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FRAMATOME ANP, Inc.

DOCKET NUMBER**PROPOSED RULE****PR 2, 20, 21, 50, 51, 72, 73, 140**
(68FR 40026)DOCKETED
USNRC**+170**September 11, 2003
NRC:03:060

September 12, 2003 (3:04PM)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ATTN: Rulemakings and Adjudications Staff

**Comments on the Proposed Rule to Modify 10 CFR Part 52, 68 Federal Register 40026,
July 3, 2003 (RIN 3150-AG24)**

Framatome ANP (FANP) submits the following comments on the proposed changes to 10 CFR Part 52 published in the Federal Register on July 3, 2003 (68 FR 40026).

FANP participated in the development of comments by the Nuclear Energy Institute (NEI) on this proposed rulemaking and endorses the comments submitted by NEI on behalf of the nuclear energy industry.

FANP is particularly concerned about the replacement of §52.5 and §52.9 with a revised version of §52.5 that broadly references thirty-eight sections of 10 CFR 50 and applies them without specificity to licensees, holders, or applicants for design approval, design certification, ESP, site report, or license under Part 52. This approach is contrary to the stated purpose of the rulemaking (as noted in the Background discussion in the Federal Register notice), which is to "clarify and/or correct" 10 CFR 52 based on experience exercising the rule for three design certifications. Instead of providing a clear licensing path for future applicants, this broad "sweeping in" of numerous sections of Part 50 creates confusion.

For example, this approach may invalidate the precedent established in the three previous design certifications by requiring future applicants to comply with regulations that were not previously invoked or that are unintentionally swept in by the change or applied inconsistently by individual NRC reviewers. Further, it creates additional regulatory burden on future applicants because each would need to identify the applicable Part 50 requirements and obtain the concurrence of the NRC. This is inefficient both for the applicant and the NRC, which would be required to establish the applicable licensing requirements for each new application.

FANP urges the NRC to reconsider this part of the revision and instead identify the applicable Part 50 requirements in the appropriate subparts of Part 52. (Attachment 1 provides additional legal analysis of the proposed revision of §52.5. The analysis was performed on behalf of FANP by the law firm of Winston & Strawn.)

For similar reasons, FANP is troubled about the replacement of §52.111 with a new version which broadly applies the same requirements in 10 CFR Chapter I to design certification applicants as to applicants for construction permits and operating licenses, without specifically

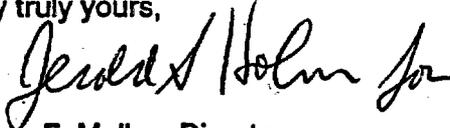
identifying which of the 199 parts of 10 CFR Chapter I are applicable. FANP urges the NRC to reconsider this part of the revision and instead identify the applicable 10 CFR Chapter I requirements for design certification applicants.

FANP believes the proposed wording in §52.211(b)(3) that states the NRC "may impose additional licensing requirements...for the prototype plant...during the testing period" is unnecessary, since a prototype facility would be governed by 10 CFR 50, presumably with an application for a Class 104(c) license. Further, FANP believes that the language is too vague because it does not specify under what conditions such requirements may be imposed or what those requirements might be. Thus, the proposed wording creates an area of acute regulatory uncertainty for future applicants. For these reasons, FANP urges the NRC to omit the proposed wording in §52.211(b)(3).

FANP believes the current requirement included in §52.17(a)(1), that Early Site Permit (ESP) applicants provide "an analysis and evaluation of the major structures, systems, and components" that affect radiological consequences, is inappropriate. As currently worded, this requires information which may not be available at the time of the ESP application if the specific reactor design has not been selected. FANP encourages the NRC to revise the rule to be consistent with the Plant Performance Envelope (PPE) approach developed by NEI, which provides a bounding set of parameters based on consideration of a variety of plant designs.

FANP appreciates this opportunity to comment on the proposed rulemaking. If you have any questions concerning the comments, please contact Sandra Sloan (434-832-2369) or me (434-832-2981).

Very truly yours,



James F. Mallay, Director
Regulatory Affairs

Attachment

cc: R. J. Bell (NEI)
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Memorandum

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VIA ELECTRONIC MAIL

To: John R. Concklin

From: Mark J. Wetterhahn *MJW*
Kathryn M. Sutton

Date: September 5, 2003

Re: Further Comment on Proposed Amendment to 10 C.F.R. § 52.5

Further to the comments set forth in our communications dated August 26, 2003, we offer the following additional remarks on the proposed revisions to 10 C.F.R. § 52.5. 68 Fed. Reg. 40026, 40048 (July 3, 2003).

10 C.F.R. § 52.5, "Applicability of 10 CFR [Part 50] Provisions"

In addition to the comment that the proposed revision to this regulation fails to specifically define the applicability of the listed Part 50 regulations to each of the Part 52 Subparts, another deficiency exists as a result of its sweeping provisions. Specifically, as currently proposed and "[u]nless otherwise specifically provided for in Part 52," the Part 50 regulations listed in Section 52.5 would apply equally to "a licensee, holder of, or applicant for an approval, certification, permit, site report, or license issued under this part." 68 Fed. Reg. at 40048. The latter clause would result in the imposition of onerous regulatory burdens, that are not adequately justified or consistent with the policy and regulatory intent underlying Part 52, on "holders of" standard design certifications, early site permits, and site reports.

For instance, as proposed, Section 52.5 would impose the record keeping requirements set forth in Section 50.71 on "holders of" standard design certifications. While the imposition of such provisions on "licensees" or "applicants" may comport with the original regulatory purposes and objectives which serve as the foundations for Parts 50 and 52, to generically and uniformly impose such regulatory requirements on "holders of" standard design certifications is contrary to those same underlying regulatory and policy considerations.

This observation further underscores the importance of parsing each of the applicable Part 50 regulatory requirements to each Part 52 Subpart. The Part 50 regulations applicable to "holders of" standard design certifications should be specifically defined in Subpart D of Part 52. In summary, as currently proposed, the language in Section 52.5 can be misinterpreted as imposing unnecessary and unwarranted regulatory burden on "holders of" the various certifications, permits and reports referenced therein.