

December 2, 2010

MEMORANDUM TO: Shana R. Helton, Chief
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Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Timothy A. Reed, Senior Project Manager **/RA/**
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SUBJECT: SUMMARY OF PUBLIC MEETING: CUMULATIVE EFFECTS OF
REGULATIONS

On November 16, 2010, the Nuclear Regulatory Commission (NRC) staff held a category 3 public meeting with stakeholders to discuss cumulative effects of regulation (CER). The meeting provided stakeholders (the majority of which were power reactor licensees) an opportunity to present their views regarding the scope of CER and actions NRC could consider in addressing CER. Meeting attendees are listed in Enclosure 1. References in Agencywide Documents Access Management System (ADAMS) for the slides used by industry participants are provided in Enclosure 2.

The NRC staff opened the meeting by providing stakeholders an overview of the CER issue. The staff noted the staff's effort on CER is in response to a Commission direction from January 2010 to consider CER in the rulemaking process. To address this Commission direction, the staff noted that it is preparing a Commission paper that will identify rulemaking process enhancements that could address CER. The staff stated that the feedback from the public meeting would inform the Commission paper and provide the Commission a greater context within which CER is viewed by stakeholders. The Nuclear Energy Institute stated that they intend to submit a letter in December with industry views on CER and suggestions for potential solutions.

Scope of CER

The first portion of the meeting focused on the scope of CER. The staff began this discussion by providing a quick overview of the rulemaking process enhancements the staff is currently considering. The general feedback was that these process enhancements would help address CER. However, industry commented that CER extends beyond rulemaking and potentially involves any significant NRC regulatory action. Examples of issues of concern to industry were

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GSI-191; fire protection and NFP-805; cyber security; and the soon to be issued EP rule. Industry commented that they view CER as an organizational effectiveness/change management issue, rather than an imposed burden issue.

It was commented that the regulatory actions that create CER are those that 1) involve significant cost impacts (beyond that planned for in capital budgets), 2) are outside normal planning processes, 3) cause all licensees to seek the support of a limited set of vendors and/or products, and 4) ultimately cause other planned capital projects (not regulatory driven) to be delayed or canceled. To make this point, a slide was presented (see reference to Cost Breakout slide in Enclosure 2) that shows in relative terms, a significant increase in “regulatory required capital” in recent years for one licensee. Additionally, industry stakeholders indicated that CER involves more than just timing (i.e., while more time is necessary, it is not sufficient to completely address CER), involving also the depth of actions required by the regulatory action. It was noted, that complex projects that are outside normal planning processes, are not as well-planned and often involve the same project management people (i.e., a personnel “pinch point” that contributes to CER). Additionally, these projects typically cause the entire power reactor industry to compete for the same vendor resources and products, also contributing to CER.

Actions to Address CER

The second portion of the public meeting focused on actions or approaches that NRC could consider for addressing CER. Several suggestions were provided, including:

1. Establishing a standing committee to consider CER. Given the dynamic nature of the issue it was thought that a committee would be a good vehicle for communication with the NRC on this issue. This standing committee could involve the “other” stakeholders that can be impacted including FEMA, FERC, and other licensees.
2. Identification of a threshold (defined by a set of criteria that could separate issues that do not warrant attention from those that have potential to generate CER) at which CER mitigation/consideration would be employed or at a minimum communication with NRC would commence.
3. Development of an integrated schedule for proposed regulatory actions that would be made publicly available (to enable comment by external stakeholders and to provide an early indication of actions that could generate CER). This schedule would contain the licensee implementation dates for rules (i.e., not just the NRC’s schedule for issuance).
4. Use of more risk-informed decision making to support the development and issuance of regulatory actions, including improved prioritization of regulatory actions
5. Consideration of a feedback process or a lessons-learned process to enable problems associated with the issuance of regulatory actions to be identified and corrected.
6. When the NRC is essentially codifying current requirements (e.g., Order requirements) as part of the rule, split the rule into two parts to enable the codification portion to be issued perhaps even as a direct final rule. The other requirements that go beyond the current requirements in place could be worked on a longer schedule that enable the supporting guidance to be developed in conjunction.
7. Consideration of breaking the generic regulatory action process into two parts. The first part is the interaction on the regulatory action itself. The second portion is the interaction on the implementation schedule for the action.
8. For complex rules with potential CER, consideration should be given to piloting the rule.

Additional Insights and Feedback

There was considerable discussion throughout the meeting that did not readily fit into either the “scope” or “actions to address CER” agenda framework documented above. Some of the key insights included:

1. Industry stakeholders indicated that a lack of a clear “problem statement” early in the regulatory process, and a corresponding lack of clear regulatory acceptance criteria that need to be met to resolve the problem, contribute to CER.
2. Industry stakeholders indicated that NRC staff cost estimates for recent regulatory analyses have been substantially low. A graph to illustrate the point was provided (see Enclosure 2 for a reference for the Cost Comparison slide). One specific example provided was the cost estimate for the Part 26 work hour software. The proposed Part 26 rule regulatory analysis estimated this cost as \$500k. According to the meeting attendees, the typical licensee has been spending more than 3 million dollars for Part 26 work hour control software.
3. Industry attendees stated that it takes resources to provide resource/cost feedback (on proposed rule regulatory analyses), and as such industry is reluctant to spend resources at the proposed rule stage to generate detailed cost information. This reluctance also stems from the fact that it has been industry’s experience that proposed requirements can change during NRC concurrences and Commission vote, and that providing cost estimates at the proposed rule stage may not reflect the actual imposed requirements.
4. A meeting attendee noted that it appears that the NRC staff’s comment binning and response process (for proposed rule comments) may cause some comments, that a specific stakeholder considers important, to get binned with others, and not given the consideration the stakeholder believes is needed. The NRC staff noted that stakeholders can help this issue to some extent by providing their comments earlier in the comment period to enable other external stakeholders to view their comments, and to either be informed by the comment or to “comment on the comment,” both of which raise the awareness of the issue.
5. It was noted that while enforcement discretion is a useful and needed regulatory tool, it is a process that only should be used in limited circumstances, and that the preferred approach is to develop and implement rules that do not require either enforcement discretion or exemptions.
6. It was suggested that for complex rules where there are implementation difficulties, that NRC should hold off on “heavy-handed” inspection until implementation difficulties are resolved.
7. Non-power reactor licensees have been impacted by CER mainly through the issuance of new guidance or reinterpretations of existing rules. These licensees have been addressing these issues through direct interactions with NRC and regional management.

Enclosures:
As stated

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November 16, 2010

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November 16, 2010

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References for Slides Presented by Stakeholders

1. CER Public Meeting Slide on Cost Comparison – ML103270146
2. CER Public Meeting Slide on Cost Breakout – ML103270155