

October 26, 2004

ORGANIZATION: Nuclear Energy Institute (NEI)

SUBJECT: SUMMARY OF SEPTEMBER 9, 2004, MEETING WITH NEI TO DISCUSS EMERGENCY PLANNING (EP) ASPECTS OF EARLY SITE PERMIT (ESP) REVIEWS, APPLICABILITY OF 10 CFR PART 21 TO ESP APPLICANTS AND HOLDERS, AND INCLUSION OF PLANT PARAMETERS IN ESPs

On September 9, 2004, a meeting was held between the U.S. Nuclear Regulatory Commission (NRC) and NEI at NRC Headquarters in Rockville, MD. The purpose of this meeting was to discuss industry issues related to major features of emergency plans submitted by ESP applicants, issues related to applicability of 10 CFR Part 21 to ESP holders and applicants, and issues related to inclusion of plant design parameters in early site permits. A list of meeting attendees is included as Attachment 1. The meeting agenda is provided as Attachment 2. No NRC or NEI handouts were provided during the meeting.

This meeting was preceded by a phone conference on August 30, 2004, during which NEI proposed, and the staff agreed to, the agenda and discussion topics for the meeting.

#### Highlights of the Emergency Planning Portion of the Meeting

The staff began the meeting by making several points:

- C The staff has identified an open issue for internal consideration. The issue involves the question of what finality is associated with an ESP holder having received NRC approval of major features of an emergency plan in accordance with Subpart A of 10 CFR Part 52.
- C The staff needs to better define what major features are, beyond the limited discussion in 10 CFR Part 52. Although draft NUREG-0654 Supplement 2 provides a definition and criteria for addressing major features, the staff needs to re-evaluate guidance in that document in relation to requirements for approval of emergency plans.
- C The staff needs to further evaluate whether approval can be granted (with caveats) for a major feature if one or more criteria under that feature (as defined in NUREG-0654, Supplement 2) are not approved.

NEI proposed that a major feature be defined differently than it is defined in NUREG-0654, Supplement 2, and that the staff consider defining a major feature as a "continuum" of options with regard to the level of detail provided by an ESP applicant. NEI also proposed that, if a major feature is approved, reasonable assurance has been provided, so that major features should not need to be re-validated at the combined license (COL) stage, except with regard to interfaces between matters addressed at ESP and those addressed at COL. The staff responded that, for ESPs, this is a legal issue and needs to be addressed as such, as discussed above.

With regard to ESP sites located adjacent to an operating nuclear power plant, NEI asked why information in a previously-approved emergency plan (i.e., for the operating unit) needs to be re-evaluated if such information is used to support an ESP application. NEI made an analogy to an NRC-approved topical report referenced in a licensing action in which the subject matter of the topical report is usually accepted by the staff without being reviewed again.

The staff remarked that the ESP review is a separate licensing action and that, in evaluating any ESP application, reviewers will look for information in the application (e.g., offsite planning information) to address applicable regulatory criteria. If such information is not found, the staff will develop requests for additional information. The staff also noted that any concerns pertinent to an operating plant's information used in support of an ESP application would be addressed using NRC's existing oversight process.

NEI asked why NUREG-0654, Supplement 2 calls for more information for contacts and arrangements with local, state, and federal government agencies with emergency planning responsibilities for an ESP application seeking approval of major features of an emergency plan than it does for an ESP application that is simply demonstrating that there are no significant impediments to the development of emergency plans. NEI noted that 10 CFR 52.17 appears to require the same information for both situations. The staff responded that a more detailed description of contacts and arrangements is necessary to establish a major feature of an emergency plan. The staff agreed to review this issue and provide additional feedback in the next meeting with NEI on ESP emergency planning issues.

Regarding NRC requests for projections of future site and surrounding area characteristics, the staff noted that the NRC needs to know if there will be any impediments to developing emergency plans over the potential 20-year period of an ESP.

NEI asked what finality is associated with approval of an evacuation time estimate (ETE) at ESP, as well as why an ETE previously accepted for an operating plant needs to be re-evaluated for an ESP application for an adjacent site. NEI stated that the level of review of an ETE should be less for identifying impediments to the development of emergency plans than for supporting approval of major features. Finally, NEI stated that the existence of an emergency plan for an operating plant adjacent to the ESP site should be adequate to demonstrate that there are no impediments to the development of an emergency plan for the ESP site. The staff responded that, in such a situation, the ESP applicant needs to address the impact of the proposed new plant(s) on the existing emergency plan and address contacts with local, state, and federal government agencies with emergency planning responsibilities.

The staff noted that, if an applicant puts information in an application on any subject beyond that required for the staff to make its regulatory findings, the staff's safety evaluation report may state that the staff did not review such information and would provide the reason. In addition, the staff stated that, should an ESP applicant initially request in its application approval of major features of an emergency plan and then decide to seek a finding of no significant impediments to the development of emergency plans, the applicant should revise its application to so state.

At the conclusion of this discussion, both sides agreed to a follow-on meeting to continue discussions on these subjects, and the week of October 18, 2004, was tentatively chosen as the target. The staff stated that it planned to develop and issue a letter stating its position on

the remaining emergency planning issues, mainly the definition and finality of major features of emergency plans, one week prior to the next meeting.

#### Highlights of the Part 21 Portion of the Meeting

To begin the discussion of applicability of 10 CFR Part 21 to ESP holders, the staff referred NEI to the staff's June 22, 2004 letter (ADAMS Accession No. ML040430041) providing the staff's position that Part 21 does apply. The staff also made the following points:

- C ESP applicants must have a Part 21 program implemented before an ESP is issued. In practical terms, this means before the NRC's final safety evaluation report is issued.
- C The staff agrees that language in the draft ESP template regarding Part 21 applicability can be simplified. The staff plans to add language to the template stating that the NRC has found that the applicant complies with Part 21.
- C The staff expects ESP applications to state that applicants have implemented a Part 21 program and to describe how it has been implemented (e.g., in procedures and procurement specifications). NRC will verify implementation through the inspection process in accordance with existing inspection procedures.

NEI asked for an example of an ESP item reportable under Part 21. The staff cited the example of an error discovered in a seismic analysis performed by a contractor to an ESP applicant that could impact design of safety-related structures, systems, and components. NEI and the staff generally agreed that Part 21 would require the contractor to report such a "defect" to the ESP holder, but that it would appear that the ESP holder (that had not chosen a design at the ESP stage) would not be required to evaluate the impact of the defect until such time as it chose a design to build at the site and submitted a COL application to the NRC.

At the conclusion of this discussion, NEI stated that it plans to send the staff a letter on the subject of Part 21 applicability to ESPs.

#### Highlights of the Plant Parameter Portion of the Meeting

This discussion was a follow-up to a discussion in a July 30, 2004 NRC/NEI meeting (meeting summary ADAMS Accession No. ML042390141) on the subject of inclusion of plant design parameters in ESPs. With respect to the site safety review, the staff emphasized that the only parameters it plans to put in the permit would be those that are determined by the applicant (and confirmed by the staff) to be important to the safety case. The staff intends to state that any design parameters provided by the applicant that are not used to support the site safety review were not reviewed by the staff. With respect to the environmental review, the staff stated that it proposes to include in the permit those plant design parameters provided in the application that were considered during the development of the environmental impact statement. The staff is currently reviewing its position on this question.

At the earlier meeting, NEI had stated that the presence of such parameters in the permit (as opposed to them being in the staff's review products) was of concern. However, they stated at the September 9, 2004 meeting that the issue is how environmental plant parameters are characterized, because such parameters are treated differently on the environmental side than

they are on the safety side. On the environmental side, NEI stated that the review is a bounding review and, at COL, a design value that is beyond the parameters assumed at ESP may not result in a significant change in the environmental impact. NEI believes that further analysis of environmental issues at the COL stage is only necessary if there is a significant change in the environmental impact. NEI asked that the staff consider finality for environmental findings in light of the requirements in 10 CFR 52.79(a)(1), 52.89, and 51.92.

The staff requested that NEI send a letter to the staff to describe its concerns on this subject.

*/RA/*

Michael L. Scott, Senior Project Manager  
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Project No. 689

Attachments: 1. List of attendees  
2. Agenda

cc w/ atts: See next page

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cc w/ atts: See next page

ADAMS ACCESSION NUMBER: ML042610277 \* See previous concurrence

OFFICE	PM:RNRP	SC:RLEP*	SC:NSIR/EPD*	SC:IPSB*	OGC*	SC:RNRP
NAME	MScott	AKugler	EWeiss	DThatcher	RWeisman	LDudes
DATE	10/20/04	9/22/04	9/22/04	9/23/04	10/14/04	10/23/04

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**Meeting with the Nuclear Energy Institute (NEI) Regarding Emergency Planning Aspects  
of Early Site Permit (ESP) Reviews, Applicability of 10 CFR part 21 to ESP Applicants and  
Holders, and Inclusion of Plant Parameters in ESPs  
September 9, 2004  
Attendance List**

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 Michael Scott NRR/DRIP/RNRP  
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 Alan Nelson

**Other Interested Attendees**

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 Carl Berger Energetics  
 George Zinke Entergy  
 Ben George Southern Nuclear  
 Steve Frantz Morgan Lewis  
 Lane Hay SERCH Bechtel  
 Jenny Weil McGraw Hill  
 Joe Hegner Dominion  
 Charles Pierce Southern Nuclear  
 Lew LaGarde Enercon Services  
 Guy Cesare Enercon Services  
 Kenneth Hughey Entergy  
 M. Bourgeois Entergy

## Agenda

### **September 9, 2004, Meeting with the Nuclear Energy Institute (NEI) Regarding Emergency Planning Aspects of Early Site Permit (ESP) Reviews, Applicability of 10 CFR part 21 to ESP Applicants and Holders, and Inclusion of Plant Parameters in ESPs**

8:30 a.m.	Introductory Comments	NRC/NEI
8:45 a.m.	Discussion of NEI comments on major features of emergency plans submitted in ESP applications	NRC/NEI
9:45 a.m.	Public comment	
10:00 a.m.	Discussion of NEI comments on applicability of 10 CFR Part 21 to ESP applicants and holders	NRC/NEI
10:45 a.m.	Public comment	
11:00 a.m.	Discussion on inclusion of plant parameters in ESPs	NRC/NEI
11:30 a.m.	Public comment	
11:45 a.m.	Summary	NRC/NEI
12:00 noon	Adjourn	

ESP-Generic

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