



NUCLEAR ENERGY INSTITUTE

Alan P. Nelson
SENIOR PROJECT MANAGER,
LICENSING
NUCLEAR GENERATION

December 4, 2001

Mr. Christopher I. Grimes
Chief, License Renewal and Standardization Branch
Division of Regulatory Improvement Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: License Renewal Appeals Process and Rules of Engagement

PROJECT NUMBER: 690

Dear Mr. Grimes:

On September 19, 2001 the NEI License Renewal Working Group met with the NRC Steering Committee, and recommended that the industry review the technical issue appeals process and develop improvements. The steering committee agreed, and recommended that NEI interact with you as the review matures. It was suggested that the appeals process issue be discussed at the next NEI License Renewal Working Group/NRC Steering Committee agenda.

The industry and the NRC have recognized the need to define a license renewal appeals process and to establish the rules of engagement. The objective is to develop a process that is clearly defined, and useful in clearly identifying and resolving differences in the interpretation of license renewal requirements that exist in 10 CFR 51 and 10 CFR 54 in a timely manner.

It is not the purpose of the appeals process to pursue changes to the regulations governing license renewal. There is a separate process in place to initiate changes to regulations, and this process should be used if the remedy being sought is a change to the rules that apply to the license renewal process.

Attached for your review and preliminary discussions at the scheduled meeting on December 12, 2001 is industry's approach to the "License Renewal Appeals Process and Rules of Engagement."

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Mr. Christopher I. Grimes
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We look forward to working with the NRC staff on this project. If you have any questions, please call me at (202) 739- 8110 or e-mail (apn@nei.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan Nelson".

Alan Nelson

Enclosure

License Renewal Appeals Process and Rules of Engagement

Purpose

The industry and the NRC have recognized the need to define a license renewal appeals process and to establish the rules of engagement. The objective is to develop a process that is clearly defined, fair, expedient, and useful in clearly identifying and resolving differences in the interpretation of license renewal requirements that exist in 10 CFR 51 and 10 CFR 54. It is expected that the outcome of the appeal process will be a final decision for a defined issue that is binding on both parties and not subject to further debate. Once an issue has been appealed and a finding made, timely follow-on action should be completed when required to issue interim staff guidance (ISG) until such time that guidance documents are revised. The end result of such an appeals process will be a reduction in uncertainty for future applicants and NRC reviewers. Above all else, the appeals process must be straightforward and timely if it is to be a useful tool in the on-going effort to streamline and standardize the method used by the regulator to review renewed license applications.

Before an issue is considered for appeal, it is expected that there would be an ongoing dialog of the issue between the NRC staff and the industry. The industry may be represented by an applicant for plant specific issues or ultimately by NEI when an issue appears to have generic implications. This type of interaction is good in that it helps to better define issues, and it is expected to continue independent of the appeals process. Some issues may continue in an ongoing dialog mode for an extended period as both sides continue to learn and adapt their positions as more applications are processed. The appeals process would only be used when it becomes clear that there is a difference of opinion on a fundamentally important issue that will not be resolved in a satisfactory fashion or in a timely manner.

It is not the purpose of the appeals process to pursue changes to the regulations governing license renewal. There is a separate process in place to initiate changes to regulations, and this process should be used if the remedy being sought is a change to the rules that apply to the license renewal process. Also, the appeals process described in this paper is different from and does not replace the Hearings process provided for in 10 CFR 54.27 which is intended to provide the public an opportunity to have concerns brought before a hearing board.

Underlying Principles

The appeals process must be based on principles that are mutually agreed upon and uniformly enforced if the decisions rendered are to be accepted as fair and technically sound. The following basic ground rules need to be embodied in such a process:

- Both parties must accept the final decision yielded by the appeals process. Once a final finding has been rendered for an issue, that same issue shall not be subject to additional appeals. Only if associated issues or a change in scope are identified would another appeal

be available; in such a situation, a new and separate issue from the one previously appealed would have to be identified and agreed to by both sides.

- One of the purposes of an appeals process is to establish a body of information that will assist both applicants in preparing and the NRC in reviewing applications. The decisions coming from the appeals process shall be well documented to facilitate future reference. Also, it is important that changes to guidance documents be made in a timely fashion. The NRC should issue interim guidance for implementing the findings until revisions to guidance documents can be made.
- There should be at most two levels of appeal. The first appeal would be made to an ad hoc appeals board, the License Renewal Review Board (LRRB), consisting of two members of NRC line management appointed by the Office of the Executive Director for Operations and one senior executive representing the industry who is appointed by the NEI License Renewal Working Group (LRWG). The individuals serving as board members shall not have been directly involved in the formulation of the position being appealed and shall be knowledgeable of license renewal principles. An appeal of an LRRB decision could be initiated via a request to the office of the EDO, where the merits of the request would be reviewed and a decision made regarding making a further appeal to the Commission where a final finding would be made.
- The appeals process must have minimal impact on the processing of applications that are under review. Not only would there be a maximum of two levels of appeal available, but also there should be time limits imposed for completing the steps in the appeals process. While the appeals process is underway, the NRC review of submitted applications should proceed using NRC interpretations that were being applied prior to the appeal being filed. If applicants feel that these interpretations will result in unnecessary expenditure of resources and are willing to accept the associated impacts on cost and schedule, they may elect to request that the NRC delay selected phases of the review process for their application pending issuance of the appeal decision.
- The issue being appealed shall be clearly defined. This is accomplished by having the appellant prepare a written statement that identifies the issue to be appealed in technical terms. The statement must reference the applicable section(s) of the regulation that define the underlying requirements for the issue being appealed. The issue shall be bounded to the extent that there is a clear definition of scope (e.g. which SSCs, aging effects, or programs are being addressed). The statement of the issue shall not include a discussion of the position being taken. After the appellant has developed a statement of the issue, the NRC shall review the statement and consensus reached that (1) the issue is subject to appeal (i.e., it is not an issue that has been previously decided on appeal) and (2) the statement accurately defines the specific issue that is being contested. The issue definition step is not complete until a mutually agreed upon statement has been developed.
- Each party shall prepare a written paper (brief) spelling out the position taken and the basis supporting their position. All supporting documentation shall be included in the paper so that it is a completely self contained document. Additionally, the appellant shall identify in its paper the nature of the changes to guidance documents that would be needed. The presenters

for each side in the hearing shall be identified in the papers. For issues that have generic applicability to the industry, NEI may participate in the appellant's presentation. The position papers shall be exchanged between the two sides and provided to the License Renewal Review Board. The objective of this disclosure is to clearly identify the opposing positions being taken so that during the hearing, the discussion remains focused on the issue being appealed. Discussion of related issues outside the defined scope of the appeal shall not be permitted during the hearing.

- The proceedings before the LRRB shall be handled in manner that is fair and equitable for both sides. During the hearing, each side shall be allotted equal time to present their position and dispute contentions made in the other party's position paper. LRRB members should be afforded an opportunity to question each side and ask for clarification. Finally, each side shall be given equal time to present their closing arguments. No other one-on-one interaction between the board members and either party to the hearing shall be allowed during the proceeding or while the board is formulating its decision. The LRRB will take the information presented under advisement and subsequently issue a written statement of their findings which includes a discussion of the basis for their decision. To document the appeals hearing, the NRC would issue a written report which includes a full transcript of the proceedings, the decision rendered, and the basis for the decision.
- The criteria used by the appeal board as the basis for their decision shall be based on the requirements specified in the governing regulations, versus on guidance documents (e.g. SRP, GALL, etc.) which identify NRC endorsed means of satisfying regulatory requirements. Guidance documents should not be afforded the same weight as the regulation, and therefore, not used to narrow compliance options available to the applicant. Where the wording in the rule allows some latitude for how compliance can be attained, the board should decide whether the approach proposed by the appellant "is permitted by" the regulations. Also, the material considered by the board in making their decision shall be limited to that presented in the hearing.

Flow Chart of the Process

A flow chart that identifies, at a high level, the steps that could be taken in a proposed license renewal appeal process is attached. Steps 1 and 2 are included to show how it is anticipated that issues will typically originate and to make clear that issues that do get appealed will have already been discussed at the working levels in an attempt to resolve them. The formal appeals process starts with Step 3. Since only the major steps are shown, further discussion of the activities included in each step is provided below.

Step 1 - An issue which is being contested may result from an RAI or an SER open item for which agreement with the NRC staff cannot be reached. An issue could also evolve from a position developed by NEI and formally submitted to the NRC. The issue may be specific to a given applicant or it may be one that has generic applicability to the industry. Based on how generic the issue is, it may be discussed at NEI License Renewal Task Force (LRTF) meetings, but at a minimum, it would be discussed in joint meetings between the applicant and the NRC

staff. The NEI License Renewal Working Group would be briefed on the issue, and depending on the nature of the issue, it may be an agenda item at the regularly scheduled meetings with the NRC License Renewal Steering Committee. Serious efforts would be made to resolve the issue through one of these forums.

Step 2 - When it becomes apparent that an issue cannot be satisfactorily resolved with the Staff, the option of a formal appeal will be discussed at the NEI Working Group level. In the case of a plant specific issue, the Working Group would be briefed on the issue, while for a generic issue, they may be involved in developing the strategy used to proceed with an appeal. The merits of the issue and its importance to an applicant and/or the industry would be considered. The decision to initiate a formal appeal would be made based on these discussions.

Step 3 - The appeal process is officially initiated by notifying (by written communication) the NRC License Renewal & Standardization Branch Chief that an issue is being appealed. The notification would either be made by an applicant or NEI based on the nature of the appeal. At this point, the clock would start for the various steps in the appeals process. In parallel with the appeals process, the NRC review of any applications shall proceed independent of the appeal, except as requested by an applicant. These applicants must formally request that some phase(s) of the NRC's review of their application be placed on hold pending the appeal where they are not in a position to make commitments or dedicate resources to comply with NRC expectations on an issue that is being appealed.

Step 4 - The appellant takes the lead in preparing the written statement of the issue that is being appealed. Before proceeding to the next step in the appeals process, NRC review and concurrence with the issue statement must be obtained using whatever interactions are necessary. Agreement on the issue statement shall be reached within 20 days of the start of the appeal process. At this point, with the issue being defined, the three members of the LRRB who will hear the appeal would be designated, and the date of the hearing would be confirmed by the NRC Office of the EDO.

Step 5 - Each party develops and documents, in a written position paper, their position on the issue, including the rationale and basis for their position. The appellant and the NRC shall submit their position paper to the other party and the Review Board no later than day 40 of the appeals process.

Step 6 - The License Renewal Review Board hearing is held approximately 60 days after the appeal was initiated. The proceedings are transcribed in order to document the information verbally presented to the board.

Step 7 - The LRRB issues a written decision within 5 days of the hearing date. The basis for the decision shall be provided with the finding.

Step 8 - Once a decision is issued by the LRRB, the appellant or the Staff would have 5 days to review the finding and decide whether a request for an Appeal to the Commission would be made. Such a request shall be submitted to the EDO. The basis for this appeal would be included in the request as well as an amended position paper. Assuming that the EDO finds that there is merit for a second appeal, the EDO would forward the appellant's and the staff's position

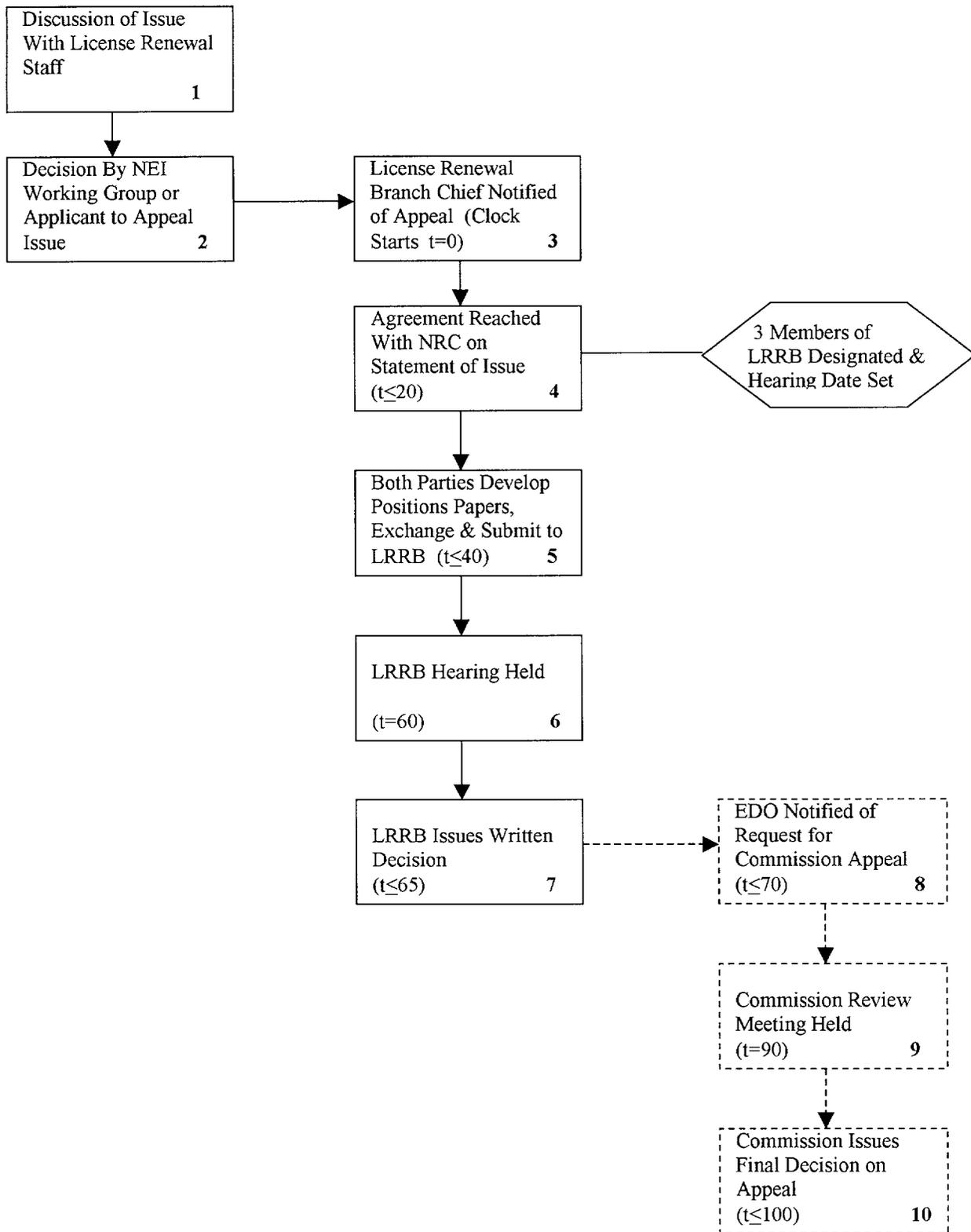
papers to the Commissioners and a date for the appeal would be scheduled for as close as possible to day 90 of the appeals process. If the EDO finds that the Commission should not hear the appeal, written notification would be made providing the reason for the denial.

Step 9 - The review by the Commission should be held approximately 90 days after the appeal was initiated. The appellant and the staff would present their positions. The Commissioners would have an opportunity to question both sides before taking the information presented under advisement.

Step 10 - Within 10 days of the review, the Commission would issue a final decision on the appeal. It would be in writing and include the basis for the finding made.

The dates for the LRRB and Commission hearings should be set as close as possible to the 60 and 90 day targets. Adjustments would be made if these days fell on weekends, holidays, or dates when the Commission has prior commitments.

License Renewal Appeals Process



----- Denotes Optional Second Phase of Appeals Process

All times (in days) specified for Steps 4-10 are in relation to the notification made in Step 3