

March 8, 2004

Mr. Robert H. Leyse
P.O. Box 2850
Sun Valley, ID 83353

Dear Mr. Leyse:

I am writing to inform you that your most recent request for rulemaking, submitted on January 17, 2004, fails to meet the minimum requirements for docketing as a petition for rulemaking under 10 CFR 2.802.

Your letter asks the Nuclear Regulatory Commission (NRC) to amend its regulations concerning the effect of fouled or corroded fuel elements on the course of reactivity insertion accidents (RIAs). You request that the NRC amend or revoke the following agency documents:

- NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (SRP), Draft Sections 2.2 and 4.4
- Regulatory Guide (RG) 1.77, "Assumptions Used for Evaluating a Control Rod Ejection Accident for Pressurized Water Reactors"
- Information Notice (IN) 97-85, "Effects of Crud Buildup and Boron Deposition on Power Distribution and Shutdown Margin"
- The NRC's July 16, 2003, Federal Register notice denying PRM-50-73 and PRM-50-73A (68 FR 41963)

Of these four items, only RG 1.77 arguably falls within the intended scope of the rulemaking petition process outlined in § 2.802. Regulatory Guides, because they detail for the public and licensees acceptable methods of complying with specific NRC regulations, may be considered "interpretive rules" open to petition under § 2.802.

None of the other documents you list is a regulation. NUREG-0800 provides guidance to NRC staff, not requirements for licensees. It is not legally binding, and it does not constitute a rule or regulation. An NRC Information Notice is neither a legally binding requirement, nor does it provide guidance to licensees on methods for compliance with NRC requirements; hence, IN 97-85 is not a rule. Finally, the NRC's published denial of your earlier petitions for rulemaking, PRM-50-73 and PRM-50-73A, is not itself a rule. Rather, it states the NRC's reasons for declining to amend current Part 50 requirements in response to your petitions. Your earlier email to Chairman Diaz, dated October 28, 2003, requested that the NRC withdraw the notice denying PRM-50-73 and PRM-50-73A. On January 29, 2004, Catherine Haney, Program Director, Reactor Policy and Rulemaking Program, informed you by letter that the Office of Nuclear Reactor Regulation had reviewed your October 28 email and determined that it provided no new information to support your contention that the staff's technical basis for denying the petitions contained errors that warranted a reversal of the agency's decision.

With respect to RG 1.77, your letter requests that this document be revoked or amended because it assumes a "fuel damage limit ... of 280 cal/g peak fuel enthalpy [that] is grossly excessive for fouled and/or corroded fuel elements." However, your letter does not appear to

provide a basis for this claim. Moreover, you do not specify how the NRC should rectify the perceived problem with the fuel damage limit. You do not indicate whether you believe the NRC should remove the stated limitation, modify the limitation to some other value, or substitute an altogether different methodology or approach.

Section 2.802(c)(1) states that a petition for rulemaking must “[s]et forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended.” Because your letter does not clearly state the basis for the action requested and proposes no definite regulatory alternative to the current fuel damage limit, it fails to fully satisfy the specificity requirement in § 2.802(c)(1).

You indicate that your January 17 letter is meant to supplement the requests for Part 50 rulemaking you submitted on September 11 and November 28, 2003. Each of your previous letters was determined to be ineligible for docketing as a petition for rulemaking because it did not include specific information required by § 2.802(c). Your most recent letter is similarly deficient and, as provided for in § 2.802(f), is being returned to you. The return of your letter does not prejudice in any way your right to file a new petition.

Any questions about this matter may be directed to Michael Lesar, Chief, Rules and Directives Branch, by calling 301-415-7163 or by e-mail to MTL@nrc.gov.

Sincerely,

/RA/

William D. Travers
Executive Director
for Operations

Enclosure: As stated

provide a basis for this claim. Moreover, you do not specify how the NRC should rectify the perceived problem with the fuel damage limit. You do not indicate whether you believe the NRC should remove the stated limitation, modify the limitation to some other value, or substitute an altogether different methodology or approach.

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