

DOCKET NUMBER

PETITION RULE

PRM 50-70
(65 FR 30550)

DOCKETED
USNRC

Before the

NUCLEAR REGULATORY COMMISSION

'00 SEP 15 P2:58

Petition for Rulemaking filed by :
Eric Joseph Epstein on May 12, 2000 : 10 CFR Part 50
Federal Register, Volume 65, Number 93, : Docket No: PRM-50-70
30550-30553 :

ADJ

Response to PPL Susquehanna's Request to Deny Petitioner's Motions to Dismiss Delinquent Filings (1) and Separate Pro Se Representations (2)

ERIC JOSEPH EPSTEIN, *Petitioner*
4100 Hillside Road
Harrisburg, PA 17112

Annette L. Vietti-Cook
Secretary of the Commission
United States Nuclear Regulatory Commission
Rules and Directives Branch
Division of Administrative Services
Office of Administration
Washington, D.C. 20555-0001

Dear Madame Secretary:

1) On December 30, 1999, the Petitioner, Eric Joseph Epstein, (hereafter, "Petitioner" or "Epstein"), filed a **PETITION for RULEMAKING 10 CFR. CH 1. (1-1-99), EDITION** (Hereafter the "Petition") SUBPART-H §2802:PETITION to AMEND THE FINANCIAL ASSURANCE REQUIREMENTS for DECOMMISSIONING NUCLEAR POWER REACTORS SECTION 50.75 REPORTING and RECORD KEEPING for DECOMMISSIONING PLANNING, Parts: (a), (b), (c), (d), (e), and (f) to INCLUDE UNIFORM REPORTING for PROPORTIONAL OWNERS of NUCLEAR GENERATING STATIONS and A REQUEST to PETITIONER'S RECOMMENDATIONS for NUCLEAR DECOMMISSIONING IDENTIFIED IN : II) STATEMENT of ISSUES: 9 (A), (B), (C), (D), (E) AND (F);

1 The Petitioner's Initial Motions were filed on August 15, 2000. An additional Set of Motions were filed on August 23, 2000. PPL Susquehanna's Request deals only with the Initial Set of Motions.

2 PPL Susquehanna includes PPL and the Allegheny Electric Cooperative (AEC).

Template = SECY-067

SECY-02

2) The Nuclear Regulatory Commission (NRC) docketed the Petition on January 3, 2000;

3) David L. Meyer acknowledged receipt of the Petition in a letter delivered by the United States Postal Service (USPS) to Mr. Epstein dated January 24, 2000;

4) The NRC notified the Petitioner, via the United States Postal Service on May 8, 2000, that the Petition was docket pursuant to 10 CFR 2.802 and assigned the number: PRM-5070;

5) Mr. Meyer notified the Petitioner through the USPS on August 7, 2000, and provided comments from eight interested parties (3);

6) The Commission solicited public comment and explicitly instructed interested parties to:

Submit comments by July 26, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

7) Despite advance notice, and 75 days in which to file timely comments, several parties failed to adhere to the submission standards established by the Commission (4);

3 Comments from New England Power Company and Ogelthorpe Power Corporation were entered through electronic submission and the USPS. Both formats continue to lack signature(s) or any other visible means of attestation as of **September 5, 2000**

28 USC APPENDIX - RULES OF CIVIL PROCEDURE Rule 11, TITLE 28 JUDICIARY AND JUDICIAL PROCEDURE, FEDERAL RULES OF CIVIL PROCEDURE, III. PLEADINGS AND MOTIONS, Rule. 11 Signing of Pleadings, Motions, and Other Papers:

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

4 Part 2, -- RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS, Subpart H -- Rulemaking; Section 2.805 participation by interested persons; and, Section 2.808 Authority of Secretary to rule on procedural matters.

8) The Petitioner filed Motions to Dismiss Delinquent Filings and Separate *Pro Se* Representations on August 15, 2000. An additional Set of Motions were filed on August 23, 2000, affecting only the North Atlantic Service Energy Company;

9) PPL Susquehanna (PPLS) filed a Response to Motions re Petition For Rulemaking by Eric Joseph Epstein (65 FR 30550) (5);

10) PPLS's Response distorts and mischaracterizes Mr. Epstein's argument, and seeks to sanction untimely filings. Furthermore, PPLS's Response introduces a sophomoric paradigm whereby the Company argues that all rulemaking stake holders have an equitable amount of resources to expend at an intellectual banquet of ideas;

11) PPL Susquehanna asserts:

Mr. Epstein erroneously suggests that NRC's procedures should be governed by his experience with respect to certain rulemaking petitions in certain administrative proceedings in the Commonwealth of Pennsylvania and the rules of governing the practice of law before certain administrative agencies in the Commonwealth of Pennsylvania.

[Page 1, Paragraph 2, Lines 1-4]

While the Petitioner observed how certain administrative agencies (6) in Pennsylvania deal with *Pro Se* representation and verifiable means of attestation, the crux of the Petitioner's argument actually read:

The signing of petitions submitted by corporate entities by legal counsel suggests that a fairly standard practice, which avoids the unauthorized practice of law, already informally and formally exists. To allow rulemaking petitions 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 to the allegations made within the submission, and whether other constraints bind the signatory, such as **Rule 11 sanctions under the Federal Rules of Civil Procedure**, due to the nature of their action; (**Bold face type added**) (Motion to Separate *Pro Se* Representation, (7), August 15, 2000);

5 The Petitioner acknowledges that PPL and the Allegheny Electric Cooperative have retained legal counsel. Mr. Epstein lauds PPL and the AEC for taking prompt and appropriate measures to rectify this issue.

6 The NRC, an administrative agency, maintains its Region I headquarters in King of Prussia, Pennsylvania, and on site inspectors are deployed at five separate nuclear stations throughout the Commonwealth.

12) Ironically, PPL and the AEC (7) are arguing a moot point since they secured in-house legal counsel, Bryan A. Snapp, Esquire (PPL) and Otto Hoffman, Esquire (AEC), and retained the services of Morgan, Lewis & Bockius, LLP; (8)

13) PPLS suggests that a wide array of stake holders "routinely file comments on behalf of their respective organizations." (PPLS, Page 1, Paragraph 2, Lines 6-10). However, Mr. Epstein reviewed the NRC's on-line rulemaking library, and found that the overwhelming majority of commentaries were prepared by representatives from the nuclear industry, attorneys representing the nuclear industry, or industry advocacy groups; (9)

14) In fact, on August 31, 2000, the NRC acknowledged the disproportionate amount of resources and influence the industry wields on the rulemaking process, and Proposed Guidelines for Including Industry Initiatives in the Regulatory Process (10);

7 The AEC, along with the Petitioner, the Office of Consumer Advocate, ARIPPA, the International Brotherhood of Electrical Workers, Local 1600, and the PPL Industry Customer Alliance, are currently challenging PPL's Exempt Wholesale Generating designation in a proceeding before the Public Utility Commission (PUC, Docket No. R-00973954. This matter is currently on Appeal in Commonwealth Court.)

However, both PPL and the AEC, acting as adversaries before the PUC, secured legal counsel and filed comments in a timely fashion.

8 The Petitioner has not been apprised through oral communication, formal correspondence, or electronic posting or facsimile, that Morgan, Lewis & Bockius has been charged to represent the interest of any other party in this proceeding.

9 The NRC's "Current Rulemakings Available" (*Enclosed*) clearly demonstrates that the overwhelming majority of rulemaking petitions are submitted by the nuclear industry, which then files comments in support of itself. States rarely comment, and almost all of these rulemaking petitions and announcements require technical, fiscal or public policy expertise.

10 Federal Register: August 31, 2000 (Volume 65, Number 170)[[Notices]][Page 53050-53058] From the Federal Register Online via GPO Access.

SUMMARY: The NRC staff has developed proposed guidelines to ensure that future industry initiatives would be treated and evaluated in a consistent and predictable manner. The proposed guidelines would allow industry initiatives to play an important role in achieving the NRC's regulatory goals of maintaining safety, reducing unnecessary regulatory burden, improving efficiency, effectiveness, and realism, and improving public confidence. The NRC staff is soliciting stake holder comments from interested parties related to the proposed guidelines for including industry initiatives involving nuclear power reactor licensees in the regulatory process.

14) It is an unreasonable, and an undue hardship, to expect consumer, environmental, or public interest groups, to enlist and deploy resources at a level commensurate with an industry dominated by Fortune 500 actors; (11)

15) If an individual wants to speak on behalf of a corporation or industry actor, s/he can list the entity for **affiliation purposes only. The nuclear industry should not be allowed to subsidize *Pro Se* commentary through corporate resources;**

16) The NRC's own data clearly reflects that the existing system does not foster citizen participation; (12)

17) Yet the industry, with all of its resources, wants to codify the right to submit comments "slightly late." (Page 2, Paragraph 4, Line 2). To legalize blatant disregard for rules and regulations in a Rulemaking Proceeding is a cavalier approach to time management, and would create regulatory anomie;

18) When does the finessing of deadlines, and the dilution of rulemaking end? Perhaps the industry will next argue that this logic should be extended to liberalize control rod drive drop testing, postpone deadlines for addressing corrective actions, increase the time period in updating isotopic distribution, or encourage emergency preparedness participants to be "slightly late " if it is practical do so";

11 "As a result of a 21 percent increase in operating revenues, PPL Corp. has moved up to No. 349 in the Fortune 500, a 52-place rise in one year.

In the past two years, the Allentown, Pa.-based company has risen 118 places on the list, which is published by Fortune Magazine every April."

(PPL Corporation News Release, April 4, 2000.)

12 The petitioner has been involved with NRC processes for almost two decades, and actively participated in all facets of public participation. Most recently, Mr. Epstein filed comments on October 29, 1999 Nuclear Energy Institute's Petition for Rulemaking, 10 CFR 51, Docket No. PRM. 51-7, Nuclear Regulatory Commission, (September 2, 1999: Volume 64, Number 170, pp. 48117-48120). With the exception of Mr. Epstein, ten out of the eleven parties that filed comments represented the nuclear industry.

19) PPL Susquehanna not only wants the ability to file comments when they feel "it is practical to do so", but the Company contends that the process of affixing a signature to a document is burdensome and irrelevant (Page 2, Paragraph 3); (13)

20) The Petitioner simply asks that the NRC recognize and enforce its own rules and regulations. Furthermore, the Commission should not deregulate the rulemaking process, or condone and countenance the industry's practice of failing to meet deadlines.

Respectfully submitted,



Eric Joseph Epstein, Petitioner
4100 Hillsdale Road
Harrisburg, PA 17112

13 Perhaps the Company and industry have forgotten the importance of affixing a signature in such mundane matters as contracts, inspection reports, and certifying quality control.

The Petitioner also reminds the Commission that his community was victimized by sloppy record keeping and inattentiveness to detail. The systematic falsification of leak rate testing by hand written signatures occurred at Three Mile Unit-2 prior to the March 28, 1979, loss of coolant accident. This fictive approach to safety resulted in the first criminal conviction of an NRC licensee. On February 29, 1984, a plea bargain between the Department of Justice and Met Ed settled the Unit 2 leak rate falsification case. Met Ed plead guilty to one count, and no contest to six counts of an 11 count indictment.

Enclosures

DATED: SEPTEMBER 5, 2000

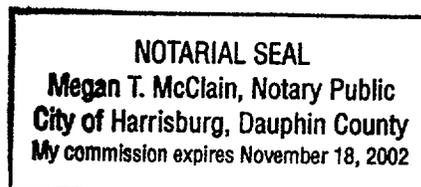
State of Pennsylvania
County of Dauphin

Sworn and subscribed before me this
5th day of September 2000



NOTARY

6



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Current Rulemakings Available

- [Advance Notice of Proposed Rulemaking - Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste](#)
- [Advance Notice of Proposed Rulemaking - Risk-Informing Special Treatment Requirements](#)
- [Direct Final Rule - Formal and Informal Adjudicatory Hearing Procedures; Clarification of Eligibility to Participate](#)
- [Direct Final Rule - List of Approved Spent Fuel Storage Casks: Standardized NUHOMS-24P and NUHOMS-52B Revision](#)
- [Direct Final Rule - List of Approved Spent Fuel Storage Casks: VSC-24 Revision](#)
- [Draft NUREGS and Draft Regulatory Guides](#)
- [NRC Examination of its Approach for Control of Solid Materials at Licensed Facilities](#)
- [Notice of Intent to Implement Currently Effective Rule and Request for Comments - Government in the Sunshine Act Regulations](#)
- [Petition for Rulemaking - \(PRM-2-12\) Michael Stein; Employee Protection and Deliberate Misconduct](#)
- [Petition for Rulemaking - \(PRM-26-2\) Barry Ougley](#)
- [Petition for Rulemaking - \(PRM-30-62\) Employee Protection Training](#)
- [Petition for Rulemaking - \(PRM-30-63\) Natural Resources Defense Council](#)
- [Petition for Rulemaking - \(PRM-30-64\) Charles T. Gallagher, Gammatron, Inc.](#)
- [Petition for Rulemaking - \(PRM-32-05\) Metabolic Solutions, Inc.; Denial of Petition](#)
- [Petition for Rulemaking - \(PRM-35-15\) Jeffrey C. Angel](#)
- [Petition for Rulemaking - \(PRM-36-01\) Revision of Part 36 Requirements for Panoramic Irradiators](#)
- [Petition for Rulemaking - \(PRM-40-26\) Chromalloy Tallahasee, a Division of Chromalloy Gas Turbine Corporation; Denial of Petition for Rulemaking](#)
- [Petition for Rulemaking - \(PRM-40-27\) State of Colorado and Organization of Agreement States](#)
- [Petition for Rulemaking - \(PRM-40-28\) Donald A. Barbour, Philotechnics](#)
- [Petition for Rulemaking - \(PRM-50-64\) Potential Liability of Joint Owners of Nuclear Plants; Denial of Petition](#)
- [Petition for Rulemaking - \(PRM-50-65\) Shutdown of Nuclear Facilities Not Compliant with Y2K Issues; Denial of Petition](#)
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Denial of Petition

- Petition for Rulemaking - (PRM-50-67) Assurance of Reliable Back-Up Sources of Power for Nuclear Facilities; Denial of Petition**
- Petition for Rulemaking - (PRM-50-68) Bob Christie**
- Petition for Rulemaking - (PRM-50-69) Westinghouse Electric Company LLC**
- Petition for Rulemaking - (PRM-50-70) Eric Joseph Epstein; Financial Assurance Requirements for Decommissioning Nuclear Power Reactors**
- Petition for Rulemaking - (PRM-50-71) Nuclear Energy Institute**
- Petition for Rulemaking - (PRM-51-7) Nuclear Energy Institute**
- Petition for Rulemaking - (PRM-54-1) Union of Concerned Scientists**
- Petition for Rulemaking - (PRM-71-12) Special Requirements for Plutonium Shipments**
- Petition for Rulemaking - (PRM-72-04) Prairie Island Coalition**
- Petition for Rulemaking - (PRM-72-5) Nuclear Energy Institute**
- Petition for Rulemaking - (PRM-73-10) State of Nevada**
- Petition for Rulemaking - (PRM-76-1) United Plant Guard Workers of America**
- Proposed Policy Statement - Staff Meetings Open to the Public**
- Proposed Rulemaking - Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses**
- Proposed Rulemaking - Consideration of Potassium Iodide in Emergency Plans**
- Proposed Rulemaking - Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada**
- Proposed Rulemaking - Domestic Licensing of Special Nuclear Material; Possession of a Critical Mass of Special Nuclear Material**
- Proposed Rulemaking - Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors**
- Proposed Rulemaking - Interim Storage for Greater Than Class C Waste**
- Proposed Rulemaking - Licensing Proceedings for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Design Standards for Participating Websites**
- Proposed Rulemaking - List of Approved Spent Fuel Storage Casks: FuelSolutionsTM Addition**
- Proposed Rulemaking - List of Approved Spent Fuel Storage Casks: NAC UMS Addition**
- Proposed Rulemaking - Operator License Eligibility and Use of Simulation Facilities in Operator Licensing**
- Proposed Rulemaking - Reporting Requirements for Nuclear Power Reactors**
- Proposed Rulemaking - Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material**
- Proposed Rulemaking and Policy Statement - Medical Use of Byproduct Material**
- Request for Comment on Issues Paper: Major Revision to 10 CFR Part 71: Compatibility with ST-1--The IAEA Transportation Safety Standards--and Other Transportation Safety Issues, Issues Paper, and Notice of Public Meetings**

- [Request for Comments - High-Level Guidelines for Performance-Based Activities](#)
- [Request for Comments - Proposed Compatibility Designation Change and Draft Emplacement Criticality Guidance for Low-Level Waste](#)
- [Request for Information - Fissile Material Shipments and Exemptions](#)
- [Rulemaking Plan - Changes to 10 CFR Part 55 to Reduce Unnecessary Regulatory Burden Associated With the Use of Simulation Facilities in Operator Licensing](#)
- [Rulemaking Plan - Decommissioning Trust Provisions \(Part 50\)](#)
- [Rulemaking Plan - Decrease in the Scope of Random Fitness-for-Duty Testing Requirements for Nuclear Power Reactor Licensees as Required by 10 CFR Part 26](#)
- [Rulemaking Plan - Emergency Planning Requirements for Permanently Shutdown Nuclear Power Plant Sites, 10 CFR Part 50.54\(q\) and \(t\); 10 CFR 50.47; and Appendix E to 10 CFR Part 50](#)
- [Rulemaking Plan - Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations, 10 CFR Part 72](#)
- [Rulemaking Plan - Lessons Learned on 10 CFR Part 52](#)
- [Rulemaking Plan - Material Control and Accounting Amendments](#)
- [Rulemaking Plan - Protection Against Discrete Radioactive Particle \(DRP\) Exposures \(10 CFR Part 20\)](#)
- [Rulemaking Plan - Reactor Fire Protection Risk-Informed, Performance-Based Rulemaking](#)
- [Rulemaking Plan - Revision of 10 CFR to Permit the Submission of Documents Electronically; Minor Corrections](#)
- [Rulemaking Plan - Standardizing the Process for Allowing a Licensee to Release Part of its Reactor Facility or Site for Unrestricted Use Before Receiving Approval of its License Termination Plan](#)
- [Rulemaking Plan and Request for Comments - Re-evaluation of Physical Security Regulations](#)

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**Before the
NUCLEAR REGULATORY COMMISSION**

Petition for Rulemaking filed by :
Eric Joseph Epstein on May 12, 2000 : **10 CFR Part 50**
65 Federal Register 30550 : **Docket No: PRM-50-70**

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the active participants named below by US mail or hand delivery in .

Annette L. Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20055-0001
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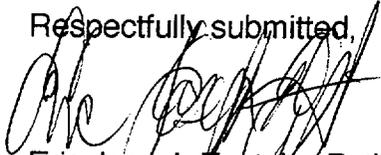
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DATE: September 5, 2000