

January 23, 2003

Mr. Stephen D. Floyd, Acting Division Director
Nuclear Generation
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

SUBJECT: LICENSE AMENDMENTS

Dear Mr. Floyd:

In a letter dated July 10, 2002, Mr. Ralph Beedle stated that the Nuclear Energy Institute (NEI) has a fundamental disagreement with how the *Perry* decision¹ is being applied by the Nuclear Regulatory Commission (NRC) staff to several proposed actions, with regard to the need for a license amendment. NEI urged the NRC to address this issue generically to ensure that policy implications are appropriately considered.

The NRC has considered the comments in this letter. As discussed with your staff and other industry representatives in a public meeting on December 10, 2002, we believe we have established a basis for concluding that a license amendment is appropriate for each of the specific cases described in your letter. A license amendment issued on a plant-specific basis is necessary where there is a change in the activity previously authorized or where staff judgment and discretion must be applied to determine whether the underlying requirements would be met, in the absence of objective, prescribed criteria for fulfilling those requirements.

The staff acknowledges that NRC regulations and practices include processes for obtaining NRC approval other than by a license amendment. It is not effective or efficient to revisit earlier processes that may have been established in the regulations for particular actions. Our focus is on consistent application of the criteria from the *Perry* decision in the future. Thus, we have been explicit in some rulemakings such as for Accident Source Term (§50.67) and License Termination Plans (§50.82), about the need for a license amendment pursuant to §50.90 in these regulations. There are also circumstances in which application of the *Perry* decision supports NRC approval in a different form. The publication of the proposed rule on partial site release (66 FR 46230, September 4, 2001) is a good illustration. Under this proposed rule,

¹The *Perry* decision (CLI 96-13) concerned an approval, as required by 10 CFR 50, Appendix H, of a change in a capsule withdrawal surveillance schedule (consistent with the applicable American Society of Testing and Materials (ASTM) standard), and whether this approval (not involving the TS or license condition) was a license amendment. In the cited case, the Commission concluded that the approval was not a license amendment, stating “by merely ensuring that required technical standards are met, the staff’s approval does not alter the terms of the license and does not grant the Licensee greater operating authority.” The Commission also noted that, under Appendix H, the staff evaluates a proposed schedule in terms of objective, technical, preestablished criteria (in the ASTM standard).

a letter approval is sufficient for non-impacted areas; however, for release of impacted areas, a license amendment is required.

Nevertheless, the interest and debate over this topic demonstrates that the NRC could clarify the basis upon which we determine which specific actions require a license amendment. As an example, Regulatory Issue Summary (RIS) 2002-05, on Integrated Surveillance Programs (ISP), states that "since implementation of the ISP may directly affect the licensing basis of each operating [boiling water reactor] BWR, licensees who wish to participate shall submit a license amendment (see Commission Memorandum and Order CLI 96-13) to incorporate the ISP into the licensing basis for their BWR facility." The ISP differs significantly from the surveillance withdrawal schedule change at issue in *Perry* where the withdrawal schedule change requested was prescribed by objective criteria. In the case of the ISP, while there are different methodologies that are applicable for a particular vessel, not all of these methodologies establish fluences with acceptable results. Thus, the NRC must make a plant-specific determination involving staff judgment and discretion as part of the incorporation of the ISP into the licensing basis.

Two of the other examples mentioned in the letter involve proposed rules for which the NRC is affording ample opportunity for public comment on all aspects of the rule, including the form of implementation. Thus, if NEI believes that the NRC has not appropriately determined that NRC approval of implementation of a voluntary alternative regulation (in the form of a license amendment) is necessary, there is a means to present this opinion on the specific circumstances. The NRC staff will be guided by the *Perry* decision and our views as expressed during the December 10, 2002, meeting in its consideration of such comments. Moreover, we have considered our existing processes, such as these rulemaking opportunities to comment on specific proposed actions, and have concluded that they are appropriate and adequate to address comments such as those contained in the July 10, 2002, letter. Therefore, we do not plan any further generic review or action in response to this letter.

Sincerely,

/RA DMatthews Acting for/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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/RA DMatthews Acting for/
 Samuel J. Collins, Director
 Office of Nuclear Reactor Regulation

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*See previous concurrence