



NUCLEAR ENERGY INSTITUTE

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November 12, 2002

Dr. P.T. Kuo  
Program Director  
License Renewal and Environmental Impacts  
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 Dr. Kuo:

By letter dated September 25, 2002, NRC provided comments to the NEI License Renewal Working Group and Task Force on industry's position of December 4, 2001, regarding "License Renewal Appeals Process and Rules of Engagement." The industry believes there is agreement on our approach to formalizing a practical approach for the appeals process.

The industry and the NRC 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's 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. The time frames provided in the September 25, 2002 response are too long and will require that the licensee (applicant) acquiesce in order to meet schedules. To address these issue commitments should be made to handle first level appeals through the resolution phase in 30 days rather than the recommended 90 days and higher level appeals be completed in 20 days rather than the recommended 30 days. Best efforts should be made to have an arbitrator who's knowledgeable but has not been directly involved in earlier decisions. It is recommended that additional detail be added to assure that the process is being monitored by the next level of review and kept on schedule.

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Dr. P.T. Kuo  
November 12, 2002  
Page 2

Enclosed for your review is a markup of the staff's approach that identifies in a step by step fashion the actions that should or would be taken. Since the wording on the flow diagram does not clearly match the text a markup is provided along with stated time frames for appeal, review, and resolution.

We agree that 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.

We appreciate the opportunity to work 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", with a long horizontal flourish extending to the right.

Alan Nelson

Enclosure

September 25, 2002

Mr. Alan Nelson  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20006-3708

**SUBJECT: RESPONSE TO LETTER REGARDING LICENSE RENEWAL APPEALS PROCESS  
AND RULES OF ENGAGEMENT**

Dear Mr. Nelson:

By letter dated December 4, 2001, you shared NEI and industry comments and suggestions with the NRC license renewal staff on ways to improve the current technical issues appeals process associated with license renewal. The purpose of this letter is to respond to your comments and suggestions, and to share the staff's thoughts on revisions to the process. We have also enclosed, for your review and consideration, the staff's comments on the industry proposals.

As discussed in your letter, the industry and the NRC recognize the need to define a license renewal appeals process. We agree that the appeals process must be clearly defined and be useful in resolving differences in the interpretation of license renewal requirements in a timely manner. The NRC, like the industry, also believes that the appeals process must be fair to all stakeholders, that the basis for final resolutions be clearly communicated, and that final resolutions be incorporated into the associated guidance documents as expeditiously as possible. Further, we agree that the purpose of the appeals process is not to change the substance or intent of the regulations governing license renewal.

We look forward to working with you to discuss our views on improvements to the appeals process. If you have any questions, please call me at 301-415-1183.

Sincerely,

/RA/

Pao-Tsin Kuo, Program Director  
License Renewal and Environmental Impacts  
Division of Regulatory Improvement Programs  
Office of Nuclear Reactor Regulation

Project No 690

Enclosure: As stated

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## License Renewal Appeals Process and Rules of Engagement

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1. The staff agrees that one of the purposes of the appeals process is to establish a body of information to assist in preparing applications, and to assist the staff in reviewing applications. Therefore, final decisions and their bases, resulting from the appeals process, should be well documented. Further, the final decisions should be shared with stakeholders in a timely fashion by, first, incorporating the decision into interim staff guidance and, later, incorporating the decision into the next update to the license renewal guidance documents.
2. The appeals process, as shown in the attached flow diagram (Attachment), is sufficient to efficiently and effectively evaluate the issue under appeal and to render a sound decision The current process allows for early management review at the working level, with progressively higher levels of management review, if needed.

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Any stakeholder can initiate a formal appeal by a written request to the Director, License Renewal & Environmental Impacts Program (PD-RLEP).

- The PD-RLEP will serve as the (1) first-level decision maker in the appeals process. If either party in this first-level appeal wishes to appeal to the division level,
- Such party should submit a written request to the (2) Director, Division of Regulatory Improvement Programs, who will serve as the second-level decision maker.
- A further appeal can be initiated by a written request to the (3) Director, Office of Nuclear Reactor Regulation, who will serve as the third-level decision maker.
- The next level of appeal can be initiated by a written request to the (4) Executive Director of Operations, who would serve as the fourth-level decision maker.
- If the issue remains unresolved and involves a policy issue, the issue can be submitted to the (5) Commission for a final decision.

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3. The issue being appealed should be clearly defined by a written statement accompanying the request for appeal.

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- The issue statement should have a clearly defined scope and should reference the applicable section(s) of the regulation that provides the requirements for the issue being appealed
- Upon receipt of the request for appeal, the PD-RLEP will forward the request to the relevant staff that will review the request and agree that the appeal originator has clearly identified the issue
- PD-RLEP will then determine whether the issue is admissible or subject to appeal (i.e., the issue has not previously been decided on appeal)
- PD-RLEP will provide a written response to the originator, acknowledging receipt of the request, along with the determination of admissibility, and identification of an appeal coordinator, who will provide administrative oversight and support during the appeal process
- PD-RLEP's determination regarding the admissibility of the request should include the basis for the determination

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- The decision on admissibility should be made, and a response provided to the originator, within 5 days of the date of the appeal request

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4 If the appeal is made by an applicant for license renewal, the staff review of the application will continue during the appeals process unless the applicant submits a written request to the PD-RLEP that the review, or a portion thereof, be placed on hold, pending the final appeal decision.

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5. Each party in the appeal will prepare a briefing paper describing the position taken and the basis for their position.

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- The basis should reference any supporting documents. The originator should include a draft of proposed changes to the guidance documents that would be needed. Both parties and the PD-RLEP shall receive copies of the briefing papers.
- This step should be completed within 5 days of the date of the appeal request

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6 The appeal meeting should occur as soon as is practicable, but no later than 15 days from the date of the appeal request. Each party in the appeal will have equal time to provide an opening statement. The originator then states its position. The opposing party can then state its position on the issue and dispute the originator's arguments, and vice versa. The PD-RLEP is free to question both parties throughout the meeting.

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7. Following the appeal meeting, the PD-RLEP will take the information presented during the meeting under advisement

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- Within 5 days of the conclusion of the meeting, issue a written statement of its findings, which will include the basis for the decision. The appeal coordinator will issue a report within five (5) days of the decision that summarizes the meeting and includes the written decision and its basis. Documents presented at the meeting would be attached. Should the issue be further appealed, the report will be included in the written request to the decision maker at the next level.

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- If both parties agree to the decision, they will provide written confirmation to the PD-RLEP (or relevant decision maker), within five (5) days of issuance of the report.

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- Following issuance of the report, a stakeholder would have five (5) days from the date of the decision to review the decision and make a written request for the next level of appeal.

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- As described above, the first level of appeal, including issuance of the final report would be completed no more than 30 days from the date that a request for appeal is provided to the PD-RLEP.

- Higher-level appeals, including issuance of the final report, would occur at 20-day intervals.

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- 5 days from the issuance of the report to a request for a higher level appeal meeting,
- 5 days from the request to the appeal meeting,
- 5 days from the appeal meeting to the decision, and
- 5 days from the decision to the report,
- As such, if the process is followed through the Commission level, a final binding decision would be issued no later than 120 days from the initial request for appeal

§ \_\_\_\_\_ The criteria used by the PD-RLEP (and other decision makers in the appeal process) as the basis for its decision shall be the requirements specified in the governing regulations, versus guidance documents, which identify NRC-endorsed means of satisfying regulatory requirements. The staff agrees that guidance documents should not be afforded the same weight as the regulations and should not be used to narrow the compliance options available to the originator. The decision maker should decide whether the originator's proposed position complies with the regulations.

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higher-level appeal meeting.

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