

RulemakingComments Resource

From: ANDERSON Katherine (EXTERNAL AREVA) <katherine.anderson.ext@areva.com>
Sent: Wednesday, July 17, 2013 5:07 PM
To: RulemakingComments Resource
Cc: MUSGRAVE Jennifer (AREVA)
Subject: Docket ID NRC-2009-0044, Proposed Rule on the Petition to Rulemaking Process
Attachments: NRC-13-058.pdf

The subject letter, NRC:13:058, is attached. Should you have any questions please contact Jennifer Musgrave at 434.832.2725.

Thank you,

Katherine Anderson

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July 17, 2013
NRC:13:058

Ms. Cynthia K. Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Comments on Proposed Revisions to the Petition for Rulemaking Process (78 Fed. Reg. 25,886, dated May 3, 2013; Docket ID NRC-2009-0044)

Ms. Bladey:

AREVA NP Inc. (herein denoted as AREVA) appreciates the opportunity to provide comments on the proposed rule *Revisions to the Petition for Rulemaking Process*, Docket ID NRC-2009-0044, submitted to the *Federal Register* on May 3, 2013. AREVA requests that the U.S. Nuclear Regulatory Commission (NRC) take serious consideration of the concerns addressed in this letter.

AREVA commends the NRC staff for proposing new policy to streamline the petition for rulemaking (PRM) process. Revisions to the existing regulations that improve the efficiency and clarity of the NRC petition for rulemaking (PRM) process are consistent with the NRC's Principles of Good Regulation. AREVA supports the overall goal of the proposed revisions in their intent to improve efficiency and create a more transparent process, in light of the recent influx of PRM submittals and corresponding resource challenges. AREVA contests that the following four (4) amendments to the existing text will not result in achieving the NRC staff's goal to enhance transparency and encourage public participation in the PRM process:

1. Proposed change to § 2.802(e)(2): Requirements for petitioners who are not participants in an NRC licensing proceeding related to their PRMs
2. Proposed change to § 2.803(b): Removal of the NRC staff's 30-day guideline for determination of acceptance
3. Proposed change to § 2.803(h): Considerations that the NRC may take into account when making a determination on the course of action to resolve a PRM
4. Proposed change to § 2.803(i): PRM resolution

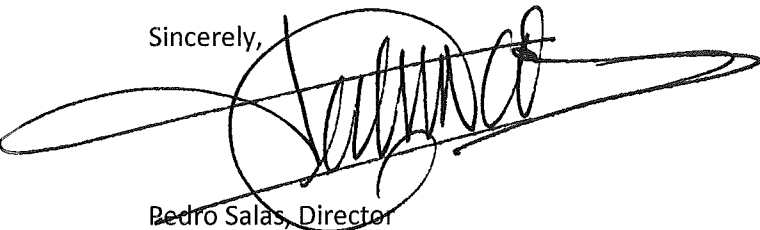
AREVA is in agreement with and endorses the comments submitted by the Nuclear Energy Institute (NEI). AREVA asserts that § 2.802(e)(2) essentially allows petitioners to participate in licensing adjudications without meeting established standing and contention admissibility standards. A regulatory agency should provide a petitioner with certainty in the early stages of the review, and this assurance could be compromised by the proposed removal of existing time guidelines provided in § 2.802(f) of the PRM process. Additionally, AREVA contends that §§ 2.803(h) and (i) are complex and will not clarify the PRM process. Each item of concern is discussed in further detail in Attachment A, as well as proposed actions and recommendations to be taken by the staff to better support the proposed rule's objectives of transparency and efficiency.

AREVA NP INC.

If you have any questions related to these comments, please contact Ms. Jennifer L. Musgrave, Regulatory Affairs. She may be reached by telephone at (434) 832-2725, or by email at jennifer.musgrave@areva.com.

AREVA appreciates the staff's attention and consideration in reviewing these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Pedro Salas', is written over a large, light-colored circular stamp. The signature is fluid and cursive.

Pedro Salas, Director
Regulatory Affairs
AREVA NP Inc.

Enclosure:

1. Attachment A, Comments on Proposed Changes

Attachment A

Item 1: Proposed Changes to § 2.802(e)

The proposed changes detailed in 10 CFR § 2.802(e)(2) would specifically allow a rulemaking petitioner who is not a participant in an NRC licensing proceeding to request suspension of the licensing adjudication pending disposition of the PRM. The proposed change will not improve the Commission's ability to review suspension petitions and in fact will delay the PRM process. Historically, those intervening in the licensing PRM process must provide adequate factual and legal claims to support their arguments.¹ The revision will enable rulemaking petitioners to engage in adjudicatory proceedings through suspension petition submissions without initially satisfying the required contention admissibility criteria. This approach, by its very nature, will undermine the Commission's policy and goal of efficient and effective adjudications.

The revision is also fundamentally unnecessary as the Commission retains the authority to take action in any individual proceedings it deems appropriate.² Similarly, the current procedural rules of practice have not inhibited the Commission's ability to review suspension requests filed by non-parties when such a review is determined to be warranted by the Commission.³ Accordingly, there is no substantial evidence that the proposed provision is necessary nor will it enhance the Commission's ability to make sound rulings on suspension petitions. Additionally, the Commission has stressed numerous times the importance of timely adjudications. It can take a significant amount of time before the Commission has sufficient information pertaining to the issues raised in a PRM to make an informed ruling on a suspension request. For the duration of this period, NRC officers may decline to rule on pending issues, based on the possibility that the PRM may be related (even slightly) with the adjudicatory issues that the proceedings should be halted. AREVA asserts enabling more suspension petitions by non-partisans through the revised § 2.802(e)(2) will directly result in increased and substantial delays.

Consequently, AREVA finds the addition of § 2.802(e)(2) adverse to enhancing the efficiency and effectiveness of NRC rulemaking. This addition is counterintuitive by allowing the submission of suspension petitions, which require Commission consideration to judge the validity of a PRM before the PRM has been effectively evaluated by the NRC staff and public. The overall time required for such determination might negatively impact the timeliness of adjudications. The proposed revision is also unnecessary because the Commission retains the authority to supervise agency licensing proceedings to review suspension requests filed by non-partisans (even though such petitions are not explicitly permitted by agency procedures.) With consideration of the provided discussion, AREVA asserts that the current NRC framework concerning this matter should be retained, and the proposed 10 CFR § 2.802(e)(2) should not be included in the final rule.

Item 2: Proposed Changes to § 2.803(b)

The Supplementary Information published with the proposed rule explains § 2.803(b), which states:

Proposed new paragraph (b) also would remove the estimated timeframe in which a determination of acceptance will be completed (the existing text provides 30 days from the date of receipt of the PRM). The NRC would remove the 30-day timeframe to ensure that sufficient time

¹ Refer *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 273) (2006)

² *Statement of Policy on Conduct of Adjudications*, CLI-98-12, 48 NRC 18 (1998)

³ *Union Electric Co, d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC (Sept. 9, 2011) (slip op. at 39, n. 132) (citing *Petition for Rulemaking to Amend 10 CFR § 54.17(c)*, CLI-11-1, 74 NRC (Jan. 24, 2011) (slip op. at 2 n.5))

would be available, if needed, for thorough examination of the issues raised in complex or complicated PRMs. Although the 30-day guideline would be removed from the regulations, the NRC still expects to complete the acceptance review of most PRMs within a 30-day period.

AREVA asserts that removing the established 30-day timeframe to complete the determination of acceptance review introduces uncertainty into the process and removes responsibility from the regulatory agency to complete reviews in a timely manner. The removal of this guideline will not increase transparency or regulatory stability; thus the revision will be detrimental to meeting the Commission's stated objectives regarding adjudications: providing a fair hearing process, avoiding unnecessary delays, and producing an informed adjudicatory record that supports agency decision-making on matters related to the NRC's responsibilities.⁴ The current deadlines work not only to ensure efficiency in the process, but also to serve as an aid to the petitioner. Elimination of a timeframe guideline renders the petitioner (and the public) less informed, and may potentially result in decreased clarification and outside involvement throughout the process.

Operating in the absence of a specific timeframe calls to question how the NRC staff will still "expect to complete the acceptance review of most PRMs within a 30-day period." This cannot be substantiated without a specific guideline stating the amount of time allotted for petitions to proceed through the acceptance-determination state. The staff's statement is unclear and introduces ambiguities into a system that currently has an explicit, transparent process in place. Additionally, given the current flexibility in the existing rule, there appears to be little to no case for removing such a provision; the change will not increase transparency or regulatory stability.

Certain cases exist where a PRM is more robust and requires a more thorough review, but there is not currently a clear definition of what constitutes a "complex or complicated" PRM. The petitioner should be informed if the NRC staff deems a PRM as "complex or complicated" in order to expect possible delays in the review process. This will maintain the integrity of the NRC's commitment to transparency and timeliness, while still allowing for relief when resources are limited or more information is required to uphold a standard of excellence in regulatory oversight. AREVA asserts that the NRC retain the existing text that establishes the 30-day timeframe for clarity and certainty purposes, with the prospect of developing a process for reviewing "complex or complicated" PRMs.

Item 3 & 4: Proposed Changes to § 2.803(h) and (i)

The revisions to 10 CFR 2.803 § 2.803(h) and (i) would result in a two-step process for closing a PRM:

1. 10 CFR § 2.803(h) provides for *administrative closure* of a PRM
2. 10 CFR § 2.803(i) provides for *resolution* of a PRM.

The proposed § 2.803(h) allows for *administrative closure* of a PRM once the NRC has determined that the PRM should be entirely denied, or that the agency should initiate a rulemaking action. Under revised provisions in § 2.803(i), *resolution* of a PRM is only enacted once the agency has completed all planned regulatory action on the PRM (e.g. issued a final rule addressing all or part of the PRM's issues, or confirmed a decision not to complete a rulemaking.) The Supplementary Information published with the proposed rule indicates that an *administrative closure* of a PRM would not establish a final *resolution* of the PRM. AREVA believes that this approach will complicate, rather than clarify, the PRM process.

⁴ *Statement of Policy on Conduct of Adjudications*, CLI-98-12, 48 NRC 18 (1998)

AREVA endorses NEI's stance that for the sake of clarity and transparency there should be only one step necessary for the agency to issue a final disposition on a PRM. Additionally, division of the closure process into two overlapping yet distinct steps involving *administrative closure* and *resolution* is unnecessary, time intensive, and confusing. AREVA suggests that the proposed 10 CFR §§ 2.803(h) and (i) be revised pragmatically, per the recommendation of NEI.