

August 11, 2005

Mr. Adrian P. Heymer
Director, New Plant Deployment
Nuclear Generation Division
Nuclear Energy Institute (NEI)
1776 I Street, NW, Suite 400
Washington, D.C. 20006-3708

SUBJECT: INTERPRETATION OF 10 CFR 52.39(a)(2)(ii) AND 10 CFR 52.39(b) (ESP-22a)

Dear Mr. Heymer:

The purpose of this letter is to respond to requests by the Nuclear Energy Institute (NEI) to provide interpretations to specific language contained in Title 10 of the *Code of Federal Regulations* (10 CFR) sections 52.39(a)(2)(ii) and 52.39(b). In a September 27, 2004, letter (ADAMS Accession No. ML042820378), associated with the U.S. Nuclear Regulatory Commission (NRC) review of early site permit (ESP) applications, NEI requested that the staff provide an interpretation of 10 CFR 52.39(b). During a public meeting on January 18, 2005 (ADAMS Accession No. ML050400256), the NRC staff agreed to consider this request. Subsequently, NEI requested that the staff also provide further clarification of 10 CFR 52.39(a)(2)(ii). This letter provides the NRC staff's position regarding these regulations.

10 CFR 52.39(b) provides for a construction permit (CP), operating license (OL), or combined license (COL) applicant, who has filed an application referencing an ESP issued under Subpart A of Part 52, to seek a variance from "one or more elements" of the permit. The intent of the staff regarding the phrase "one or more elements" was not to exclude any aspects contained in the permit. At the time the rule was written, the staff sought to use a general phrase that would cover all of the components approved as part of an ESP. It is the staff's intent that the phrase "one or more elements," as used in 10 CFR 52.39(b), refer to, one or more site characteristics, design parameters, and terms and conditions of the permit.

10 CFR 52.39(a)(2) sets forth the conditions for when a CP, OL, or COL applicant cannot reference an ESP in a CP, OL, or COL application. One condition occurs when there exists a petition alleging that the site is not in compliance with the terms of the ESP. 10 CFR 52.39(a)(2)(ii) states that this petition must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under Subpart C of 10 CFR Part 2, which show that the acceptance criteria have

A. Heymer

-2-

not been met. It is the staff's intent that the phrase "acceptance criteria," as used in 10 CFR 52.39(b), refer to site characteristics, design parameters, and terms and conditions of the permit.

Please contact John Segala at (301) 415-1858 or by email at jps1@nrc.gov if you have any questions.

Sincerely,

/RA/

William D. Beckner, Program Director
New, Research and Test Reactors Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Project No. 689

cc: See next page

A. Heymer

-2-

not been met. It is the staff's intent that the phrase "acceptance criteria," as used in 10 CFR 52.39(b), refer to site characteristics, design parameters, and terms and conditions of the permit.

Please contact John Segala at (301) 415-1858 or by email at jps1@nrc.gov if you have any questions.

Sincerely,

/RA/

William D. Beckner, Program Director
New, Research and Test Reactors Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Project No. 689

cc: See next page

ADAMS ACCESSION NUMBER: ML051930391

OFFICE	RNRP	PM:RNRP	OGC/NLO w/comments	SC:RNRP	PD:RNRP
NAME	CAraguas	JSegala	DReddick	LDudes	WBeckner
DATE	07/12/05	07/12/05	08/02/05	08/08/05	08/09/05

OFFICIAL RECORD COPY

Distribution for Letter to A. Heymer Dated August 10, 2005

Hard Copy

RNRP R/F
CAraguas
JSegala
BSosa
RAnand
LDudes

External e-mail

bhupinder.singh@hq.doe.gov
tom.miller@hq.doe.gov
Vanessa.Quinn@dhs.gov
Kenneth.Wierman@dhs.gov
James.Purvis@dhs.gov

E-Mail

PUBLIC
JDyer (RidsNrrOd)
RBorchardt
BSheron (RidsNrrAdpt)
NRR/ADPT Secretary [RidsNrrAdpt]
RNRP Group
DMatthews
EWeiss
BMusico
DBarss
JAnderson
RMoody
NMamish
PKuo
AKugler
BZalcman
TKenyon
JCushing
JWilson
NGilles
KCampe
CMunson
JLee
GBagchi
TMensah (NRR Communication Coord)
ACRS (RidsAcrsMailCenter)
OPA
Mel-Zeftway
SKlementowicz
PPrescott
ATardiff
RWeisman, OGC
GMizuno, OGC

Combination List:

cc: Mr. Charles Brinkman
Westinghouse Electric Co.
Washington Operations
12300 Twinbrook Pkwy., Suite 330
Rockville, MD 20852

Mr. David Lochbaum, Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street, NW, Suite 600
Washington, DC 20006-3919

Mr. Paul Gunter
Nuclear Information & Resource Service
1424 16th Street, NW, Suite 404
Washington, DC 20036

Mr. James Riccio
Greenpeace
702 H Street, NW, Suite 300
Washington, DC 20001

Mr. Adrian Heymer
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

Mr. George Alan Zinke
Project Manager
Nuclear Business Development
Entergy Nuclear
M-ECH-683
1340 Echelon Parkway
Jackson, MS 39213

Mr. Thomas P. Miller
U.S. Department of Energy
NE-20, Rm. A286
Headquarters-Germantown
19901 Germantown Road
Germantown, MD 20874-1290

Ms. Marilyn Kray
Vice President, Special Projects
Exelon Generation
200 Exelon Way, KSA3-E
Kennett Square, PA 19348

Mr. Laurence Parme
Manager, GT-MHR Safety &
Licensing
General Atomics Company
P.O. Box 85608
San Diego, CA 92186-5608

Mr. Joseph D. Hegner
Lead Engineer - Licensing
Dominion Generation
Early Site Permitting Project
5000 Dominion Boulevard
Glen Allen, VA 23060

Mr. Edward L. Quinn
MDM Services Corporations
Utility Operations Division
28202 Cabot Road, Suite 205
Laguna Nigual, CA 92677

Ms. Lynn Connor
Doc-Search Associates
2211 sw 1ST Ave - #1502
Portland, OR 97201

Mr. Paul Leventhal
Nuclear Control Institute
1000 Connecticut Avenue, NW
Suite 410
Washington, DC 20036

Ms. Patricia Campbell
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Mr. W. Edward Cummins
AP600 and AP1000 Projects
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

Dr. Robert E. Gamble
Manager, ESBWR
GE Nuclear Energy
1989 Little Orchard St., M/C 365
San Jose, CA 95125-1030

August 12, 2005

Dr. Jack W. Roe
Nuclear Energy Institute
1776 I Street, NW
Washington, DC 20006-3708

Mr. Stephen P. Frantz
Morgan, Lewis, & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Mr. Gary Wright, Manager
Office of Nuclear Facility Safety
Illinois Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

Mr. Brendan Hoffman
Research Associate on Nuclear Energy
Public Citizens Critical Mass Energy
and Environmental Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

Mr. Tom Clements
6703 Gude Avenue
Takoma Park, MD 20912

Mr. Lionel Batty
Nuclear Business Team
Graftech
12300 Snow Road
Parma, Ohio 44130

Mr. Ian M. Grant
Canadian Nuclear Safety Commission
280 Slater Street, Station B
P.O. Box 1046
Ottawa, Ontario
K1P 5S9

Mr. Edward F. Sproat, III
Vice President - Int'l Projects
Exelon Generation
200 Exelon Way
Kennett Square, PA 19348

Mr. Glenn H. Archinoff
AECL Technologies
481 North Frederick Avenue
Suite 405
Gaithersburg, MD. 20877

Dr. Regis A. Matzie
Senior Vice President and
Chief Technology Officer
Westinghouse Electric Company
2000 Day Hill Road
Windsor, CT 06095-0500

Mr. Ed Wallace, General Manager
Projects
PBMR Pty LTD
PO Box 9396
Centurion 0046
Republic of South Africa

Mr. Dobie McArthur
Director, Washington Operations
General Atomics
1899 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

Mr. Russell Bell
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

Ms. Vanessa E. Quinn, Chief
Radiological Emergency Preparedness
Section
Nuclear & Chemical Hazards Branch
Federal Emergency Management
Agency/DHS
500 C Street, SW
Washington, D.C. 20472

Mr. Ron Simard
6170 Masters Club Drive
Suwanee, GA 30024

Mr. Jerald S. Holm
Framatome ANP, Inc.
3315 Old Forest Road
P.O. Box 10935
Lynchburg, VA 24506-0935

Ms. Kathryn Sutton, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Ms. Anne W. Cottingham
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006-3817

Mr. Robert E. Sweeney
IBEX ESI
4641 Montgomery Avenue
Suite 350
Bethesda, MD. 20814

E-Mail:

gerald.holm@framatome-anp.com
mwetterhahn@winston.com
gcesare@enercon.com
whorin@winston.com
rob.sweeney@ibexesi.com