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NUCLEAR ENERGY INSTITUTE

(5)

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Mail Stop 0-16C1
Washington, DC 20555-0001

ATTN: Rulemaking and Adjudications Staff

SUBJECT: "Licenses, Certifications, and Approvals for Nuclear Power Plants," NRC Supplemental Proposed Rule re Limited Work Authorizations 71 Fed. Reg. 61,330 (Oct. 17, 2006) (RIN 3150-AG24)

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)[1] is pleased to submit the enclosed comments on the above-captioned Nuclear Regulatory Commission (NRC) rulemaking, which supplements the March 13, 2006, proposed rule amending the licensing and approval processes for future nuclear power plants. (See 71 Fed. Reg. 12,782.)

NEI supports this supplemental proposed rule. The proposed amendments will improve the Limited Work Authorization (LWA) process and increase NRC focus on matters that have significance to safety. The proposals will enhance the overall effectiveness and certainty of the NRC reactor licensing process for new nuclear plants. It will enable combined license applicants to use modern nuclear plant construction practices that have been developed overseas and that can start as early as 24 months prior to issuance of the license.

While NEI supports this supplemental proposed rule, we have comments in a few areas that warrant adjustment before the rule is finalized. Our main comments are in three areas:

1. The industry believes that an applicant should be allowed to conduct excavation activities without prior NRC approval. Excavations, the removal

[1] The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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of soil, gravel and rock, do not have a reasonable nexus to public health and safety. It is not necessary to require a LWA for excavations for facilities required to be described in the FSAR in order to ensure that the Staff will be informed when excavations occur and when results yield new information about the site. If excavation identifies faults or other deformation features that pose a substantial safety hazard, the proposed 10 CFR 52.6 requires combined license (COL) applicants and licensees to reflect that information in their applications, or to update previously submitted information, to the extent the new data bears upon the complete and accurate characterization of the site.

We recognize that in previous construction projects geological anomalies that impact site characterization and design were identified. As a result we recommend that an additional paragraph should be added to §50.10(b) that would require an applicant to map excavations and notify the NRC when the excavations are open for inspection.

2. The proposed language that defines the scope of a LWA is too broad and unnecessarily restrictive. It would eliminate the majority of the benefit of the rule by restricting the amount of pre-construction activities that could be performed without a LWA to a small subset of the structures on the construction site.

   The final rule should link a LWA only to the activities listed in the rule in connection with structures, systems and components (SSCs) that are required to be described in the SSAR, PSAR, or FSAR, and that are safety-related, or that are risk-significant as identified in Chapter 19 of the FSAR.

3. The rule should allow a LWA application to be submitted up to 18 months before a combined license application, not 12 months. To our knowledge, there is no compelling reason not to allow the LWA applicant to do so. The potential impact on construction schedules could be significant when considering modern, modular construction practices. This is especially true for those plants that are not in the first wave of applications and that are submitting applications, which are identical to a licensed reference plant, with the exception of site-specific details. For these second-wave plants, the license may be issued 24 months after the license application submittal. If the regulation is not changed the project schedule could be extended unnecessarily.

The enclosure provides more detailed comments on these three issues and includes recommended language changes to the applicable sections of the proposed rule. Also, the enclosure provides additional comments and recommendations on the following topics:

- LWA applicant reliance on earlier EIS for a facility not constructed
- Enhancing the usefulness of the LWA phased application, and
- Grandfathering of current ESP applicants

We commend the NRC staff for developing this supplemental rule in a very timely manner. As revised by this rulemaking, the LWA rule will eliminate inconsistencies in the current rule and more accurately align the LWA provisions with the NRC's role under National Environmental Policy Act (NEPA) case law that post-dates the existing 10 CFR 50.10(c).

In the business environment in which the new nuclear plants are being constructed companies must seek to minimize the time interval between their decision to proceed with a COL application and the start of commercial operation. With the incorporation of industry comments, the final rule should allow companies to adopt modern construction practices and proceed with construction in the most efficient manner consistent with statutory requirements.

If you have any questions about the industry recommendations, please contact me at (202) 739-8094; aph@nei.org or Anne Cottingham (202) 739-8139; awc@nei.org.

Sincerely,

Adrian P. Heymer

Enclosure

c: The Honorable Dale E. Klein, Chairman, NRC
The Honorable Edward McGaffigan, Jr., Commissioner, NRC
The Honorable Jeffrey S. Merrifield, Commissioner, NRC
The Honorable Peter B. Lyons, Commissioner, NRC
The Honorable Gregory B. Jaczko, Commissioner, NRC
Mr. Luis A. Reyes, Executive Director of Operations, NRC
Ms. Karen D. Cyr, General Counsel, NRC
Mr. James E. Dyer, NRC
Mr. R. William Borchardt, NRC

Enclosure to NEI Letter on NRC Supplemental Proposed Rule Amending Limited Work Authorization Regulations

I. Introduction

This rule, if implemented, would re-focus the scope of "pre-construction" work requiring prior NRC approval (in the form of a limited work authorization) for activities that have safety significance. It would enhance the NRC's regulations by requiring a LWA only for "activities that have a reasonable nexus to radiological health and safety and/or common defense and security." (See 71 Fed. Reg. at 61,332.)

NEI believes that the supplemental proposed rule will facilitate resolution of relevant safety and environmental issues at an earlier stage of the licensing process than is possible under current LWA regulations. In addition to focusing NRC regulatory oversight on activities with a nexus to radiological safety, the rule's optional phased LWA application and approval process also will minimize unnecessary delay in construction schedules. Promulgation of this proposed rule will enhance licensing efficiency consistent with the NRC's statutory authority and obligations.

Sections III-V of these comments discuss recommended changes that NEI believes should be incorporated in the LWA final rule.

II. The Supplemental Proposed Rule Is Consistent with NRC's Jurisdiction and the National Environmental Policy Act

The supplemental proposed rule comports with the Atomic Energy Act (AEA) of 1954, as amended, the environmental review procedures of the National Environmental Policy Act (NEPA), and current case law. This rulemaking restructures the current LWA rule to reach only those activities that are within the Commission's jurisdiction under the AEA.

In *Nuclear Fuel Services* (NFS), where the Commission specifically addressed the issue of its authority over pre-construction activities, it rejected a request for an injunction to halt pre-license construction until completion of the comprehensive Final Environmental Impact Statement (FEIS). The Commission ruled that it had no authority to halt such actions by NFS since those actions were not prohibited by (*i.e.*, do not require a license under) the AEA.[1] The Commission held that NEPA did not apply to those activities because NEPA is a procedural statute and does not broaden the agency's substantive power beyond its AEA

[1] *See Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-03-03, 57 NRC 239, 246 (2003).

authority.[2] Similar reasoning applies in the context of limited work authorizations. The NRC's licensing authority — the only action that triggers NEPA — is co-extensive with the AEA. In contrast, pre-construction activities do not require NRC approval under the AEA and thus do not require NRC review under NEPA. See also 71 Fed. Reg. at 61,332-33.

Moreover, NEPA does not apply to private pre-construction activities since NEPA is triggered only by a major Federal action. Under Council on Environmental Quality (CEQ) regulations, a "[m]ajor Federal action" includes "actions with effects that may be major and which are potentially subject to Federal control and responsibility." 40 CFR § 1508.18. Private pre-construction activities that do not require NRC approval are not Federal actions and do not trigger NEPA. *NRDC v. EPA*, 822 F.2d at 128. The connection between pre-construction activities and the activities requiring NRC approval does not "federalize" the entire project for NEPA purposes, because the private pre-construction activities can be undertaken by a non-NRC applicant at any time and can be adapted for multiple uses, including but not limited to nuclear plant construction.[3]

As the proposed rule also makes clear, NEPA does apply to the two "Federal" approvals (the LWA and the COL/CP). The NRC must perform a NEPA review on the impacts of the LWA activities prior to issuance of the LWA. See proposed 10 CFR 50.10(d). Therefore, there is no "segmentation" since the NRC is not attempting to avoid the NEPA process for the activities that require NRC approval. See 71 Fed. Reg. at 61,333. The proposed rule also requires a full EIS for the LWA activities, even though an Environmental Assessment might be adequate given the requirement to prepare and implement a redress plan. *Id.*[4] Importantly, the issuance of the LWA also does not "pre-ordain" the outcome of the COL review or its associated NEPA analysis. LWA activities are performed at the applicant's risk and have no bearing on the issuance of the COL or CP. See

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[2] *Id.*, at 249-50, *citing Natural Res. Def. Council v. Envt'l Prot. Agency*, 822 F.2d 104, 129 (D.C. Cir. 1987). Analogously, in *NRDC v. EPA*, the D.C. Circuit invalidated an EPA rule that prohibited facility construction pending completion of the agency's NEPA review of its discharge permit. The Court held that NEPA did not confer independent authority on the agency to prohibit private activities otherwise allowed under the Clean Water Act. 822 F.2d at 128, 130.

[3] *See id.*, at 130; *see also*, CLI-03-03, 57 NRC at 248; *Winnebago Tribe v. Ray*, 621 F.2d 269, 273 (8th Cir. 1980) (Corps of Engineers permit does not "federalize" entire project), *cert. denied*, 449 U.S. 836 (1980); *Save the Bay v. U.S. Corps. of Engrs.*, 610 F.2d 322, 326-27 (5th Cir. 1980) (same), *cert. denied*, 449 U.S. 900 (1980).

[4] On this point, the NRC should consider providing additional flexibility to the NRC Staff. The Staff should have discretion to issue an Environmental Assessment (EA) if the Environmental Report prepared for part 1 of a phased COL application shows no significant impacts associated with proposed LWA activities. This change would require modifications to proposed Sections 51.20(b)(5) and 51.76 in the LWA final rule.

proposed 10 CFR 50.10(e). The proposed rule explicitly states that sunk costs will not be considered in the final weighing of the costs and benefits of issuing the COL or CP. *Id.*

III. Certain Additional Activities Should Be Allowed without a LWA

A. NRC Should Allow All Activities Included in Proposed 10 CFR 50.10(b) without a LWA or other NRC Approval

NEI concurs with the agency's proposal that prospective COL applicants (and other persons) should be allowed to conduct all of the activities listed in proposed 10 CFR 50.10(b)(1)-(8) (see 71 Fed. Reg. at 61,347) without NRC approval. These activities do not constitute "construction."

B. NRC Should Allow Excavation Activities without a LWA

In addition to the activities listed in proposed Section 50.10(b)(1)-(8), NEI believes that prospective COL applicants (and other persons) should be permitted to conduct certain other activities that the proposed rule defines as "construction" without a LWA or other NRC approval. Proposed Section 50.10(b) defines "*construction*" for which a LWA must be obtained to include:

> "Excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report." (71 Fed. Reg. 61,347).[5]

Significantly, NEI does not agree that *excavation* for any structure, system or component (SSC) of a facility required by regulation to be described in the site safety analysis report (SSAR) or preliminary or final safety analysis report (PSAR or FSAR) should fall within the scope of "construction" in the context of Section 50.10. The broad inclusion of excavation among the category of activities that will require a LWA appears inconsistent with the NRC's statement that it intends to

[5] In this regard, the Supplementary Information states (71 Fed. Reg. at 61,337) that "installation of the foundation" includes soil compaction; installation of drainage systems and geofabric, placement of concrete (e.g., "mudmats") or other materials that will not be removed before placement of the foundation of a structure; placement and compaction of a sub-base; installation of reinforcing bars to be incorporated into structural foundations; the erection of concrete forms for the foundation that will remain in place permanently (even if non-structural), and placement of foundation or other foundation materials – for any SSCs required to be described in the FSAR.

require LWAs only for those activities that have a "reasonable nexus to radiological health and safety and/or common defense and security."

The rule proposes that "initial site grading to attain the final ground elevation and erosion control measures to preclude run-off" at the location where further excavation will be required lacks a reasonable nexus to radiological safety, while "the removal of any soil, rock, gravel or other material below the final ground elevation, in preparation for the placement of the foundation and associated retaining walls" does have a safety nexus that requires a LWA. See 71 Fed. Reg. at 61,336-37. In other contexts, however, the NRC apparently views excavation as falling under the category of site exploration or preparation activities, as opposed to "construction." The Commission should similarly categorize excavation activities as pre-construction activities for LWA purposes.[6]

However, in recent public meetings, NRC officials suggested that a LWA should be obtained before a prospective COL applicant commences excavation activities. The basis cited for this suggestion was two or three incidents during the construction of existing U.S. commercial nuclear facilities where soil-related issues were discovered during excavation. (We note that in the instances cited, it would appear that it was not the excavation activities themselves that had safety implications, but rather the conditions identified by the excavations.) In any event, the NRC staff stated that, based on this experience, they need to have real-time knowledge of soil structure information discovered during site excavations, so that the impacts of this information on the site characterization review can be considered.

It is not necessary to require a LWA for excavations for facilities required to be described in the FSAR in order to ensure that the NRC staff will be informed when excavations occur and when results yield new information about the site. If excavation identifies faults or other deformation features that pose a substantial safety hazard, proposed 10 CFR 52.6 requires COL applicants and licensees to reflect that information in their applications, or to update previously submitted information, to the extent the new data bears upon the complete and accurate characterization of the site.

It should also be recognized that the NRC is currently exercising oversight of other *pre-application* activities for new plants via the inspection process. For example, the NRC currently conducts site visits to gather information on site borings and conducts inspections of ESP applicants' site characterization activities. An analogous process of communication, observation, and inspections could be used at the time of site excavation to provide real-time information to the

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[6] Examples of excavation activities without a reasonable nexus to radiological health and safety include excavating for holding ponds to collect on-site runoff, or to be used for septic services. These activities should not require NRC approval in a LWA.

NRC staff concerning soil and geological conditions uncovered by excavation. Conceptually, this would be quite similar to NRC inspection of long-lead items (e.g., the reactor vessel) that will be ordered and manufactured prior to license issuance. Thus, there is an established mechanism for NRC involvement in siting and other non-licensed activities prior to issuance of the license.

Moreover, NRC Regulatory Guide 1.165, *Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion,* was updated in 1997 to address Part 52 COL applications. This guidance states that COL applicant FSARs should include a commitment to geologically map all excavations and notify the NRC when excavations are open for inspection.[7] This guidance, which will apply to the forthcoming COL applications, is adequate to ensure that the NRC will be informed of site excavations and that excavations will be geologically mapped. It is not necessary for the NRC to require a LWA for site excavations in order to provide the NRC staff with timely information about site excavations.

Given these considerations, we recommend that the NRC modify the definition of "construction" in proposed Sections 50.10(b) and 51.4 to exclude excavation from the list of activities that require a LWA, as follows:

> **"Construction" includes subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, ...**

Further, the NRC should amend the proposed rule to add the following provisions to the list of activities specifically excluded from the definition of "construction" under proposed Sections 50.10(b) and 51.4:

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[7] RG 1.165 provides in relevant part (Sec. 1.3): "It should be demonstrated that deformation features discovered during construction, particularly faults, do not have the potential to compromise the safety of the plant. The two-step licensing practice . . . has been modified to allow for an alternative procedure. The requirements and procedures applicable to NRC's issuance of combined licenses for nuclear power facilities are in Subpart C of 10 CFR Part 52. Applying the combined licensing procedure to a site could result in the award of a license prior to the start of construction. During the construction of nuclear power plants licensed in the past two decades, previously unknown faults were often discovered in site excavations. Before issuance of the OL, it was necessary to demonstrate that the faults in the excavation posed no hazard to the facility. Under the combined license procedure, these kinds of features should be mapped and assessed as to their rupture and ground motion generating potential while the excavations' walls and bases are exposed. Therefore, a commitment should be made, in documents (Safety Analysis Reports) supporting the license application, to geologically map all excavations and to notify the NRC staff when excavations are open for inspection."

"The term 'construction' excludes . . .

(9) Excavation for any structure, system or component otherwise included in the term "construction," provided the excavations are geologically mapped and the NRC staff is notified when the excavations are open for inspection.

The Supplementary Information should indicate that excavation includes appropriate erosion control measures necessary to stabilize site excavations pending LWA or license approval of construction activities.

IV. The Final Rule Should Define "Construction" to Require a LWA Only for Certain Activities for Safety-Related or Risk-Significant SSCs, not All SSCs Required To Be Described in the FSAR

Apart from the question discussed above regarding the need to include "excavation" within the scope of "construction" at all, NEI believes that NRC's proposed definition of "construction" is otherwise too broad. The proposed rule would include "excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, *for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report*" (emphasis added). This language should be narrowed. See proposed Section 51.4 and 50.10(b).

For example, proposed 10 CFR 52.79(a) provides that the FSAR must describe the facility, present the design bases and the limits on its operation, and present a safety analysis of "*the structures, systems, and components of the facility as a whole*" (emphasis added). Further, proposed 52.79(a)(1)(ii) requires discussion of "the proposed general location of each facility on the site." While some SSCs required to be described in those licensing documents have a reasonable nexus to radiological safety, this certainly is not true for all of them.

Throughout the proposed rule, the Commission emphasizes its intention that LWA requirements will only apply to activities with a reasonable nexus to radiological safety. See 71 Fed. Reg. at 61,332, 61,334. However, the proposed definition of "construction" activities that require a LWA is not totally consistent with this stated intent. The proposed rule fails to demonstrate that radiological health and safety concerns require (or even justify) inclusion of all SSCs "required to be described" in the SSAR, PSAR, or FSAR within the definition of "construction" for LWA purposes.

Moreover, as a practical matter, it is not clear exactly what SSCs might be excluded from the LWA requirement because they are not required to be described in the SSAR, PSAR, or FSAR. It appears that there would be very few SSCs that would fall under this exception, and, therefore, the subset of structures for which any excavation, subsurface preparation, pile driving, or foundation and structural installation could be performed without a LWA would be quite small. As stated, the rule's requirement for a LWA would apply to several facilities that have no nexus to radiological safety (e.g., cooling towers). (The proposed rule does not provide substantive guidance on this point.)[8] We recommend that the LWA final rule be revised to provide a clearer nexus to radiological health and safety for those activities that will require a LWA, as set forth below. Such modifications would be consistent with the stated purpose of the LWA rulemaking.

While we consider the scope created by "facilities required to be described in the FSAR" to be overly broad, we understand that the NRC staff would consider too narrow a re-definition of "construction" that describes the scope as "safety-related facilities" (although the term "safety-related" is already defined in 10 CFR 50.2, 50.49, and 54.4). Given these considerations, we propose that the NRC re-define "construction" in proposed Sections 50.10(b) and 51.4 as follows:

> **"Construction" includes subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any structure, system or component of a facility that (i) is required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report; and (ii) is determined to have a reasonable nexus to radiological health and safety or common defense and security.**

Further, the NRC should amend the proposed rule to add the following provisions to the list of activities specifically excluded from the definition of "construction" under proposed Sections 50.10(b) and 51.4:

> **(10) Subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any facility that performs no safety function and contains no**

[8] While the proposed rule provides (71 Fed. Reg. at 61,337) that the driving of piles to support the erection of a bridge for a temporary or permanent access road may be performed without a LWA, on the theory that this activity is "not related to ensuring the structural stability or integrity" of any SSC required to be described in the FSAR, this example does not justify the extremely broad scope of the proposed definition of "construction."

safety-related SSCs or risk-significant SSCs identified in Chapter 19 of the FSAR.

The Supplementary Information should provide examples that illustrate the intended scope of the facilities that will not fall within the revised definition of "construction" in Sections 50.10(b) and 51.4(10). At a minimum, those examples should include permanent warehouses or administrative office buildings located on the site, cooling towers and connected piping, and switchyards for connection to transmission lines.

V. Other Comments

A. LWA Applicant Reliance on earlier EIS for a Facility Not Constructed

Proposed Sections 51.76(e) and 51.49(e) are slightly inconsistent. Proposed Section 51.76(e) refers to the LWA applicant's ability to incorporate by reference an earlier EIS prepared for that same site, if a construction permit was issued for the site but construction of the plant was never commenced. By contrast, proposed Section 51.49(e) contains an analogous provision allowing the LWA applicant's Environmental Report to reference an earlier EIS prepared for the same site, if a construction permit was issued for the site but construction of the plant was never completed. At the recent NRC public meeting, the NRC staff clarified verbally that the latter, more expansive language matches the NRC staff's intent. Accordingly, the NRC should revise the reference to "commenced" in proposed 51.76(e) to "completed." Further, the NRC should clarify this intended meaning in the Statements of Consideration for the final rule.

B. Grandfathering of Current ESP Applicants

The NRC should clarify in the final rule that the amendments to the LWA rule do not require any change to applications for early site permits (ESPs) filed before the effective date of the rule, and that the amended LWA rule will authorize the holder of an ESP to undertake the full range of activities specified in 10 CFR 50.10(c)(1), subject to the requirements of 10 CFR 50.10(c)(3).[9]

C. Enhancing the Usefulness of the LWA Phased Application

Proposed Section 2.101(a)(9) provides for phased LWA submittals by authorizing submittal of the LWA application and supporting environmental documentation up to 12 months before submission of the remainder of a COL/CP application. Notably, the proposed rule does not authorize a LWA applicant to use the phased

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[9] NEI anticipates that current ESP applicants may address these points further in their separate comments on this proposed rule.

COL/CP approach in 10 CFR 2.101(a)(5).[10] Instead the phased LWA process in proposed 2.101(a)(9) is limited to COL/CP applications submitted under 2.101(a)(1)-(4). The LWA applicant may either submit a limited ER (discussing LWA activities only) or a "full scope" ER. See proposed 51.49(b),(f).

If the LWA application is submitted under 2.101(a)(9), the draft EIS "may be limited to the consideration of the activities proposed to be conducted under the LWA." Proposed 10 CFR § 51.76(b). If the applicant submits a full-scope ER, then the DEIS will not consider siting issues, including whether there is an obviously superior site or issues related to operation of the plant at the site, including the need for power. *Id.* Instead, after part two of the application is docketed, the NRC will prepare a supplement to the EIS.

When read together, the phased LWA process in proposed 2.101(a)(9) and the phased COL/CP process in Section 2.101(a)(5) cannot be used on the same application. Thus, an applicant wishing to take advantage of the early submittal process in 2.101(a)(5) and the benefits of early NRC staff review and an accelerated hearing schedule cannot apply for a LWA. Conversely, an applicant who wants to request a LWA and has prepared a full-scope ER will not be able to obtain the benefits of the early submittal in the form of a full-scope EIS or an accelerated hearing schedule. We propose that the LWA final rule be modified to better enable LWA applicants to take advantage of the early submittal process in 2.101(a)(5).

If a COL/CP applicant elects to submit a full-scope ER using the early submittal provisions of Section 2.101(a)(5), the applicant should be allowed to request a LWA based on that early-ER submittal. This would merge the applicant's option of submitting a full-scope ER under proposed Section 2.101(a)(9) with the requirement that the early-ER be a full-scope ER under 2.101(a)(5). More information would be available to the NRC staff and public in this scenario than would be available if an applicant only submitted a LWA-ER under the proposed 2.101(a)(9), while the same information would be available if the applicant submitted the optional full-scope ER with the LWA application.

Additionally, the NRC should make the timing provisions of Section 2.101(a)(5) consistent with the timing of the phased approach in proposed 2.101(a)(9) of the LWA rule. There is no apparent reason for limiting the phased approach in Section 2.101(a)(5) to submissions within <u>6 months</u> of each other when the proposed LWA rule permits submissions up to <u>12 months</u> apart. NEPA segmentation concerns that drive the 12-month limitation are eliminated or at

[10] 10 CFR 2.101(a)(5) provides for a phased COL/CP submittal process by allowing an applicant to submit one part that includes the ER and a second part that includes the Safety Analysis Report. One part may precede or follow other parts by no more than <u>six months</u>.

least minimized where a complete ER is submitted under Section 2.101(a)(5), because all of the environmental information is submitted simultaneously.

To effectuate these process enhancements, we recommend that the NRC amend proposed Section 50.10(c)(2) as follows:

> **An application for a limited work authorization may be submitted as part of a complete application for a construction permit or combined license in accordance with 10 CFR 2.101(a)(1) through (4), or as a partial application in accordance with 10 CFR 2.101(a)(9). An application for a limited work authorization may also be submitted with a complete part of an application in accordance with 10 CFR 2.101(a)(5). An application for a limited work authorization must be submitted by an applicant for or holder of an early site permit as a complete application in accordance with 10 CFR 2.101(a)(1) through (4).**

Conforming changes to Section 2.101(a)(5) would be required to allow one part of the COLA to precede or follow other parts by no longer than 12 months.

D. Time Interval between LWA Application and COL Application

Another industry concern that has been raised in connection with proposed Section 2.101(a)(9) is the proposed rule's restriction that CP, ESP or COL applicants who opt to submit a LWA application in two parts must file part two no later than 12 months after submittal of part one. See proposed Section 2.101(a)(9), 71 Fed. Reg. at 61,334. As discussed at the recent NRC public meeting, the NRC should consider allowing submittal of the LWA application up to 18 months (not 12 months) before the COL application. To our knowledge, there is no compelling reason not to allow the LWA applicant to do so, and the potential impact on construction schedules could be significant.

From: "HEYMER, Adrian" <aph@nei.org>
Date: Thu, Nov 16, 2006 6:22 PM
Subject: "Licenses, Certifications, and Approvals for Nuclear Power Plants," NRC Supplemental Proposed Rule re Limited Work Authorizations 71 Fed. Reg. 61,330 (Oct. 17, 2006) (RIN 3150-AG24)

November 16, 2006

Ms. Annette L. Vietti-Cook

Secretary

U.S. Nuclear Regulatory Commission

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SUBJECT: "Licenses, Certifications, and Approvals for Nuclear Power Plants," NRC Supplemental Proposed Rule re Limited Work Authorizations 71 Fed. Reg. 61,330 (Oct. 17, 2006) (RIN 3150-AG24)

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NEI supports this supplemental proposed rule. The proposed amendments will improve the Limited Work Authorization (LWA) process and increase NRC focus on matters that have significance to safety. The proposals will enhance the overall effectiveness and certainty of the NRC reactor licensing process for new nuclear plants. It will enable combined license applicants to use modern nuclear plant construction practices that have been developed overseas and that can start as early as 24 months prior to issuance of the license.

Sincerely,

Adrian P. Heymer

Senior Director, New Plant Deployment

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Enclosure

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[1] The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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