

July 10, 2002

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

FROM: William D. Travers */RA/*
Executive Director for Operations

SUBJECT: STATUS OF THE RESOLUTION OF PETITION FOR RULEMAKING,
PRM 50-71

The purpose of this memorandum is to inform the Commission of staff's intention to resolve a petition for rulemaking, PRM 50-71, by partially granting it now and continuing to evaluate it for future action. The petition from the Nuclear Energy Institute (NEI) requested, in essence, that the NRC amend its regulations in 10 CFR 50.44 and 50.46, to allow nuclear power plant licensees to use zirconium-based cladding materials other than Zircaloy or ZIRLO without obtaining exemptions. Currently, the regulations in 10 CFR 50.44 and 50.46 refer to Zircaloy and ZIRLO fuel cladding. NRC has approved a third cladding material, M-5 and it has been used in several cases but it required an exemption to the regulations each time.

The NEI petition was docketed on April 12, 2000, and published for public comment on May 31, 2000, (65 FR 34599) with the public comment period ending on August 14, 2000. Ten public comments were received, one of which concerned spent fuel storage and was not considered applicable to this petition. None of the other comments opposed the petition.

The staff has recommended removing the references to fuel cladding types as part of the rulemaking to risk-inform 10 CFR 50.44. Specification of the exact cladding type is not considered essential to the requirements for combustible gas control. This is addressed in SECY-02-0080, Proposed Rulemaking, Risk-informed 10 CFR 50.44, "Combustible Gas Control in Containment," dated May 13, 2002.

With regard to 10 CFR 50.46, the staff plans to conduct a rulemaking to add M-5 to the list of fuel cladding materials to which the requirements of section 50.46 are applicable. The staff proposes that a ruleplan need not be prepared for this rulemaking for several reasons. First, the rulemaking is simple, and does not appear to raise any significant policy issues, inasmuch as the staff has already approved the use of M-5 in several exemption requests and has not identified any significant policy issues on use of M-5 as the result of the exemptions. In addition, legal analysis of underlying rulemaking is probably unnecessary, given that the Office

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of the General Counsel (OGC) has approved the use of M-5 through exemptions. The staff also proposes that the rule be adopted through direct final rulemaking, inasmuch as the PRM review process already provided for stakeholder input (via publication in the Federal Register and an opportunity to comment), and no adverse comments were received, which suggests that no adverse comment is likely to be received if the rule were published as a direct final rule. OGC has no objections to the use of a direct final rule.

For the longer term, as part of SECY-02-0057, "Update to SECY-01-0133, 'Fourth Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR (Option 3), and Recommendations on Risk-Informed Changes 10 CFR 50.46 (ECCS Acceptance Criteria)," dated March 29, 2002, the staff has described a planned future rulemaking to replace the current prescriptive ECCS acceptance criteria in 10 CFR 50.46 with a performance-based requirement that would allow licensees to use cladding materials other than those currently named in the regulations without having to submit exemption requests every time a new cladding material is adopted. The performance-based rule described in SECY-02-0057 would provide an alternative approach that would permit nuclear power plant licensees to change the licensing basis to use zirconium-based cladding materials other than Zircaloy or ZIRLO without the need for exemptions. This future rulemaking would achieve the purpose of the NEI petition. Thus, the staff is deferring this aspect of the petition.

The Office of the General Counsel has reviewed this memorandum and has no legal objection to the course of action described above.

Attachment: Memorandum from D. Matthews to M. Lesar dated April 26, 2002,
ML020920497 (contained in ADAMS Package Number: ML021150437)

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* See Pervious Concurrence

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