

PR 1,2,10,19,20,21,25,26,50,52,54,55, et. al.  
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December 7, 2006

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U.S Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKETED  
USNRC

December 11, 2006 (3:00pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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SUBJECT: *10 C.F.R. Part 52 Rulemaking*

Dear Commissioners:

As a lawyer who practices regularly before the U.S. Nuclear Regulatory Commission ("NRC"), I am writing to urge you to re-publish, for public comment, the changes to the Part 52 regulations that the Commission has proposed in the draft final rule described in SECY-06-0220, dated October 31, 2006. Under basic principles of administrative law, the rule should be re-published because the draft final rule contains changes that differ significantly from the text of the two proposed rules. To the extent that the Commission is considering changes proposed by the Nuclear Energy Institute ("NEI") in a Commission meeting held on November 9, 2006, and in a December 1, 2006, comment letter to the Commission, these changes also should be published for public comment.

In addition, the Commission should reconsider the Statement of Policy on Conduct of New Reactor Licensing Proceedings that is posted on the NRC website, because it contains provisions that are inconsistent with the Commission's goals of fairness and efficiency.

Public Citizen and the Nuclear Information and Resource Service join me in making this request.

The following aspects of SECY-06-0220, NEI's comments on the draft final rule, and the draft policy statement are of concern to us:

1. At page 5 of SECY-06-0220, the NRC Staff proposes to allow the substitution of an environmental assessment ("EA") for an environmental impact statement ("EIS") at the construction permit/operating license stage. This proposal is inconsistent with NEPA and completely unacceptable to fulfill the NRC's purposes of informing the public of its actions. A combined construction permit and operating license ("COL") application is a concrete proposal for the construction and operation of a major facility that could have devastating impacts on the human environment if an accident occurs. It is essential for the Commission to provide all the rigor and processes for public participation that are ensured by preparation of an EIS. An EA is an unsatisfactory substitute because it

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involves a much less rigorous analysis, and does not require nearly the same level of participation by the public. The NRC should maximize opportunities for the public to raise issues that arise after an ESP is issued, especially since 20 or more years may have elapsed since that time.

2. At pages 6-7 of SECY-06-0002, the Staff states that the final rule should be revised to reflect the "finality of environmental issues resolved in an ESP." In its December 1 letter, NEI also argues that siting-related NEPA issues addressed in the EIS at the ESP stage should be considered final and not subject to the "new and significant information" standard. The proposed change is inconsistent with the purpose of NEPA, which is to ensure that environmental factors are taken into account right up until the time that major federal action occurs. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989). NEPA does not allow the NRC to cast its environmental decisions in stone until after the federal action is taken.

In addition, the regulations should ensure that both the applicant's environmental report and the EIS reflect consideration of information that is potentially new and significant. It is insufficient for the applicant and the NRC to merely state that no new or significant information was identified. The NEPA decision-making documents should describe the process that was used to review potentially new and significant information and explain how it was evaluated.

3. In its December 1 letter, NEI disputes the draft reporting requirement for fulfillment of ITAACs. NEI's letter refers to an "agreement" in its November 9 meeting with you that "the proposed language in Section 52.99(c)(1) and (c)(2) is unnecessarily burdensome on both licensees and the NRC staff." NEI recommends "alternative language" that will provide a "summary description of the bases for ITAAC conclusions to the NRC." The Commission should follow the approach proposed in SECY-06-0220, that "notification must contain sufficient information to demonstrate that the acceptance criteria for the ITAAC were met." If the NRC grants NEI's request to substantially reduce the amount and quality of information provided regarding the fulfillment of ITAACs, the provision for public hearings on the satisfaction of ITAACs would be rendered meaningless.

4. In its December 1 letter, NEI suggests grandfathering pending ESP applicants from new requirements relating to siting and quality assurance. Grandfather clauses are inappropriate in NRC licensing, because they place finality before safety. NRC regulations should make it clear the safety is the paramount consideration when considering the applicability of new regulations to pending applications.

In the November 9 meeting (transcript at pages 10-11) and the December 1 letter, NEI also appears to suggest a double standard for changes to design certification requirements. If the public suggests changes, NEI would have them meet the backfit

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standard. If the industry suggests changes, no backfit test would be applied. In addition, NEI requests that changes to the design certification requirements should not be allowed to lead to review of other provisions. NEI's proposed process is lopsided and not in keeping with the basic concept of placing safety above other considerations. If a proposed change to design certification requirements would reduce safety or have an adverse interaction with another requirement, there should be no bar to reviewing that issue.

5. In the November 9 meeting, NEI proposed to expand the scope of activities permitted under a limited work authorization ("LWA") to include construction of non-safety-related buildings. As stated in Public Citizens' and Nuclear Information and Resources Services' November 17, 2006, comments on the Supplemental Proposed Rule, that any form of excavation or construction should be considered to constitute construction activities and should not be allowed prior to the completion of a construction permit or combined license at the site.

6. The Staff's proposed change to 10 C.F.R. § 2.340 represents a significant departure from the requirement, imposed after the Three Mile Island accident, that the issuance of construction permits and operating licenses must be stayed pending Commission review. This is not a mere conforming amendment as claimed by the Staff, but the abandonment of a major measure for ensuring NRC accountability in the licensing of nuclear power plants. The Commission should not depart from it, and it certainly should not do so without consulting the public.

7. In the draft policy statement at page 6, the Commission states that it will consider granting exemptions that allow applicants to submit license applications in piecemeal fashion. Such a policy would be grossly unfair and inefficient, and inconsistent with the Commission's decision in *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 29 (2001) that a license applicant's indecision should not dictate the scope and timing of the hearing process. As the Commission noted in that case, NRC hearing policies seek to "instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings." *Id.*, quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998). Allowing applicants to submit COL applications in multiple subparts would add additional undue burdens on the public to not only meet numerous and random deadlines, but also to have legitimate concerns divided into multiple ongoing hearings. This proposal would make it nearly impossible for the public to raise legitimate concerns in licensing proceedings. The public has as much right to expect fairness and efficiency as do applicants for nuclear reactor licenses.

The policy statement should also address the question of how the rights of individual intervenor groups will be protected if licensing proceedings are consolidated.

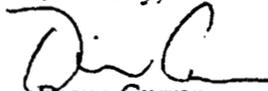
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Presumably, neighbors of one proposed nuclear power plant will not wish to confer their hearing rights to "lead intervenors" who are unknown to them.

I appreciate this opportunity to comment on the draft final rule. I would be happy to discuss my concerns further if you have any questions.

Sincerely,



Diane Curran

Cc: Michele Boyd, Public Citizen  
Paul Gunter, Nuclear Information and Resource Service