

December 28, 2004

ORGANIZATION: Nuclear Energy Institute (NEI)

SUBJECT: SUMMARY OF NOVEMBER 10, 2004, MEETING WITH THE NUCLEAR ENERGY INSTITUTE (NEI) TO DISCUSS APPLICABILITY OF 10 CFR PART 21 TO ESP APPLICANTS AND HOLDERS, EMERGENCY PLANNING (EP) ASPECTS OF EARLY SITE PERMIT (ESP) REVIEWS, INCLUSION OF PLANT PARAMETERS IN ESPs, AND ESP/COMBINED LICENSE (COL) INTERFACE ISSUES

On November 10, 2004, a meeting was held between the U.S. Nuclear Regulatory Commission (NRC), Federal Emergency Management Agency (FEMA), and NEI at NRC Headquarters in Rockville, MD. The purpose of this meeting was to discuss issues related to the applicability of 10 CFR Part 21 to ESP holders and applicants, industry issues related to major features of emergency plans submitted by ESP applicants, issues related to inclusion of plant design parameters in early site permits, and ESP/COL interface issues. A list of meeting attendees is included as Attachment 1. The meeting agenda is provided as Attachment 2. A copy of the NEI handouts provided during the meeting is Attachment 3. This meeting was a follow-up to an NRC/NEI meeting held on September 9, 2004 (meeting summary ADAMS Accession No. ML042610277).

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 (ML040430041) providing the staff's position that Part 21 does apply to ESP holders. The staff also made the following points:

1. ESP applicants must have a Part 21 program implemented before an ESP is issued. In practical terms, this means the program should be in place before the NRC's final safety evaluation report is issued.
2. The staff agrees with NEI that language in the draft ESP template regarding Part 21 can be simplified as discussed in NEI's letter of September 27, 2004.
3. Item 4 of the NEI September 27, 2004, letter stated that Part 21 applies only to safety-related activities, as defined in the regulation, and that determination of which ESP related activities are safety-related will be made on an applicant-specific basis. The staff stated that the determination of which ESP activities are safety-related should be consistent from one ESP to the next, and that the staff cannot envision a situation in which a particular ESP activity would be considered safety-related for one ESP application but not for another. Industry representatives pointed out that different reactor designs may identify different equipment as being safety-related. This fact could

result in two ESP applicants identifying different safety-related activities if they were referencing different designs. The staff acknowledged that such a situation could lead to different safety-related activities for ESP applicants.

4. NEI stated that further discussion was needed on the extent to which Part 21 implementation is to be addressed in ESP applications. As the NRC stated in its June 22, 2004, letter to NEI on this subject, an ESP applicant needs to demonstrate in its application that there is reasonable assurance that Part 21 obligations, both retrospectively and prospectively, will be met. The staff also stated in the September 9, 2004 meeting with NEI that 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). The staff expects to update the NRC's ESP Review Standard (RS-002) to reflect this information. The staff acknowledged that an ESP applicant is not required to include information relating to its Part 21 program in its ESP application. However, it is the staff's preference that such information be provided in the ESP application. If such information is not provided by an ESP applicant, the NRC staff will obtain the necessary information through the inspection process.
5. NEI stated in its September 27, 2004, letter that further discussion was needed on the need for a separate item in the ESP template on Part 21 applicability. The staff agrees with NEI that no separate item on Part 21 applicability is necessary. The ESP template will reflect a single item stating that the applicant has demonstrated compliance with Part 21.

Highlights of the Emergency Planning Portion of the Meeting

On November 9, 2004, the staff issued a letter to NEI regarding emergency planning (EP) issues that NEI had identified with regard to ESPs. In the letter, the staff discussed its positions regarding (1) finality of EP-related determinations made at the ESP stage, (2) review criteria for ESP applications that seek acceptance of "major features" of emergency plans (an option provided in 10 CFR Part 52), and (3) staff review of previously filed EP information referenced in an ESP application. This letter (ML042870262) formed the basis for some of the discussions in the meeting with NEI held on November 10, 2004, and the staff began the discussion on this subject by reiterating the major points made in the letter.

NEI stated that they need more time to review the staff's letter. NEI also suggested that a further discussion on major features of the ESP would be more beneficial after the issuance of the staff's first ESP draft safety evaluation report (DSER) in December, 2004. NEI requested a meeting with the staff in January 2005.

The following points were made by the participants:

1. A discussion was held regarding "significant impediments" reviews. NEI stated that the industry believes that such a review for a site adjacent to an operating reactor with an existing emergency plan should be very simple. The staff agreed that an existing plan in place in such a case is convincing evidence of the lack of impediments to development of emergency plans, and the staff agreed to consider this question further.

2. NEI asked for clarification regarding the need to project data such as population figures forward, and for how long. The staff agreed to consider this question further.
3. NEI stated a concern that potential applicants for greenfield sites might find the business risk unacceptable regarding the lack of finality at the ESP stage for major features of emergency plans.
4. NEI sought clarification relating to the need for a new 44 CFR 350 certification in association with an ESP for an existing site. FEMA representatives agreed to provide the clarification to the NRC staff by December 2004.
5. NEI asked when the staff expects to revise Supplement 2 to NUREG-0654 to address lessons learned from the ESP reviews. The staff agreed to discuss this question internally and to inform NEI of conclusions reached.

Highlights of the Plant Parameter Portion of the Meeting

This discussion was a follow-up to a discussion in the September 9, 2004, NRC/NEI meeting on the subject of inclusion of plant design parameters in ESPs. The staff made the following points:

1. The staff believes that an early site permit should specify both the site characteristics and the design parameters that the staff used in evaluating the suitability of the site. As stated in the NRC's February 5, 2003, letter on Generic Issue ESP-6, a combination of site characteristics and PPE values will comprise the ESP bases that will be the focus for comparison with the design of an actual plant proposed in a COL application for the site.
2. The staff agrees with NEI that it is important to clearly distinguish between site characteristics and postulated design parameters in the ESP and the EIS.
3. Nature of site characteristics: The staff agrees with NEI's characterization of site characteristics as "hard and fast" numbers that completely and accurately describe the site and that upon the filing of a COL application, the site parameters postulated for the design of the facility must fall within the actual site characteristics if there is to be issue preclusion under 10 CFR 52.39.

Where this is not the case, the site characteristics may be revised (based on additional data) to bound those postulated for design, the design may be modified to account for the existing characteristics, or the licensee may provide additional analysis to demonstrate that the proposed plant would nonetheless comply with NRC requirements concerning site suitability. These matters would be subject to NRC review and adjudication in the COL proceeding.

4. Nature of design parameters: Design parameters, as used by an ESP applicant taking the Plant Parameter Envelope (PPE) approach, are surrogates for actual facility design information used to support the NRC's safety and environmental reviews.

5. In the situation where actual design characteristics proposed in a COL application are not bounded by design parameters assumed in the ESP, the staff disagrees with NEI that further analysis and NRC approval is not always needed. If actual design characteristics proposed in a COL application are not bounded by the design parameters in the ESP, the NRC must evaluate the effect of the difference on the environmental impact of the actual proposed action. Because this evaluation will comprise part of the agency's decision regarding the COL application, the evaluation of the difference would be subject to litigation.
6. The participants discussed the requirements in 10 CFR 52.79 which states, ". . .if the application references an early site permit, the application need not contain information or analyses submitted to the Commission in connection with the early site permit, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the parameters specified in the early site permit, . . ." There was considerable discussion about the interpretation of this requirement as it relates to an ESP applicant that references a PPE. The staff stated that this issue would be addressed further in the upcoming proposed rule on 10 CFR Part 52, expected to be issued in mid-2005.
7. The NRC staff will only list PPE values (design parameters) in the permit that were considered by the staff in its safety or environmental review. PPE values that were not considered by the NRC staff in its review of the ESP application will not be listed in the permit.

Finally, the staff stated that it was not prepared to address Item 6 from the NEI's September 27, 2004 letter which requested the staff interpretation of the use of the phrase "one or more elements of the permit" in 10 CFR 52.39(b). The staff stated that it would follow up with the Office of the General Counsel on this item prior to next meeting with NEI.

Highlight of the ESP/COL Interface Issues

NEI led a discussion with the NRC staff concerning the evaluation of new or changed information included in a COL application that references an ESP. NEI stated that they have concerns about the nature of the staff review of this information in the COL application. Specifically, they questioned whether the COL review is merely to confirm site characteristics or whether there will be a review of new meteorological information. NEI stated that the issue of providing new meteorological information also raises concerns with the level of finality of the ESP. NEI noted that this information impacted both the environmental and safety reviews.

After significant discussion, the following action items were noted:

- 1) Both NRC and NEI staff will consider the finality of the meteorological information at the time of the COL application and comment on whether the COL applicant needs to update the site data that was reviewed for the ESP.
- 2) NEI requested that the NRC consider where the environmental protection plan fits into the 10 CFR Part 52 process, i.e., at the ESP stage or at the COL stage.

Both NRC and NEI staff agreed to discuss ESP/COL interface issues and address these action items during their next public meeting.

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Project No. 689

Attachments: 1. List of attendees
2. Agenda
3. Handouts

cc w/atts: See next page

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