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NUCLEAR ENERGY INSTITUTE

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

~~DOCKET NUMBER~~
PROPOSED RULE 2
(68FR 66372)

Steven P. Kraft
Director,
Waste Management

January 12, 2004

Secretary
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

SUBJECT: Nuclear Energy Institute (NEI) Comments on proposed amendment to 10 CFR Part 2, *Licensing Proceeding for the Receipt of High-Level Radioactive Wastes in a Geologic Repository: Licensing Support Network, Submissions to the Electronic Docket, RIN 3150-AH31 (68 Fed. Reg. 66,372 – November 26, 2003)*

- References: 1) Letter, Steven P. Kraft to NRC Rules and Directives Branch, Nuclear Energy Institute (NEI) *Comments on Draft Regulatory Guide DG-3022 Topical Guidelines for the Licensing Support Network*, dated September 26, 2002
- 2) Letter, Steven P. Kraft to Andrew Bates, Nuclear Energy Institute (NEI) *Comments on Licensing Support Network (LSN) Issues Raised at the June 3, 2003 LSNARP Meeting*, dated July 1, 2003

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, is pleased to submit these comments on the Nuclear Regulatory Commission's (NRC) proposed amendments to its Rules of Practice applicable to the use of the Licensing Support Network (LSN) and the electronic hearing docket in the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository.

The proposed amendments provide a useful clarification of 10 CFR Part 2, Subpart J requirements with regard to the information technology aspects of the Electronic Hearing Docket (EHD) and Licensing Support Network (LSN)

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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supporting geologic repository licensing. However, none of these clarifications describes a means of compliance with the existing rule that is not already encompassed by the current language of the regulations. Each of these clarifications can be accomplished more expeditiously through guidance.

Given the importance of the disposal of used nuclear fuel and other high level radioactive waste, it is imperative that NRC proceed as expeditiously as possible in addressing relevant matters. It is particularly important that clarifications that do not affect the substance of the licensing process, but address the administrative information technology aspects of process implementation, be made available to proceeding participants as early in the process as possible.

We are disappointed that NRC has apparently chosen not to promulgate these clarifications in the proposed LSN Regulatory Guide (DG-3022) and/or other similar documents. We reiterate our previously stated position (see Reference 1) that there is a need for clear and timely LSN guidance and that incorporating the proposed clarifications into DG-3022 instead of completing this rulemaking would be more appropriate and expeditious. Furthermore, our comments on DG-3022 addressed issues that are not addressed in this rulemaking (for example, comments addressing what type of information should/should not be included in the LSN and the distinction between preliminary and final information are not addressed in this rulemaking). Therefore, NRC should complete finalization of DG-3022, addressing all comments, as soon as possible, even if the rulemaking proceeds.

If NRC chooses to use rulemaking to provide clarifications, we strongly urge NRC to proceed with this course as expeditiously as possible. We are encouraged to find that none of the proposed amendments would establish any new regulatory expectation substantively affecting the ability of parties to certify compliance with the LSN requirements of 10 CFR Part J. Therefore, we consider our previously stated concerns (see Reference 2) over the introduction of new expectations at this late point in the process to be resolved. However, proceeding with this rulemaking at this time does raise the possibility that parties might improperly interpret this action as an impediment to timely certification of compliance with LSN requirements until the rulemaking is completed. We strongly encourage NRC to clearly communicate that the ongoing efforts of potential parties to prepare for and complete LSN certification during calendar year 2004 can and should continue uninterrupted while this rulemaking is in progress.

U.S. Nuclear Regulatory Commission

January 12, 2004

Page 3

Specific comments on the proposed clarifications are contained in the enclosure to this letter. We would be pleased to address any questions the NRC may have on our comments.

Sincerely,



Steven P. Kraft

Enclosure

cc: **The Honorable Nils J. Diaz, Chairman, NRC**
The Honorable Edward McGaffigan Jr., Commissioner, NRC
The Honorable Jeffrey S. Merrifield, Commissioner, NRC
Karen Cyr Esq., General Counsel, NRC
William Travers, Ph.D. Executive Director for Operations, NRC
Carl J. Paperiello, Ph.D. Deputy Executive Director for Operations, NRC
Mr. Ellis W. Merschoff, Chief Information Officer, NRC
Mr. Daniel Graser, Licensing Support Network Administrator, NRC
Mr. John Greeves, Director, Division of Waste Management, NRC

**The Honorable Margaret S.Y. Chu, Ph.D., Director, Office of Civilian
Radioactive Waste Management, DOE**
**Mr. W. John Arthur, Deputy Director, Office of Civilian Radioactive
Waste Management, DOE**

ENCLOSURE

**NUCLEAR ENERGY INSTITUTE (NEI)
SPECIFIC COMMENTS ON NRC PROPOSED CLARIFICATIONS
TO 10 CFR PART 2 (68 Fed. Reg. 66,372)**

1. Comment on timeliness of the proposed rulemaking

The Department of Energy is planning to submit a license application to NRC in December 2004. Consistent with this schedule, the first use of the LSN will occur in June 2004 and all potential parties will be required to have loaded their documentary material by September 2004. Although we find no issues raised by this rulemaking that would establish new regulatory expectations substantively affecting the ability of parties to certify compliance with the LSN requirements on this schedule, NRC should nevertheless proceed as expeditiously as possible in finalizing this rulemaking.

Given both experience with prior rulemakings and DOE's need to prepare for LSN certification months in advance of the June 2004 date on which the Department is expected to certify, it seems unlikely that this proposal will be promulgated as a final rule in time to be useful to the Department. There would also seem to be some uncertainty as to whether the rulemaking will be finalized in time to support other parties' internal decision-making regarding their subsequent LSN certifications. Therefore, we strongly encourage NRC to clearly communicate that the ongoing efforts of potential parties to prepare for and complete LSN certification during calendar year 2004 can and should continue uninterrupted while this rulemaking is being completed.

2. Comments on provisions that could result in the loading of duplicate documents on individual participant LSN document collection servers.

It is a positive step that NRC has clarified that parties are not required to load documents already loaded by other parties. Avoidance of duplicate documents should help reduce the information management burden on the LSN.

Although, as mentioned above, this rulemaking is not likely to be completed in time to support DOE's LSN certification, prospects for the rule to be in place by the time other parties will need to certify are better. Because it is when the other parties certify (subsequent to DOE) that duplicate document issue really becomes germane, and because NRC has expressed concern regarding the LSN's ability to handle a

large number of documents, we would encourage NRC to not only assure that this clarification is available to these parties (either through a timely rulemaking, the swift issuance of guidance, or other means), but to further strengthen this provision so that it unambiguously not only excuses parties from loading duplicates but specifically instructs parties not to include duplicate documents.

3. Comments on provisions related to the continuing obligation of LSN participants to update their documentary material

As proposed, § 2.1003(e) would require that the documentary materials made available via the LSN be supplemented, apparently indefinitely. Such a requirement, however, is inconsistent with the basic concept of discovery, and should not be imposed. Once discovery in the form of document production is complete, it is finished.² There is no need for supplementation since the information upon which a decision will be made must be in the record of the licensing proceeding, and will be available within the Electronic Hearing Docket. Further, complying with a requirement to maintain and update a collection of documents constituting on the order of 40 million pages of material might be impossible. In any event, it would be extremely burdensome. Accordingly, proposed § 2.1003(e) should not be adopted.

4. Amendments which NEI endorses as proposed. NEI considers the following aspects of the proposed rulemaking to be worthwhile clarifications that should help facilitate an effective repository licensing proceeding. Although it is our position that these clarifications could have more expeditiously been made through the promulgation of guidance, we have no comments on the substance of what is being proposed in these areas.

- Amendments to the requirements and standards for a party's submission to the electronic docket for the HLW licensing proceeding
- Amendments to the provisions related to the Secretary of the Commission's determination that the DOE license application is electronically accessible.
- Amendments to those provisions on material that may be excluded from the LSN

² See, e.g., 10 C.F.R. § 2.740(e).