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August 25, 2000

DOCKET NUMBER  
PETITION RULE PRM 50-70  
(65 FR 30550)

Annette L. Vietti-Cook  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: Response to Motions re Petition For Rulemaking by Eric Joseph Epstein (65 FR 30550)

Dear Madame Secretary:

On behalf of PPL Susquehanna, LLC ("PPL Susquehanna"), this letter responds to Petitioner, Eric Joseph Epstein's "Motion to Separate *Pro Se* Representation of . . . Employees From Their Affiliated Organizations" ("Motion to Separate") and "Motion to Dismiss Delinquent Filings" ("Motion to Dismiss"), both dated August 15, 2000. Both motions lack merit and run contrary to NRC's longstanding policy in which "NRC strongly encourages public participation and input throughout the NRC's rule making process." *Non-Destructive Testing Management Association*, DPRM-79-4, 10 NRC 253, 255 (Aug. 2, 1979). PPL Susquehanna respectfully asks that the motions be denied.

In his Motion to Separate, Mr. Epstein erroneously suggests that NRC's procedures should be governed by his experience with respect to rulemaking petitions in certain administrative proceedings in the Commonwealth of Pennsylvania and the rules governing the practice of law before certain administrative agencies in Pennsylvania. There is, of course, no legal basis for doing so, and if NRC were to be guided by Mr. Epstein's experience in Pennsylvania, it would be forced to contravene its own longstanding practice and procedure. Authorized members of organizations, including corporations, associations, public interest groups, and the like, routinely file comments on behalf of their respective organizations. These views enhance the rulemaking process by providing the NRC with insights, view points and other useful information that can assist the NRC in conducting a rulemaking.

NRC's broad interest in soliciting comments from any person or organization with useful information to contribute is reflected in both its rules governing rulemakings and its *Federal Register* notices for such rulemakings. For example, 10 CFR 2.805(a) broadly provides that

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any "interested person" will be afforded "an opportunity to participate through the submission of statements, information, opinions and arguments in the manner provided in the notice." NRC's Notice regarding Mr. Epstein's Petition broadly provides for the submission of comments, without any restrictions on the nature or format of the comments, other than the date for submission (July 26, 2000). With respect to the July 26 deadline, NRC's Notice provides that "[c]omments received after this date will be considered if it is practical to do so." 65 FR at 30550. This flexibility plainly illustrates NRC's preference to receive any helpful comments, in any appropriate format, in order to facilitate broad public participation. In describing its rulemaking procedures, NRC has indicated that it "has adopted procedures expected to result in a broader spectrum of public comment on proposed amendments to NRC regulations." *Non-Destructive Testing Management Association*, DPRM-79-4, 10 NRC at 255.

Moreover, the NRC has a longstanding practice of permitting individuals to act on behalf of an organization, so long as they are duly authorized to do so. For example, an individual non-lawyer may represent an organization in *formal* adjudicatory proceedings before the NRC, which can include motions practice, briefing, discovery, and cross-examination. 10 CFR 2.713(a). NRC's rules provide that a "partnership, corporation or unincorporated association may be represented by a duly authorized member or officer." *Id.* This and the other provisions of 10 CFR Part 2, subpart G, do not apply to rulemaking proceedings, which are governed by Subpart H. However, NRC's practice with respect to the potential role of non-lawyers in its formal adjudicatory proceedings surely supports its longstanding practice of accepting comments on rulemakings that are submitted by non-lawyers on behalf of various organizations.

There is no merit to Mr. Epstein's contention that allowing comments "to be verified by non-attorneys also raises other substantial questions of law, such as whether the signatory is authorized to bind the submitting corporation." (Paragraph 7 of Motion to Separate.) First, there is no evidence to suggest that any individuals have submitted unauthorized comments. Second, it seems highly unlikely that an individual would attempt to submit unauthorized comments on behalf of an organization, when the same comments could be submitted on the individual's own behalf. Third, if unauthorized comments were submitted, the affected organization would have every incentive to so inform the NRC so that its views could be properly known. Finally, given the nature and role of comments in rulemaking proceedings, *i.e.*, wherein positions on policy issues are considered on their own merits, there is simply no need for any extraordinary assurance that an organization is "bound" by its comments. In the absence of evidence to the contrary, NRC need not presume that individuals will routinely take it upon themselves to submit comments on behalf of others without proper authorization. But rather, NRC should presume the contrary.

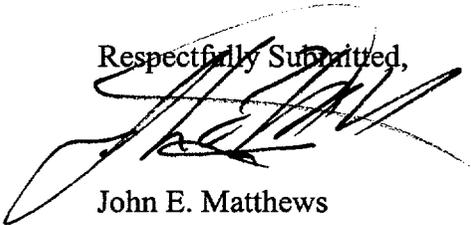
In his Motion to Dismiss, Mr. Epstein provides no substantive basis for NRC to disregard comments that have been submitted slightly late, other than his contention that "[e]ach party that filed a late brief insisted on strict adherence to NRC regulations and a limited and narrow

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interpretation of Commission parlance" and his suggestion that "[a] sense of fair play and accountability dictates that these parties are held to a similar standard." (See Paragraph 5 of Motion to Dismiss.) However, Mr. Epstein completely ignores NRC's rules providing that "[t]he Commission may grant additional reasonable opportunity for the submission of comments," 10 CFR 2.805(a), and NRC's Notice which specifically provided that late-filed comments "will be considered if it is practical to do so." 65 FR at 30550. These requirements stand in stark contrast to other NRC rules, which provide that "good cause" be shown for the extension of time limits. See, e.g., 10 CFR 2.711(a). No harm is caused by NRC's consideration of late-filed comments under these circumstances, and NRC will no doubt benefit from the additional insights provided in the late-filed comments, if it is practical for NRC to consider them.

For the foregoing reasons, PPL Susquehanna requests that the motions of Eric Joseph Epstein be denied.

Respectfully Submitted,



John E. Matthews

cc: Service List (attached).

Before the

NUCLEAR REGULATORY COMMISSION

Petition for Rulemaking filed by )  
Eric Joseph Epstein ) 10 CFR Part 50  
65 Federal Register 30550 ) Docket No: PRM-50-70

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2000 copies of a letter responding to Eric Joseph Epstein's "Motion to Separate *Pro Se* Representation of . . . Employees From Their Affiliated Organizations," and "Motion to Dismiss Delinquent Filing," and this Certificate were served by U.S. Mail, postage pre-paid, on the following:

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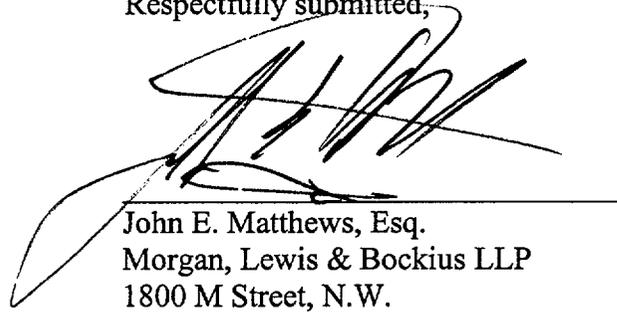
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Matthews', is written over a horizontal line. The signature is stylized and somewhat cursive.

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Date: August 25, 2000