

December 27, 2002

MEMORANDUM TO: Christopher I. Grimes, Program Director
Policy and Rulemaking Programs
Division of Regulatory Improvement Programs, NRR

FROM: Eileen M. McKenna, Senior Reactor Engineer */RA/*
Policy and Rulemaking Program
Division of Regulatory Improvement Programs, NRR

SUBJECT: SUMMARY OF DECEMBER 10, 2002, MEETING WITH NUCLEAR
ENERGY INSTITUTE (NEI) AND OTHER STAKEHOLDERS ON THE
THRESHOLD FOR LICENSE AMENDMENTS

On December 10, 2002, Nuclear Regulatory Commission (NRC) staff met with representatives from NEI and other stakeholders at the NRC's office in Rockville, Maryland. The purpose of the meeting was to clarify the staff's position about the use of license amendments for granting NRC review and approval for certain actions, and the threshold for when an amendment is necessary. The meeting was prompted by a letter from NEI dated July 10, 2002, (ML021970416) and questions raised in other forums. Attachment 1 is a list of those that attended the meeting. Attachment 2 is the staff slides used as introductory material for the meeting.

The meeting began with introductions and a statement of the purpose of the meeting from the NRC. The staff made a presentation on the processes for changes to licensing bases and how the *Perry* decision¹ sheds light on changes that require a license amendment and how this applies to cited examples. The staff stated that its approach is not a new position, and indicated that this issue appeared to be arising now with the development of voluntary alternative regulations and requirements and how such requirements became part of a specific plant's licensing basis, including more explicit mention of using the license amendment process.

During the meeting, the staff discussed the aspects mentioned above from the decision as guiding the staff's proposals that particular changes be through license amendments. In particular, the decision focused upon three statements of characteristics of a change that requires a license amendment that the staff views as insights into the license amendment threshold deriving from the *Perry* decision. These were: (1) Altering the terms of the license (i.e., the license conditions, the Technical Specifications and orders); (2) Involving potentially greater operating authority (e.g., 50.59 conditions) or (3) A change that requires a plant-specific reasonable assurance finding (where objective prescribed criteria do not exist).

¹The *Perry* decision (CLI 96-13) concerned an approval (required by Appendix H to 10 CFR Part 50) of a change in a capsule withdrawal surveillance schedule (consistent with the applicable ASTM standard), and whether this approval (not involving the TS or license) was a license amendment. In the *Perry* case, the Commission concluded that the approval was not a license amendment.

In its letter, NEI referred to four specific examples: (1) Regulatory Issue Summary 2002-05 on Integrated Surveillance Programs, (2) proposed section 50.69, Risk-informed Special treatment requirements (see SECY-02-0176, dated September 30, 2002, pending before the Commission), (3) the proposed voluntary alternative rule on use of NFPA-805 for fire protection programs (67 FR 66578, November 1, 2002), in particular the proposed requirement for a license amendment to get staff approval to use alternative methods to those specified in NFPA-805; and (4) a proposed steam generator generic license change (that would replace existing TS with a program controlled by the TS).

While there was universal agreement that altering the terms of a license required a license amendment, and about what altering the terms included, there were different views among the meeting participants as to how greater operating authority was to be judged and the role to be played, if any, by the existence of "objective, pre-established criteria" for purposes of judging acceptability. At the heart of the issue is the degree to which a staff approval could be done in a form other than a license amendment, in those cases where the process for approval has not already been defined.

It was mutually agreed that none of the examples altered the terms of the license². In NEI's view, none of the four examples involved greater operating authority. The NRC asked NEI to describe its concept about what greater operating authority meant, but they did not provide such a response. NRC indicated that it did not believe it was necessary to define greater operating authority, in part because of the difficulty in fully defining what it encompasses, and given that all four examples seemed to involve situations where the licensing basis was being changed where no objective criteria exist. The NRC also indicated that while the *Perry* decision is illustrative in terms of some instances where a license amendment was not required, it does not completely delineate instances where greater operating authority is involved. The other examples cited in *Perry* were limited to restart decisions, where it is clear that the action involved resuming previously granted operating authority. The NRC staff noted that the decision uses variations on terminology ("exceed operating authority already granted," "material license issuance decision," "going beyond existing license authority," "operating in any greater capacity.")

With respect to the four examples cited in the NEI letter of July 10, 2002, the NRC staff stated that they thought a license amendment was required in each case. The staff briefly summarized its views on each case, noting in particular the need for a plant-specific finding about adequacy of certain features and that staff judgment would be involved to determine acceptability because the applicable standards/guidance are not sufficiently objective.

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For the fire protection rule, a separate provision governs the need for a license amendment to revise or remove existing license conditions pertaining to fire protection programs or analyses. This provision of the proposed rule was not challenged in the NEI letter. Further, as formulated, the proposed steam generator license change package would have relocated details about the steam generator tube parameters from the TS to a program controlled through the TS. Thus, at issue was subsequent approvals related to material in the program, not with respect to changes to the TS themselves.

Further, in a letter to NEI dated June 10, 2002 (ML021630007), about the then-current version of the steam generator licensing change package, the staff concluded that the approach was inconsistent with the principles from the *Perry* decision. Review and approval of changes to the parameters (performance criteria, tube repair limits and methods) was necessary; thus, such changes should be through a license amendment.

The staff indicated that the third characteristic of a change that requires a license amendment flows from the second, and is a means to help determine if greater operating authority is being granted through a particular licensing action. The staff stressed that this issue arises only when NRC approval of an action is necessary; then the form of the approval being a license amendment is based upon these fundamental precepts as applied to the specific case. The need for the approval would be determined based upon such considerations as safety significance, type of change being implemented, degree of discretion being afforded to the specific licensee, and need for staff judgment about acceptability because of lack of prescriptive acceptance criteria. When a license amendment is appropriate, the staff would then include this requirement in the implementing vehicle (such as rule language).

NEI stated that they thought that the staff should establish a generic position, because of their perception that the staff is making its decisions without such a basis. NEI also questioned why a staff approval, such as of a topical report or a methodology, would not be sufficient to allow any licensee to adopt it without the need for a plant-specific approval through a license amendment. They appeared to view "greater operating authority" in a more limited way than did the staff, arguing that a different way of meeting a regulation should not involve an amendment. They noted that the existing regulations are not consistent with respect to how approvals are processed (e.g., relief requests under §50.55a, quality assurance plans under §50.54(a), or other instances in the regulations that specify the need for an approval and a submittal as specified in §50.4(e.g., §50.54(q)) but do not specify an amendment). NEI proposed that the Commission identify all change control processes in the regulations and that they be conformed to the *Perry* decision, as NEI interprets it. The staff noted that §50.4 concerns filing of correspondence by applicants (addresses, number of copies) and does not address the NRC's review processes. The staff agreed that the regulations do contain processes for approvals that do not involve license amendments, but stated that its focus now is upon the consistency of its recommendations in pending and future decisions, not on processes that may have been applied in the past. Thus, the staff is attempting to apply the principles underlying *Perry* in a consistent manner to the specific circumstances involved.

David Lochbaum of the Union of Concerned Scientists asked the staff about what "consistency" meant in this context. The staff replied that it refers to applying the principles in the *Perry* decision to the specifics of particular actions. This individual also thought that the criteria the staff uses to determine if an amendment is necessary for an approval are not easily understood.

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At the close of the meeting, NEI agreed to consider the discussion and provide any further thoughts of what greater operating authority means. NEI asked about a response to their letter; the staff is considering a written response to the letter. In addition, the staff noted that there is opportunity in the proposed rulemakings to provide comments on the specific cases.

Attachments: As stated (**ML023580013**)
PROJECT No. 689

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List of Attendees for 12/10/02 meeting on License Amendment Threshold

<u>Name</u>	<u>Organization</u>
Eileen McKenna	NRC/RPRP
Chris Grimes	NRC/RPRP
Steve West	NRC/RPRP
David Matthews	NRC/NRR/DRIP
Janice Moore	NRC/OGC
Geary Mizuno	NRC/OGC
Susan Uttal	NRC/OGC
Tony Pietrangelo	NEI
Ellen Ginsberg	NEI
Adrian Heymer	NEI
Suzanne Black	NRC\NRR\DSSA
Kate Barber	NRC\OGC
John Hannon	NRC\NRR\SPLB
Thomas Scarbrough	NRC\NRR\DE
Eric Weiss	NRC\NRR\SPLB
Bill Reckley	NRC\NRR\DLPM
Bill Ruland	NRC\NRR\DLPM
Nancy Chapman	SERCH Bechtel
Mike Knapik	McGraw-Hill
Steve Dembek	NRC/NRR/DLPM
Bill Beckner	NRC/NRR/RORP
Shelly Cole	NRC/OGC
Eric Benner	NRC/OCMGJD
Louise Lund	NRC/NRR/DE
Adam Hermann	Winston and Strawn
David Terao	NRC/NRR/DE
David Lochbaum	Union of Concerned Scientists
Deann Raleigh	LIS, Scientech
Roger Huston	Licensing Support Services
Rick Ennis	NRC/NRR/DLPM
Bill Rogers	NRC/NRR/DIPM