

March 19, 1999

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-99-042 - DENIAL OF A
PETITION FOR RULEMAKING: NUCLEAR ENERGY
INSTITUTE (NEI)(PRM-30-61)

The Commission has approved the staff's recommendation to deny the petition for rulemaking submitted by NEI and agreed that the staff should develop guidance documents to clarify the flexibility of the current regulations to grant licensees alternative time schedules for initiation of decommissioning. The staff should work closely with stakeholders in open meetings (and via the Internet Home Page, if appropriate) to develop the criteria for review and approval of alternate decommissioning schedules. The review criteria should also address the case of federal facilities undergoing decommissioning, a subject which has come up in discussions of external regulation of DOE nuclear facilities. It is the Commission's understanding that alternate schedule requests would be granted for a federal facility if the licensee established, inter alia, that an alternate schedule involving some of the federal licensee's other facilities would better take into account the federal licensee's overall decommissioning needs. In other words, the NRC decommissioning timeliness rule would not disrupt the health, safety, and environmental priorities established for the massive overall clean-up of DOE's nuclear facilities. The staff's guidance on approving extensions of the timeliness requirements for decommissioning sites and separate buildings or outdoor activities should include the consideration of the need to establish or revise financial assurance instruments for decommissioning, such as a bond or other instrument, to assure coverage of reasonably predicted decommissioning costs in case the company were to become financially insolvent prior to the commencement of decommissioning activities. The staff should advise the Commission of the need for rulemaking to effect such assurance.

Specific edits to the Federal Register notice, letter to NEI, and Congressional letters are noted in the attachment.

Attachment:
As stated

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS

Changes to SECY-99-042

In the Federal Register Notice:

1. On page 4, item number 1, revise as follows:
 1. NRC believes the current language of the Timeliness Rule is sufficiently flexible to accommodate the petitioner's concerns **because it currently contains provisions for granting licensees alternative time schedules for initiating decommissioning.** ~~and~~ NRC **also believes** that clarification of the specific acceptance criteria **for granting alternative schedules** could be achieved through the development of guidance.
 2. On page 6, paragraph 1, insert the following sentence as the next to last sentence: **Obviously, if the petitioner believes that the final guidance documents and their implementation do not adequately address the intent of the petition, the petitioner has the option of re-submitting the petition.**

In the letter to NEI:

3. Change the last paragraph as follows:

NRC has considered both the petition and public comments on it. For the reasons specified in the enclosed Federal Register notice, your petition is denied. Despite this denial, as discussed in our meeting with NEI on September 2, 1998, we have initiated the development of guidance to our staff, ~~which will also be provided to material licensees~~, on the criteria to be applied to requests for approval of alternate decommissioning schedules under the Commission's regulations. **We intend to solicit input from NEI and other stakeholders through open meetings and NRC's Website to develop the review criteria. The final guidance will also be provided to materials licensees.**

In the Congressional letters:

4. At the end of the third paragraph, add: **For example, since the effective date of the Timeliness Rule, August 15, 1994, fewer than 30 licensees out of several thousand have requested approval to delay decommissioning activities and only 3 were initially denied - 2 were subsequently withdrawn and 1 was approved.**
5. Change the last paragraph as follows:

Although the PRM has been denied, the NRC has initiated the development of guidance to its staff, which will be made available also to material licensees, on the criteria to be applied to requests for approval of alternate decommissioning schedules under the NRC's regulations.

6. The letter to the House of Representatives should be addressed to Joe Barton instead of Dan Schaefer.

(EDO)	(SECY Suspense: (FRN, press release, and letters	3/26/99)
(EDO)	(SECY Suspense: (Guidance Documents	6/30/99)