry representatives made it very clear that they want excavation to be excluded from the definition of "construction," which would allow them to excavate without a NEPA analysis and NRC approval. The NRC staff at the meeting encouraged the industry representatives to submit proposals on how excavation could be excluded from the definition of "construction."

Public Citizen and NIRS contend that the NRC should maintain that excavation be appropriately included in its proposed definition of "construction." At the November 1 meeting, NRC staff raised several examples in which excavation has led to significant environmental impacts and ultimately changes to the reactor design. One such problem arose during site excavation and the discovery of an earthquake fault line at North Anna nuclear power station. Similarly, a Midwest nuclear utility had begun excavation work for the placement of the foundation only to find that the company's assessment of soil composition was in error and had to change the reactor design accordingly. Such experience demonstrates that excavation activity can lead to safety significant issues in construction.

NRC staff also raised the concern at the November 1 meeting that neither the public nor the courts would believe that a decision by the NRC to grant a COL at a "site with a big hole" in the ground was evaluated in an unbiased fashion. The public already perceives the licensing process as *pro forma*. We strongly agree that granting a COL to site that has already begun excavation would only further confirm this assessment.

Sincerely,

Michele Boyd
Legislative Director, Energy Program
Public Citizen

Paul Gunter
Director of the Reactor Watchdog Program
Nuclear Information and Resource Service

From: Jerry Bonanno
To: Emile Julian; Evangeline Ngbea
Date: 12/12/2006 2:42:14 PM
Subject: NIRS/PC Comment on the LWA Supplemental Proposed Rule (RIN 3150-AG24)

Evangeline:

Please find the attached comment letter on the LWA Supplemental Proposed Rule (RIN 3150-AG24) from Public Citizen/Nuclear Information and Resource Service dated November 17, 2006. OGC became aware of this letter today, as it was referenced in the December 7, 2006 letter from Harmon, Curran, Spielberg & Eisenberb, LLP that you forwarded by email earlier this afternoon (Comment 25).

Please docket this as a public comment on the LWA Supplemental Proposed Rule (Licenses, Certifications, and Approvals for Nuclear Power Plants; Supplemental Proposed Rule (RIN 3150-AG24)). Please call me if you have any questions.

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