



NUCLEAR ENERGY INSTITUTE

65 FR 46260

July 27, 2000

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Rules and Directives
Branch
Robert Willis Bishop
Vice President &
General Counsel

September 1, 2000

Mr. David L. Meyer
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: Request for Comment; Review of Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (65 Fed. Reg. 46260; July 27, 2000)

Dear Mr. Meyer:

On behalf of the nuclear energy industry, the Nuclear Energy Institute¹ submits the following comments on revisions to the 10 CFR 2.206 process announced in the July 27, 2000, Federal Register. The NRC specifically asked for comments on the following revisions:

- Providing a petitioner an opportunity to meet with the NRC staff Petition Review Board (PRB) prior to the PRB's initial meeting as well as after the PRB has met to discuss the petition;
- Eliminating criteria currently delineated in Management Directive 8.11 as a prerequisite to holding a technical meeting; and
- Providing the petitioner and the affected licensee with a draft director's decision for comment prior to the formal issuance of the director's decision.

The staff also has rewritten Management Directive 8.11 (MD 8.11) to improve its flow and make it easier to use.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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The industry previously has stated that the instant revisions and other recently approved changes to the 10 CFR 2.206 process considerably improve communication between the NRC and petitioners, and foster more timely issuance of director's decisions.² The industry continues to believe that revising the 10 CFR 2.206 process to make it more transparent and the resulting director's decisions more understandable will vastly improve its effectiveness.

Turning to the specific changes on which the NRC seeks comment, we support providing the petitioner with an opportunity to explain the bases for the petition prior to and following the PRB meeting. These steps will permit the NRC to develop an in-depth understanding of the petition earlier in the process. Providing for licensee input at this point, including allowing the licensee to "ask questions to clarify issues raised by the petitioner" also is critical to a thorough evaluation of a 10 CFR 2.206 petition.

The industry also supports providing the petitioner and the licensee with a draft version of the director's decision. This step permits the petitioner and licensee to ensure that the NRC has accurately stated the facts underlying the petition and to present any new information that may have come to light since the submission of the petition. We note that MD 8.11 also provides for public comment on the draft director's decision. However, MD 8.11 does so in a confusing manner. We suggest that the first paragraph in Handbook Part V(E), "Issuing the Proposed Director's Decision for Comment," be revised to include the statement regarding the staff's willingness to consider "comments from other sources" (e.g., other members of the public), which is now contained in the following section.³ This will make it clear that members of the public may comment on the proposed director's decision and that the NRC will consider the public's comments prior to issuing the final decision. In addition, and as we have urged in previous submissions when this step was initially proposed, the NRC should state in the transmittal letter accompanying the draft director's decision that this is the final opportunity to provide the NRC with input on the petition.

The industry recommends that the NRC reconsider three other issues. First, MD 8.11 Handbook Part III(H), "Sending Documents to the Petitioner," states that the

² Letter from Robert W. Bishop, NEI General Counsel, to William D. Travers, NRC Executive Director of Operations, dated July 30, 1999. See also letter from Robert W. Bishop, NEI General Counsel to David L. Meyer, Chief, Rules and Directives Branch, dated January 31, 2000. The industry's position on improvements to the 10 CFR 2.206 process was also provided at a June 26, 2000, Commission briefing.

³ "Review Process for 10 CFR 2.206 Petitions," Handbook 8.11, Part V at 24-25.

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petitioner will be added to the service lists "for the topic or affected licensee(s) for all headquarters and regional documents on the affected dockets."⁴ Although we assume the NRC does not intend to enlarge the scope of a petition by providing the petitioner with correspondence related to other licensees not subject of the petition, the use of "affected licensees" in this context could lead to such a perception. For that reason, and because the revised 10 CFR 2.206 process already provides for petitioners to be placed on distribution for all relevant NRC correspondence with the licensee that is subject of a particular petition,⁵ we suggest that this provision be eliminated.

Second, the MD 8.11 Handbook text and flow charts should more clearly identify when licensees can respond to a petition and its underlying safety implications, if there are any. For example, the "Simplified 10 CFR 2.206 Process Flow Charts"⁶ include boxes captioned "Petitioner Addresses PRB." In fact, the licensee also can participate in these meetings or teleconferences. Without explicitly showing the opportunity for the licensee to participate, there is a risk that a petitioner will assume that the meeting will be closed to the licensee. The industry recommends that the MD 8.11 Handbook and the flow charts be revised to show each opportunity for licensee participation in the 10 CFR 2.206 process.

Third, we are concerned that the revised 10 CFR 2.206 process allows the NRC to determine whether licensee input is necessary following the issuance of the acknowledgement letter. Given the potentially significant impact of a 10 CFR 2.206 petition on a licensee, licensee should be permitted to provide input at this juncture as a matter of right. As with any submission, the NRC can adjudge its value once it is submitted. Thus, we strongly encourage the NRC to revise this opportunity for licensee input from one provided at NRC discretion to one always afforded the licensee.

Finally, we note the NRC has set a 120-day schedule from issuance of the acknowledgement letter to the issuance of the proposed director's decision. Although 120 days may not be excessive for a petition involving a complex matter, we do not believe the NRC routinely should take 120 days simply because that is the time allotted. In fact, given that the acknowledgement letter is issued subsequent to the meeting of the petition review board, it would appear that the

⁴ Id. at 16.

⁵ Id. at 16.

⁶ Id. at 29 and 30.

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NRC could issue most proposed director's decisions in significantly less than 120 days.

In conclusion, the industry believes that the NRC's recent efforts to improve the 10 CFR 2.206 process overall serve the public interest. We recommend that the NRC review the effectiveness of the revised process for evaluating and responding to 10 CFR 2.206 petitions in approximately 24 months to consider what, if any, further changes should be made. The industry will be pleased to participate with other stakeholders in those or any interim discussions.

If staff would like to discuss further the industry's views on the revised 10 CFR 2.206 process, please contact me at 202.739.8139 or Ellen Ginsberg, NEI Deputy General Counsel, at 202.739.8140.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Bishop", written in a cursive style.

Robert W. Bishop

(Transmitted by e-mail. ✓ Hard copy to follow by regular mail.)