

January 10, 2003

Mr. Ronald L. Simard
Nuclear Energy Institute (NEI)
1776 I Street, NW, Suite 400
Washington, DC 20006-3708

SUBJECT: RESOLUTION OF ESP TOPIC (ESP-2a), PRE-APPLICATION INTERACTIONS

Dear Mr. Simard:

The purpose of this letter is to confirm our understanding and expectations regarding the various pre-application interactions desired for the effective preparation and subsequent staff review of an early site permit (ESP) application. This topic, which is identified as ESP-2a on the current list of Nuclear Energy Institute (NEI) generic ESP issues, had its sub-topics discussed during public meetings on April 24, May 28, June 13 and July 16, 2002, (Meeting Summaries - ADAMS Accession Nos. ML0211500151, ML021720702, ML021840410 and ML022420052 respectively). Subsequently, NEI documented its position on this topic in a letter dated November 26, 2002. We confirm the understanding and expectations cited in your letter as described below.

Sub-topic ESP-2a.1: Nature of pre-application interactions

1. NEI states that substantial pre-submittal interactions with NRC will be important to address significant gaps in guidance for preparing ESP applications and to simplify follow-on NRC reviews. The NRC staff acknowledges that the interactions to date, which parallel past pre-application interactions with construction permit applicants, have been beneficial in communicating existing regulatory guidance to the ESP applicants and in identifying potential problems which could lead to inefficiency and unnecessary delays during the ESP review process.
2. NEI expects a significant number of the ESP-related issues will be common to all three lead ESP applicants. Thus, the lead ESP applicants are collectively addressing these generic issues with the NRC primarily through NEI-led interactions with the ESP Task Force (ESPTF). The NRC identified a range of pre-application applicant-to-staff voluntary activities and offered to undertake them in order to improve the efficiency and effectiveness of the ESP review process. These applicant-specific interactions, such as site visits, will take place as agreed to by the applicant and the NRC.
3. Dealing with generic issues via the ESPTF is consistent with the license renewal experience, the need to use resources effectively and the goal that ESP applications maximize use of common information and approaches. In addition, this approach along with any applicant-specific pre-application activities provides a mechanism for meaningful interactions in the absence of a defined regulatory relationship prior to a formal submittal or to the filing of an ESP application. The NRC staff notes that NRC Inspection Manual Chapter 2501, "Nuclear Reactor Inspection Program - Early Site Permit," issued in October 2002 provides regulatory guidance for staff pre-application activities.

4. The NRC's February 22, 2002, letter to NEI states that, "[I]n general, the NRC's enforcement policy would not apply prior to the submission of an ESP application." Indeed, as stated by the NRC staff representative during the public meeting held on June 13, 2002, "[A]ll pre-application activities except for the Local Public Meeting are voluntary and depend on the availability of staff resources and the consent of the applicant." As noted by the staff discussions with NEI during public meetings in 2001, the need for voluntary early interactions between the NRC staff and prospective ESP applicants prior to the filing of the ESP application has been viewed not as a compliance issue but as a good business practice. The ESP Pre-application Public Meeting to be conducted by the NRC staff is consistent with the agency's strategic goal to improve public confidence in NRC regulatory processes.

While not required, the value of pre-application interactions is clear, and the prospective ESP applicants, through NEI, have initiated a discussion on a range of generic ESP topics. NEI contends that, in addition to facilitating the three Department of Energy pilot ESP projects and yielding guidance for follow-on ESP applicants, they expect that these interactions will support the staff's efforts to develop ESP inspection guidance, proceduralize its activities to promote consistent ESP reviews and otherwise prepare for first-ever ESP applications. NEI expects that ESP review guidance and procedures developed by the staff will reflect the voluntary nature of most pre-application interactions. The NRC staff agrees that all pre-application activities with the NEI ESPTF or any ESP applicant are voluntary in nature.

5. NRC staff feedback generated by pre-application assessment of applicant-specific information is expected to be documented and transmitted to the ESP applicant. The NRC staff will document all ESP applicant-specific correspondence under a project file which will be accessible to all stakeholders. ESP applicants may address this feedback as appropriate in the ESP application. To the extent the applicant and the NRC reach agreement in writing as determined by the NRC pre-application review, it is expected that, absent significant new information, the NRC will find that specific aspect of the ESP application to be acceptable during its review. Overall, the NRC staff pre-application activities follow, as applicable, the successful model of prior pre-construction permit staff-to-applicant interactions.

Sub-topic ESP-2a.2: NRC review fee structure for ESP applications

1. NEI states that interactions with the NRC related to generic ESP topics, such as those addressed herein, are for the purpose of exchanging information and supporting the NRC's regulatory improvements and efforts. Specifically, NEI notes that these interactions and reviews support the NRC's development of generic guidance and regulations related to the implementation of first-of-a-kind requirements in Part 52 governing ESP applications and reviews. NEI contends that because these activities provide insights of value to the NRC in furtherance of its generic regulatory efforts and objectives for Part 52, they qualify for a fee exemption pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(iii) (A). Under NRC procedures, any NRC effort related to generic activities is not subject to Part 170 fees.

2. Applicant-specific activities, including local public meetings, are fee recoverable under 10 CFR 170.21. However, the three lead ESP applicants, Exelon, Entergy and Dominion, plan to seek exemption from NRC review fees under Section 170.11(b)(1) on the basis that ESP activities are in the public interest inasmuch as they further the Commission's objectives for Part 52; provide a demonstration of the untested Part 52 ESP process; assist in NRC development of ESP application, review and inspection guidance; and generally further the NRC's generic regulatory improvement efforts. NEI contends that ESP applicant requests for exemption from NRC review fees are consistent with fee waivers granted by the NRC for lead license renewal applicants.

As explained by the NRC staff during the public meeting held on July 16, 2002, as provided under 10 CFR 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer.

Sub-topic ESP-2a.3: Local public meetings by NRC

1. The NRC staff will hold public information meetings in the vicinity of the announced ESP sites in advance of the filing of the subject ESP application. The purpose of these meetings is to provide an opportunity for the public living near the identified sites to gain a full understanding of the ESP process within Part 52 and to highlight opportunities for the public to participate in the process.
2. At the May 28, 2002, public meeting, the NRC staff said it would work with ESP applicants and other stakeholders on the structure and timing of such meetings to facilitate appropriate coordination with ongoing communication plans. The NRC staff held the first of these meetings in the vicinity of the Grand Gulf site in November 2002. The NRC staff has indicated the intent to begin planning for this activity up to 1 year in advance of an ESP application. The actual timing of the subject meetings will depend upon available staff resources, local conditions and public communications needs as assessed by the staff.

Please contact Ronaldo Jenkins, the ESP Senior Project Manager at 301-415-2985 if you have any questions on this matter.

Sincerely,

/RA/

James E. Lyons, Director
New Reactor Licensing Project Office
Office of Nuclear Reactor Regulation

Project No. 689

Attachment: As stated

cc w/encl: See next page

2. Applicant-specific activities, including local public meetings, are fee recoverable under Section 170.21. However, the three lead ESP applicants, Exelon, Entergy and Dominion, plan to seek exemption from NRC review fees under Section 170.11(b)(1) on the basis that ESP activities are in the public interest inasmuch as they further the Commission's objectives for Part 52; provide a demonstration of the untested Part 52 ESP process; assist in NRC development of ESP application, review and inspection guidance; and generally further the NRC's generic regulatory improvement efforts. NEI contends that ESP applicant requests for exemption from NRC review fees are consistent with fee waivers granted by the NRC for lead license renewal applicants. As explained by the NRC staff during the public meeting held on July 16, 2002, fee waiver rules have changed since the time fee waivers were granted by the NRC for license renewal applicants and as provided under Section 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer.

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Accession #ML023520151

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Distribution for Letter to R. Simard dated January 10, 2003

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ESP-Generic

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