Secretary US NRC
att: Rulemakings and adjudications
staff — Public Comment on PRM-72-5
10 CFR Part 72 NEI Petition

Dec 11, 2000
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Appleton, WI
54915

DOCKETED USNRC

'00 DEC 15 P3:24

(24)

I have just gotten a copy of the Aug 23, 2000 comment that NEI sent to you on their own petition. I think it makes the muddle of their proposal even worse.

A major concern of theirs appears to be the amendment process. This is nothing new. When the "guinea pig case" for use of the general license was in process for the VSC-24, it became very clear to everyone involved that cask designs were part of the licensing package, and that the amendment process, by rulemaking, applied.

The vendor fabricated casks before the certification and on Aug 31, 1992 sent NRC "technical comments" saying they preferred to get approval "as is" and request an amendment in the future. This document was not put in the PDR until May 1993! I wish you'd look at it. The cask was certified "as is" on May 7, 1993. One month later Sierra wanted to be able to add fuel with control components and then requests for more, and more, and more site specific and generic changes poured in rapidly. The documents were a mess over the years. There was a great deal of controversy over utilities changes, and vendors changes, and use of 72.48, and the amendment process. It appears everybody would like to make their own changes wherever they wanted to and keep the public

DOCKET NUMBER
PETITION RULE PRM 72-5
(65FR36647)

SECY-02

Template = SECY-067

out of it as much as possible.

In NEI's letter of Aug 23, 2000 they point to (p.4) "extensive" experience when, in fact, only two amendments have been made — both to the VSC-24 and both for things that should have been done way back when the CoC was issued.

I think it more of a muddle when NEI refers (p12) to a CoC as "something" "less" than a license, I wonder what that "something" really is. Considering it was always part of the licensing package, I'd say it was part of the license. In Kelly vs. Selin the court did indeed find that because the CoC was added to the NRC rules by rulemaking, the Atomic Energy Act applied. It was decided that, since it was a generic issue that there wouldn't be hearings. Yet, are these amendments to be made by vendors and by utilities in the future, in fact, generic? That is a big question. The generic license was adopted to avoid need for more site specific approvals. NEI (p4) admits that changes are requested "to accomodate minor differences in cask contents unique to particular plants and that this will cause the number of CoC amendments to rise substantially. Indeed they say in 1999 there were 133 Part 72 licensing actions. Why is this the situation when these casks were supposed to be generic and the purpose of this generic license was to avoid such unique — site-specific changes???

NEI talks about "maintaining" a level of public confidence, yet proposes to make a lot of amendments to CoC's immediate, by Fed. Reg. notice, and let the public comment after that. Of what good is that? If that's maintaining the same level of confidence, in their mind, I certainly can't see it anything but the opposite.

The NRC needs to maintain the full measure of control it now has. You are asking for disaster if you don't. You will end up with different "versions" (of what was supposed to be a generic cash) at every reactor. And these are site specific versions, with unique changes for each site.

You need to be very careful who you let change what, or you are going to end up with more of a mess than you already have. By allowing the vendor and the utility to make changes, you'd better be very clear who is liable in each process.

NEI keeps calling their proposal a "modest revision" and "modified slightly" when, in reality, they want the whole rulemaking process for cash certification and amendment thrown out! This would be a grave mistake and cause more overwite, and costs, and time, in the future for NRC I predict — plus a bigger muddle in the documents meeting reality than we have now.

I don't think this petition should ever come to a proposed rule at all.

Sincerely,

Fawn Shilling Cain

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What their proposal will allow is even greater problems with vendors proposing that NRC certify cask designs as fast as possible "as is", just as Sierra wanted in 1992. When these designs are not truly generic, and not complete when the vendor full well knows the many changes that will be needed in the future. Vendors need to "do their homework" first, as do utilities, and get that proposed cask design complete before they send it to NRC for rulemaking. What they appear to want is still what Sierra wanted — let us build the casks, let us get a certificate "as is" (with the minimum amount of preparedness, done as fast as possible, and with as little public input as possible). Then they want to amend that certificate over and over and over in the future. This is just plain wrong. They knew the technical changes needed in 1992 for VSC-24 to some extent, and didn't do the necessary evaluation for others. Yet they wanted that certificate anyway! If vendors and utilities want a generic cask, then it should be truly generic — before certified. It shouldn't be a sketchy mess, with casks built needing future "retrofitting" at public risk, and site specific, unique, changes needed soon after certification. If it's a site specific cask, then that process is what should be used.