



May 15, 2014 (CORRECTED 5/27/14)

Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
By e-mail to: Annette.Vietti-Cook@nrc.gov

SUBJECT: *Comments on Direct Rule re List of Approved Storage Casks (79 Fed. Reg. 21,121 (April 15, 2014), Request for Rescission of the Direct Rule, and Request for Publication of a New and Revised Notice of Proposed Rulemaking, Docket No. 13-0271*

Dear Ms. Vietti-Cook:

On behalf of 20 environmental organizations and individuals¹, we are writing to urge you to withdraw and reconsider the direct final rule, issued on April 15, 2014, which adds “32PTH2,” a “new transportable dry shielded canister (DSC),” to the NUHOMS[®] Storage System that previously was approved by the U.S. Nuclear Regulatory Commission (“NRC”). See Direct Final Rule, List of Approved Spent Fuel Storage Casks: Transnuclear, Inc. Standardized Advanced NUHOMS[®] Horizontal Modular Storage System; Amendment No. 3, 79 Fed. Reg. 2,112 (April 15, 2014) (“Direct Rule”).

The Direct Rule flagrantly violates the requirements of the Atomic Energy Act and the Administrative Procedure Act for prior notice and opportunity for public participation in NRC decisions affecting public safety and the environment. *Citizens Awareness Network v. NRC*, 59 F.3d 284 (1st Cir. 1995). Equally troubling, the notice is grossly misleading, and appears designed to lull the public into a false sense of confidence.

According to the preamble to the Direct Rule, the rulemaking is “limited,” “routine,” and “noncontroversial.” 79 Fed. Reg. at 21,122. Furthermore, the NRC asserts that [a]dequate protection of public health and safety continues to be ensured, and that the rule will cause “no significant increase in the potential for or consequences from radiological accidents” in comparison to accident risks analyzed in a previous environmental assessment (“EA”) for the 1990 version of the rule. 79 Fed. Reg. at 21,122, 21,123.

To the contrary, the Direct Rule approves a significant and unprecedented change to the permissible uses of the 32PTH2 DSC: the *transportation of high burnup fuel*. This information

¹ Beyond Nuclear, Citizens’ Alliance for Safe Energy, Citizens’ Environmental Coalition, Don’t Waste Michigan, Kay Drey, Ecology Party of Florida, Captain Dan Kipnis, Missouri Coalition for the Environment, NC WARN, Nevada Nuclear Waste Task Force, Northwest Environmental Advocates, Nuclear Information and Resource Service, Nuclear Watch South, Public Health and Sustainable Energy, San Clemente Green, San Luis Obispo Mothers for Peace, San Onofre Safety, Susan Shapiro, Sierra Club Nuclear Free Campaign, and Southern Alliance for Clean Energy.



is completely absent from the Federal Register notice and may only be discovered by reviewing the accompanying Preliminary Safety Evaluation Report (“SER”), which states:

Appendix M of the FSAR describes an expansion of the authorized contents of the NUHOMS® 32PT DSC to *add high burn-up fuel assemblies up to 55 GWd/MTU.*² The 32PT DSC system is designed to store 32 intact standard PWR fuel assemblies with or without CCs. The application also describes the addition of two additional basket types based on the 24-poison plate 0 poison rod assemblies (PRA) design.

Preliminary Safety Evaluation Report, Transnuclear, Inc. Standardized Nuhoms® Horizontal Modular Storage System for Irradiated Nuclear Fuel, Docket No. 72-1004, Amendment No. 13 at 4 (Date) (ML13290A205) (emphasis added). As acknowledge in the SER, the 32PTH DCS “consists of a *dual purpose storage and transportation 32PTH DSC.*” *Id.* at 15 (emphasis added). Thus, it is intended to be used for transportation of high burnup spent fuel.

To our knowledge, the NRC has not previously approved *any* cask system for transportation of high burnup fuel, because of significant questions regarding its safety. Moreover, the NRC has explicitly stated that it will not give generic approval to transportation of high burnup fuel because it does not have enough technical information about its behavior or the conditions under which it can be safely transported:

The staff is currently reevaluating the technical basis for the transportation of spent fuel including assemblies with average assembly burnups exceeding 45 GWd/MTU. The staff is reviewing data and technical reports to further understand the mechanical and fracture toughness properties of spent fuel cladding in relation to the transportation of high burnup fuel under 10 CFR 71.55. *Therefore, until further guidance is developed, the transportation of high burnup commercial spent fuel will be handled on a case-by-case basis using the criteria given in 10 CFR 71.55, 10 CFR 71.43(f), and 10 CFR 71.51.*

Interim Staff Guidance – 11, Rev. 3 at 1 (2003) (ML033230335) (emphasis added). The issuance of the Direct Rule is completely inconsistent with ISG-11, because the rule grants generic approval of the safety of transporting high burnup fuel in the 32PT DSC. Under these circumstances, it is reasonable to predict that any member of the public seeking to challenge the adequacy of the 32PT DSC design for transportation of high burnup spent fuel in the future will be precluded from making that challenge by the promulgation of this rule. *See, e.g., Kelly v. Selin*, 42 F.3d 1501 (6th Cir. 1995). And yet the NRC has provided absolutely no notice in the Federal Register that transportation of high burnup fuel is a subject of the rule.

² We note that the 55 GWd/MTU burnup limit in the SER is inconsistent with the Technical Specifications, which state that the maximum burnup limit is 62.5 GWd/MTU. Technical Specifications at 2-31 (ML13290A182).



Because the Direct Rule provides misleading and incomplete information, and because it takes significant substantive action with safety and environmental implications, it should be withdrawn. If the NRC decides to go ahead with the proposed approval of the expanded use of the 32PT DSC, it should publish a *proposed* rule and seek public comment in advance of taking action. The proposed rule should fully describe the nature of the proposed licensing action and explain its safety and environmental implications, including preparation of a SER and an EA. The proposed rule should address the inconsistency of the proposed generic approval of the 32PT DSC for storage and transportation of high burnup spent fuel with ISG-11.³

Sincerely,

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³ The NRC suggests that if commenters raise significant enough concerns about the Direct Rule, it may be appropriate to provide a second opportunity for comment on the Direct Rule. 79 Fed. Reg. at 21,112. Given the serious substantive and procedural defects in the Direct Rule, such a remedy is the minimum response required, although it would be grossly insufficient.