

February 8, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

_____)	
In the Matter of)	
)	Docket Nos. 52-012, 52-013
South Texas Project Nuclear)	
Operating Company)	
)	
(South Texas Project)	
Units 3 and 4))	
_____)	

**PETITION TO SUSPEND HEARING NOTICE
REGARDING APPLICATION FOR COMBINED LICENSE
FOR SOUTH TEXAS PROJECT UNITS 3 AND 4
OR, IN THE ALTERNATIVE,
REQUEST FOR AN EXTENSION OF TIME
TO SUBMIT HEARING REQUEST AND CONTENTIONS
AND
REQUEST FOR EXPEDITED CONSIDERATION**

I. INTRODUCTION AND SUMMARY

The Sustainable Energy and Economic Development Coalition (“SEED Coalition”), Public Citizen, Inc., Nuclear Information and Resource Service, Inc. (“NIRS”), Beyond Nuclear, Inc., and the Sierra Club, Inc. (“Petitioners”), hereby request the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to suspend the hearing notice which gives Petitioners 60 days, or until February 25, 2008, in which to submit a hearing request and contentions regarding the proposed issuance of a combined construction permit and operating license (“COL”) to South Texas Project Nuclear Operating

Company (“STPNOC”).¹ If issued, the COL would allow STPNOC to build and operate two new reactors (Units 3 and 4) on the site of the currently operating South Texas Plant (Units 1 and 2).

Correspondence between the NRC Staff and STPNOC in late 2007 shows that the NRC Staff found major gaps in STPNOC’s application as originally submitted. Therefore it had no basis under 10 C.F.R. § 2.101(a)(3) to declare that the application was “complete,” thereby triggering the process that would require Petitioners to submit a hearing request within two months. Now, additional correspondence -- placed on the NRC’s Agency Document Access and Management System (“ADAMS”) within the last eight days – shows that neither STPNOC nor the NRC Staff believes that the Staff has any basis for continuing its review of most of the application until STPNOC makes major changes to it. Letter from M.A. McBurnett, STPNOC, to U.S. Nuclear Regulatory Commission (January 10, 2008) (“McBurnett 01/10/08 Letter”); Letter from David B. Matthews, NRC, to Mark McBurnett, STPNOC (January 30, 2008) (“Matthews 01/30/08 Letter”).² These changes may include modifications to the certified standardized design for the advanced boiling water reactor (“ABWR”) on which STPNOC’s application relies. *Id.* The Staff does not intend to resume review of the greater part of the application, or even establish a schedule for its review, until STPNOC submits necessary revisions to the COL application. *Id.*

¹ The hearing notice was posted in the Federal Register on December 27, 2007, at 72 Fed. Reg. 73,381.

² A copy of the McBurnett 01/10/08 Letter is attached as Exhibit 1. It was placed on ADAMS January 31, 2008, at Accession # ML080160242. A copy of the Matthews 01/30/08 Letter is attached as Exhibit 2. It was placed on ADAMS on January 30, 2008, at Accession # ML080230721.

The Staff's and STPNOC's extraordinary joint decision – that the licensing review should be suspended indefinitely for most of STPNOC's license application – calls into fundamental question how the Commission's asserted interest in assuring fair, efficient and meaningful licensing hearings could be served by requiring Petitioners to go ahead with the preparation of contentions on STPNOC's incomplete application. Under the circumstances, to continue to require the interested public to prepare for a public hearing would be inconsistent with the NRC's regulations, which prohibit the docketing of an application that is incomplete (10 C.F.R. § 2.101(a)(3)), and which discourage the piecemeal review and litigation of applications. 10 C.F.R. § 101(a)(5).

Moreover, to continue to require Petitioners to waste precious time and resources preparing contentions on documents that are concededly too incomplete and uncertain to warrant review by the Staff would constitute a flagrant violation of the letter and spirit of the Commission's regulations and policies for ensuring fairness and efficiency in the conduct of hearings on nuclear facility license applications. *See* Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings, 72 Fed. Reg. 32,139, 32,141 (June 11, 2007) ("Draft Policy Statement"), citing *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998); *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452 (1981). No rational purpose could be served by requiring Petitioners to go ahead with the review of STPNOC's voluminous application where both the applicant and the NRC Staff have agreed the application is largely obsolete and not deserving of further review in its current state.

Therefore Petitioners respectfully request the Commission to suspend the hearing notice. No hearing request should be required until at least 60 days after (1) STPNOC has completed the application, (2) the NRC Staff has determined the application is complete, and (3) the Staff has established a new schedule for completion of the review.

In the alternative, if the NRC decides not to grant the requested suspension, Petitioners request the Commission to extend the deadline for submitting contentions by a minimum of 180 days, because the 60-day period afforded by the notice of hearing provides a grossly insufficient opportunity to review the massive, disjointed and incomplete application, the myriad applications for “departures” from the ABWR and their interrelationship with other parts of the application, and the relationship between the concededly incomplete final safety analysis report (“FSAR”) and STPNOC’s Environmental Report (“ER”) (which necessarily relies in significant part on STPNOC’s compliance with NRC safety regulations to support its assertion that the environmental impacts of the proposed facility are benign).³

In either case, the Commission should re-publish its Notice of Hearing, which is grossly deficient because it omits any mention of the ABWR application or how to obtain it, and misleadingly asserts that the entire application can be found on ADAMS when in fact the ABWR application is not there. Finally, the Commission should ensure that – in conformance with the representations in its Notice of Hearing – all licensing documents are posted on ADAMS, including the generically approved ABWR standardized design on which STPNOC relies in principal part for its license application.

³ Petitioners reserve the right to renew their request for a hearing if, upon expiration of 180 days, STPNOC’s application remains substantially incomplete.

Given that only two weeks remain before Petitioners must meet the NRC's deadline for submitting hearing requests and contentions, Petitioners request expedited consideration of this petition. Petitioners note that they have brought this matter to the Commission's attention within less than ten days of learning, through the posting of NRC Staff-STPNOC correspondence on ADAMS, that STPNOC and the NRC Staff agree that the Staff should suspend its review of most of STPNOC's application.

As stated in the certification of counsel which follows this Petition, Petitioners have contacted counsel for the applicant and the NRC Staff to seek their consent to this petition. Counsel for NRC Staff stated that the Staff preferred to await the filing of the petition before taking a position. Counsel for STPNOC stated that STPNOC would oppose the petition.

II. DESCRIPTION OF PETITIONERS

Petitioners are regional and national environmental and civic organizations who are concerned about the safety risks and environmental impacts of the proposed STP nuclear plants, and who are now in the process of reviewing the adequacy of the STP application to protect public health and safety and the environment. SEED Coalition is a project of Texas Fund for Energy and Environmental Education, Inc., a statewide nonprofit organization with 5,000 members working for clean air and clean energy in Texas. The organization advocates for sustainable energy, including energy efficiency, renewable energy and conservation.

Public Citizen is a national, nonprofit consumer advocacy organization with over 70,000 members nationwide, including in Texas. Public Citizen's mission is to protect

openness and democratic accountability in government and the health, safety, and financial interests of consumers. Public Citizen advocates for policies that will lead to safe, affordable and environmentally sustainable energy.

NIRS is a non-profit corporation with over 12,000 members, including Texas. NIRS has a mission to promote a non-nuclear energy policy, and a concern for the health and safety of the people and ecosphere.

Beyond Nuclear is a national environmental organization that aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abandon both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic.

The Sierra Club is one of the oldest and largest grassroots environmental organizations in the United States. The Sierra Club has more than 700,000 members nationwide, and roughly 24,000 Texas members. The goals of the Sierra Club include preserving and enhancing the natural environment and protecting public health.

Petitioners anticipate submitting hearing requests to the NRC regarding their concerns about the inadequacies of the application. In order to meet the NRC's rigorous standards for gaining admission of contentions to the proceeding, these groups must expend significant time and resources on their review of the application.

III. FACTUAL BACKGROUND

A. STPNOC's License Application and NRC Review

On September 20, 2007, STPNOC submitted to the NRC a COL application for STP Units 3 and 4. 72 Fed Reg. at 73,381. The principal part of the application was an

FSAR, thousands of pages in length, which addressed both the standardized features of the plant and the features specific to the proposed STP plants. In addition, STPNOC provided a separate list of “departures and exemptions” from the certified ABWR design, including over 100 departures believed by STPNOC to require NRC Staff approval and more than 100 departures for which STPNOC asserts that no NRC approval is needed because they would cause “no more than a minimal increase in the frequency of an accident previously evaluated.” STPNOC License Application, Departures Report at 3.0-1.

The application also included a section purporting to contain “financial information,” but from which virtually all information regarding the costs of the new reactors had been redacted on the ground that it was “proprietary.” STPNOC License Application, General Financial Information, Section 1.0.⁴ In addition, the application included a voluminous ER, the applicant’s preliminary version of the Environmental Impact Statement (“EIS”) that the NRC must eventually prepare for the new plants.

B. NRC Staff Completeness Review and Related Correspondence

As required by NRC regulation 10 C.F.R. § 2.101(a)(3), the NRC staff reviewed STPNOC’s COL application to determine whether it was “complete and acceptable for docketing.” By letter dated November 29, 2007, the NRC announced the results of its review. Letter from David B. Matthews, STPNOC, to Mark McBurnett, NRC

⁴ The information that STPNOC has withheld from the license application includes the summary of project costs for Units 3 and 4 (Tables 1.3-1 and 1.3-2), sources of construction funds for both units (Tables 1.3-3 and 1.3-4), and operation and maintenance costs for the first five years (Tables 1.3-6 and 1.3-8).

(“Matthews 11/29/07 Letter”).⁵ While the Staff found that in “many parts” of the application, the “information provided meets NRC regulations with respect to the level of detail necessary to begin the evaluation of the COL application,” it noted that “the staff has identified other areas . . . where the application has not provided, or not provided in sufficient detail, information that the staff will need in order to schedule and conduct its review properly.” *Id.* at 1.

The Staff enumerated a dozen categories of missing information that “introduce uncertainty into the review schedule that is difficult to quantify and that makes development of a complete schedule impractical.” *Id.*, In the detailed list of deficiencies provided in an enclosure to the letter, the Staff listed such significant omissions as STPNOC’s failure to “provide a design for the ultimate heat sink, reactor service water pump houses, or reactor service water piping tunnel.” *Id.* In light of these informational gaps, the Staff found that it cannot determine whether [STPNOC’s] application is in conformance with 10 CFR 52.79(a)(5) *Id.*, Enclosure 1 at 1. As demonstrated by the language of Section 52.79(a)(5), the omission is significant from a safety standpoint, because the regulation requires all applicants to submit, *inter alia*,

[a]n analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

Other information missing from the application included:

⁵ A copy of the Matthews 11/29/07 Letter is attached as Exhibit 3. It can also be found on ADAMS at Accession # ML073320290.

- Potential Tier 1 changes “were not identified in the COL application, nor were exemptions sought under 10 CFR 52.63(b)(1)” (Matthews 11/29/07 Letter, Enclosure 1 at 1);
- STPNOC “did not provide the design detail of the radwaste building to the level of detail contained in the DCD [design control document]” (*Id.*);
- The COL application’s technical specifications “contain a large quantity of bracketed information and a significant number of empty brackets.” *Id.*, Enclosure 1 at 2. Although the Staff concluded that “some of this information (e.g., that associated with design acceptance criteria) is not available,” it also found that “much of the bracketed information will be required before issuance of a COL.” Without this information, “the staff cannot determine whether or not the application meets the requirements of 10 CFR Part 52 Appendix A, IV.A.2.c for COL information Item 16-1, neither can we determine whether or not the Technical Specifications meet the requirements of 10 CFR 50.36.” *Id.*
- STPNOC provided “limited soil dynamic testing data,” failed to conduct subsurface exploration borings, failed to provide boring logs or lab tests, and failed to provide dewatering plans for the excavation. *Id.*, Enclosure 1 at 2. As a result, “the staff cannot determine whether or not the application meets the requirements of 10 CFR 52.79(a)(1).” The importance of the omissions is underscored by the Staff’s warning that the STPNOC application raised potentially “significant” site suitability issues. *Id.*

- The Environmental Report fails to report on any current aquatic monitoring program, but reports data collected *before 1991*. *Id.* at 3.

Inexplicably, despite the Staff's recitation of numerous gaps in the application and the inescapable inference that the application was not complete as required by 10 C.F.R. § 2.101(a)(3), the Staff nevertheless docketed it. *Id.* The NRC Staff stated that it would conduct its "Phase 1" review for the parts of the application deemed complete, while collecting supplemental information through Requests for Additional Information ("RAIs"). *Id.* The Staff asserted that it would complete Phase 1 by July 24, 2008. *Id.* Noting, however, that STPNOC had stated the missing information would be supplied by the third quarter of 2008, the Staff warned that "[w]hen this data is available, there is a significant possibility that [STPNOC] will need to re-analyze several calculations that would result in significant changes to the COL application." *Id.*

On December 20, 2007, STPNOC responded to the Matthews 11/29/08 Letter, making commitments to provide the missing information between February and November of 2008. Letter from M.A. McBurnett to U.S. Nuclear Regulatory Commission.⁶ On January 10, 2008, however, STPNOC wrote a second letter in response to Matthews 11/29/07 Letter, providing a drastically different picture of the state of STPNOC's COL application. McBurnett 01/10/08 Letter (Exhibit 1). According to the letter, "STPNOC is in the process of arranging for the vendor support necessary to further develop the design referenced in the application." *Id.* at 1. Thus, it appears that in addition to requesting a large number of exemptions from the generically approved

⁶ A copy of the letter is attached as Exhibit 4. It can also be found on ADAMS at Accession # ML073580003.

ABWR design, STPNOC *also* anticipated that the vendor of the standardized design would seek to change it.

In light of these changes, STPNOC also requested that the NRC Staff cut back on its review of the COL application:

At this time STPNOC requests the NRC focus its review activities on the portions of the application that are site specific and generic. STPNOC requests that NRC proceed with its evaluation of Environmental report sections (COLA Part 3) and preparation of the Environmental Impact Statement (EIS), including site visits, public meetings, and development of the draft EIS. STPNOC also requests that the NRC hold its review of the Combined License Application (COLA) sections listed in the attachment.

Id. at 1. In the attachment, STPNOC listed sections from fifteen of the FSAR's twenty-one chapters for which it requested the NRC Staff to hold its review. In addition, STPNOC requested the NRC Staff to hold its review for any "departures" from the standardized design, whether or not the departures required approval by the NRC Staff.

Id. STPNOC recognized "that our request will delay the NRC's review of design-related sections of the application, and may delay the eventual issuance of the STP Units 3 and 4 COL, and that STPNOC "accepts responsibility for any delay." *Id.* at 1.

By letter dated January 30, 2008, the NRC Staff responded that it would suspend its review of the COL application, with only the following exceptions:

The staff is continuing its review of both the Environmental Report (ER) and the Emergency Plan (EP) that you submitted as a part of your COL application. Many of the issues that arise in the review of the ER are closely related to the technical areas covered in Chapter 2 of the FSAR, 'Site Characteristics.' Because of this close relationship, the staff will continue its review of Chapter 2 of your FSAR. In a similar way, sections of the EP are related to parts of Chapter 13 of the FSAR, "Conduct of Operations." Because of this relationship, the staff will continue its review of Chapter 13 of your FSAR, as it finds necessary.

The staff also determined that it is technically feasible and more efficient given available resources and contractor support to continue the review of parts of the following FSAR Sections: 3.4, 3.6, 5.2, 9.1, 9.3, 10.3, 10.4, 11.4, and 17.5.

Matthews 01/30/08 Letter (Exhibit 2). The Staff also stated that Phase 1 of its review would no longer be completed by June 24, 2008. *Id.* at 2. Instead, the Staff stated that it “will develop a schedule after you have resolved any vendor support issues and made any COL revisions necessary to allow a staff review of your application in full.” *Id.*

IV. ARGUMENT

A. NRC Regulations Require That the Hearing Notice Must Be Suspended Because STPNOC’s Application is Not Complete.

As discussed above, NRC regulations require that an application must be “complete” before it is docketed. As the Matthews 11/29/07 Letter demonstrates, STPNOC’s license application was incomplete when it was filed in September of 2007, and should never have been docketed. More recently, it has become clear that in addition to the many exemptions to the ABWR standardized design requested by STPNOC, the standardized design itself may need to be altered. *See* McBurnett 01/10/08 Letter. As a result, STPNOC has asked the NRC Staff to suspend a significant portion of its review, and the NRC Staff has agreed. McBurnett 1/10/08 Letter; Matthews 1/30/08 Letter. Under these extraordinary circumstances, there is no longer any shred of doubt that STPNOC’s application fails to meet the test of completeness established by 10 C.F.R. § 2.101(a)(3).

The Staff has proposed to go forward with a limited review that is focused on the ER, the Emergency Plan (“EP”), and certain enumerated sections of the FSAR. Matthews 01/10/08 Letter at 1-2. But the Staff’s decision to review limited parts of the

application should not be extrapolated to a requirement that Petitioners must submit contentions and prepare for a hearing on the few parts of the application on which the NRC Staff plans to conduct a review. Even if the ER, EP, and selected portions of the FSAR could be considered “complete” in their individual isolation, a piecemeal hearing would be inconsistent with Commission policy. In its draft policy statement for implementation of the new Part 52 rules (including changes to the review procedures in 10 C.F.R. § 2.101(a)), the Commission stated a general policy (with only two exceptions) that the Notice of Hearing should be issued “only when the entire application has been docketed.” Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings, 72 Fed. Reg. 32,139, 32,141 (June 11, 2007).⁷ Clearly, if one part of the application is not ready for docketing, the rest of the application should not be noticed for a hearing.

Moreover, STPNOC’s application does not satisfy either of the two exceptions to the Commission’s policy disfavoring piecemeal consideration of new reactor license applications:

The first exception is a construction permit application submitted in accordance with § 2.101(a-1), which results in a decision on early site review. The second exception involves circumstances in which: (1) A complete application is submitted; (2) one or more other applications that identify a design identical to that described in the complete application are submitted; and (3) another application is incomplete with respect to matters other than those common to the complete application. Under such circumstances, the Commission may give notice of the hearing on the complete application, and give notice of the hearing on the other application with respect to the matters common to the complete application.

⁷ To Petitioners’ knowledge, the Commission has not issued a final policy statement. While the policy statement is a draft, it nevertheless demonstrates the Commission’s intent at the time it promulgated the regulations for reviewing COL applications.

72 Fed. Reg. at 32,141.⁸ STPNOC has *neither* submitted an early site permit application; *nor* does its application piggyback on a completed application submitted in another proceeding. Thus, the Staff’s decision to proceed with a piecemeal review directly conflicts with established NRC policy.

Finally, while NRC regulations allow submission of COL applications in two parts, those two parts are the ER and the safety-related portion of the application. 10 C.F.R. § 2.101(a)(5).⁹ The Staff may not decide that the two parts are all the portions of the application that are finished and all the portions that are not finished. Moreover, submission of the second part may not follow submission of the first part by more than six months; and at the time of submission, each part must be determined to be complete. *Id.* Given that STPNOC is still “arranging for the vendor support necessary to further develop the design referenced in the application,” and has provided no schedule for submission of the additional information (McBurnett 1/10/08 Letter), it does not appear that STPNOC can satisfy this requirement.

⁸ Similarly, the Commission stated that it “strongly discourages piecemeal submission of portions of an application pursuant to an exemption unless such a procedure is likely to afford significant advantages to the design-centered review approach [that is described in more detail later in the policy statement]. *Id.*

⁹ The text of § 2.101(a)(5) provides in relevant part that:

An applicant for a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility may submit the information required of applicants by part 50 or 52 of the chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, or § 52.80(b) of this chapter, as applicable. The other part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter, or §§ 52.79 and 52.80(a), as applicable.

B. The NRC's Policy of Fairness and Efficiency Requires Suspension of the Notice of Hearing.

The regulations and policies described above in Section IV.A are designed to ensure that hearings on applications for new reactor licenses will be conducted in a manner that is fair, efficient, and meaningful, as required by the Atomic Energy Act and the Administrative Procedure Act. As set forth in the Commission's Draft Policy Statement:

As always, the Commission aims to provide a fair hearing process, to avoid unnecessary delays in its review and hearing processes, and to enable the development of an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment. In the context of new reactor licensing under 10 CFR Part 52, members of the public should be afforded an opportunity for hearing on each genuine issue in dispute that is material to the particular agency action subject to adjudication. By the same token, however, applicants for a license should not have to litigate each such issue more than once.

72 Fed. Reg. at 32,140. Indisputably, the opportunity for a hearing cannot be deemed "meaningful," nor can it "focus on genuine issues" and "real disputes" if the real issues are unknown because the application is incomplete and may change drastically in the future. As the Commission has previously recognized, it is unfair to force members of the public to waste limited resources on issues that are clearly premature. *Hydro Resources, Inc.* (P.O. Box 15910), CLI-01-04, 53 NRC 31, 43 (2001) (finding "not unreasonable" intervenors' concern that expert affidavits which had to be prepared years before they might be used in a hearing would become "stale and dated with time.")

In addition, Petitioners are entitled to see the entire application in order to prioritize the concerns they will seek to raise in the hearing. If Petitioners are presented

with the application on a piecemeal basis, they risk spending all their resources evaluating the first parts of the application that are presented, rather than being able to judge the application as a whole.

Furthermore, given the interrelationship between the various parts of the application, it would be grossly unfair to Petitioners to require them to base their evaluation on only parts of the application, when the completed application may present a very different picture of the proposal. The ER, EP, and listed subsections of the FSAR must be reviewed in the context of the entire application, and may not be considered “complete” until the application has been re-submitted with all design revisions and other missing information provided. There can be no question, for instance, that the most significant environmental impact of a nuclear power plant is its capacity for unplanned radiological releases. If the design of the plant remains uncertain, it is not possible to accurately evaluate the environmental impacts of a plant. The design of the plant will also have an effect on other important environmental impacts, such as thermal impacts and water use. In addition, the design will affect the cost of the facility, thus affecting the relative costs and benefits of the plant in comparison to other energy sources.

Similarly, Petitioners should not be required to prepare contentions on subsections of the FSAR for which neither STPNOC nor the Staff proposes to conduct a review on other parts of the application that are within the same chapter. For instance, it would be absurd to require Petitioners to submit contentions on the adequacy of Section 3.6 of the FSAR (entitled “Protection Against Dynamic Effects”), when STPNOC has requested the NRC Staff to suspend review on almost all other portions of Chapter 3 (“Design of

Structures”), including the fundamental classification of structures, components and systems (Section 3.2).

Petitioners respectfully submit that the Commission must, in this case, apply its regulations and policies to suspend the Notice of Hearing published on December 27, 2007 until STPNOC has completed its application, the NRC Staff has approved the application as complete, and the Staff has established a schedule for review. To require Petitioners to press forward with costly and time-consuming preparation of contentions on an application that has been largely disowned by STPNOC would be the height of arbitrary, capricious and unfair decision-making. As has been done in other cases where an application was incomplete or the Staff’s review of the application was delayed, the Commission should suspend Petitioners’ obligation to go forward with their hearing preparations. *See, e.g., Nuclear Fuel Services, Inc.*, (Erwin, Tennessee), LBP-03-01, 57 NRC 9, 14-15 (2003) (holding a licensing proceeding for a uranium processing plant in abeyance pending the submission of additional portions of the license application); *U.S. Army* (Jefferson Proving Ground Site), LBP-04-01, 59 NRC 27, 30 (2004) (holding a possession-only license proceeding in abeyance pending completion of the Staff’s technical review and completion of a hearing file).

C. Even if the NRC Does Not Suspend the Hearing Notice, It Should Extend the Deadline for Submitting Hearing Requests by at Least 180 Days.

In the event that the NRC denies Petitioners’ request to suspend the Notice of Hearing, Petitioners respectfully request the Commission to grant an extension of at least

180 days in which to prepare their hearing request.¹⁰ The sixty days provided in the Notice of Hearing is grossly insufficient to permit Petitioners to review the enormous application, especially in light of its many deficiencies, gaps, and deviations from the certified standardized ABWR design. In addition, an extension is necessary in order to provide time for STPNOC to provide additional information that is now missing from the application, and to allow the resolution of questions about whether STPNOC has inappropriately sought to withhold information that should be disclosed to hearing requesters.

Just by itself, the physical presentation of the application on the NRC's website presents enormous challenges to the would-be reviewer. Each separate section of the FSAR, ER, EP, and list of departures has its own separate pdf file on ADAMS, thus making it extremely burdensome to create an integrated reproduction of the application. For instance, as demonstrated in the attached Exhibit 6 (a printout of the index of FSAR contents on ADAMS), the electronic FSAR that is posted on ADAMS consists of several hundred separate pdf files. As demonstrated by Exhibit 7, a printout of the index of ABWR DCD files that has been copied onto a CD available from the NRC's PDR, the ABWR DCD is also composed of hundreds of separate pdf files, and is therefore very difficult to use. NRC guidance documents, including applicable regulatory guides and NUREG reports, are also broken into so many small electronic parts that the process of

¹⁰ As stated in note 3, Petitioners reserve the right to renew their request for a hearing if, upon expiration of 180 days, STPNOC's application remains substantially incomplete.

downloading and integrating them is absurdly time-consuming.¹¹ *See, e.g.*, NUREG-0800, the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants (2007), whose 20 chapters are broken down into about 200 separate electronic subparts; and Regulatory Guide 1.26, Combined License Applications for Nuclear Power Plants (2007) which is broken into 37 separate electronic sub-parts.

Petitioners also request additional time in order to obtain expert assistance in evaluating the large number of technical issues raised by the application, including the myriad applications for exemptions from the standardized design. The proposed plant design is one that has never been built before in the United States, and therefore non-industry and non-NRC experts have not previously analyzed the design. While NRC regulations do not explicitly require Petitioners to rely on expert assistance, as a practical matter expert assistance is necessary here, where the safety and environmental issues are novel and complex, and the NRC's standards for admissibility of contentions are rigorous. Evaluation of the effects of these exemptions on the safety of the STP operation is a difficult and time-consuming process. When the Staff docketed STPNOC's application, it stated that it expects to take seven months before it is ready to issue the first RAI's; clearly, 60 days is utterly insufficient for Petitioners.

Petitioners also seek an extension in order to provide more time for the completion of the application by STPNOC and its vendor, and to allow the Staff to review the appropriateness of STPNOC's proposal to withhold virtually all information about the costs of the new nuclear power plant as proprietary information. *See* discussion

¹¹ In addition, as discussed in Section IV.D below, the NRC's Notice of Hearing was defective because it failed to even mention the ABWR DCD, or post it on ADAMS.

above in Section III.¹² Petitioners believe that the relative costs and benefits of the STP in comparison to other potential energy sources is an important environmental issue that should be rigorously aired in a hearing; and therefore they believe it is extremely important that STPNOC be required to disclose all relevant information about the costs of the proposed plants. In addition to allowing the Staff to review STPNOC's proprietary claims, an extension would also give Petitioners time to seek the information through a Freedom of Information Act request if necessary.

Finally, an extension is warranted because the overlap of the 60-day period with the scoping process for the Environmental Impact Statement ("EIS") has drastically shortened the amount of time that is effectively available for Petitioners to prepare their hearing request and contentions. In a December 21, 2007, Federal Register notice, 72 Fed. Reg. 72,774, the NRC Staff scheduled two three-hour meetings on February 4 and 5, 2008, for the purpose of providing an overview of the NRC licensing process and taking public comment on the scope of the EIS. The NRC also set a deadline of February 18, 2008, for written comments on the appropriate scope of the EIS. In order to participate in the scoping process, Petitioners were required to expend substantial time and resources evaluating environmental issues, soliciting public input from the affected community, and preparing comments on the scope of the EIS for the proposed nuclear power plants. Therefore they had less time to spend on the preparation of a hearing request.

¹² On January 15, 2008, the Staff informed Petitioner Nuclear Information and Resource Service that it was "still reviewing the applicant's proprietary information withholding request." See Exhibit 5, E-mail message from George Wunder to Michael Mariotte.

Petitioners respectfully submit that the requested extension is unlikely to have any noticeable effect on the timing of a hearing in this case. The timing of a hearing depends in large part on the schedule for the NRC Staff's review. If, indeed, the vendor of the ABWR standardized design must seek changes to the design certification, that process is likely to take more than a few months. Moreover, some of the additional information promised by STPNOC to the NRC Staff will not be ready until late 2008 at the earliest. *See* McBurnett 12/20/07 Letter. Therefore, an extension of at least 180 days or until August 25, 2008 is warranted.

D. The Commission Should Re-Publish the Notice of Hearing.

Whether the Commission suspends the Notice of Hearing or grants an extension of the deadline for submitting a hearing request, the Commission should re-publish the Notice of Hearing because it is fatally defective and misleading. Despite the fact that the ABWR design is a crucial part of STPNOC's application, the Notice of Hearing does not even mention its existence, let alone explain how to obtain it.

In addition, the Notice of Hearing misleadingly makes the general assertion that STPNOC's application is available on ADAMS, when in fact the ABWR DCD is not available on ADAMS. The notice states as follows:

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, *and will be accessible electronically through the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room link at NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.*

72 Fed. Reg. at 73,383 (emphasis added). In addition, the notice states that "the application is also available at <http://www.nrc.gov/reactors/new-licensing/col.html>." *Id.*

But the ABWR DCD cannot be found at either of the websites listed in the Notice of Hearing. Instead, it must be ordered on a compact disk from the PDR. The fact that a DCD that was approved in 1997 is unavailable on ADAMS ten years later is simply unacceptable.

Moreover, the CD provided by the PDR bears no information to indicate that it is an official, complete copy of the ABWR. Instead, it is a collection of hundreds of numbered pdf files. *See* Exhibit 7, a printout of the indices of electronic files. Petitioners could find no cover letter or other document setting forth the official contents of the ABWR DCD, against which a reader could compare the enormous set of pdf files provided in order to verify that the collection provided was complete.

V. CONCLUSION

In order to ensure fairness, efficiency, and integrity to the hearing process for the proposed STP nuclear power plants, the Commission should grant Petitioners' request to suspend the hearing notice until STPNOC completed the application, the NRC Staff has determined the application is complete, and the Staff has established a new schedule for completion of the review. In the alternative, the NRC should grant Petitioners an extension of at least 180 days in which to submit their hearing request. The Commission should also take necessary measures to cure the substantial defect in its Notice of Hearing, and ensure that all important licensing documents are available on ADAMS.

Respectfully submitted,

/s/ Diane Curran

Diane Curran

HARMON, CURRAN, SPIELBERG, & EISENBERG, L.L.P.

1726 M Street N.W., Suite 600

Washington, D.C. 20036

202-328-3500

Fax: 202-328-6918

e-mail: dcurran@harmoncurran.com

February 8, 2008

Certificate of Counsel

I certify that on February 6, 2008, I contacted counsel for the NRC Staff and STPNOC and sought their consent to the measures requested in the foregoing petition, but was unable to obtain their agreement.

/s/ Diane Curran

Diane Curran

February 8, 2008