

JAMES LIEBERMAN

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February 3, 2017
By email

The Honorable Kristine L. Svinicki, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: PRM 50-217, Rulemaking Petition To Amend the NRC Regulations for Completeness and Accuracy of Information – 10 CFR 30.9, 40.9, 50.9, 52.6, 60.10, 61.9a, 63.10, 70.9, 71.7, and 72.11

Dear Chairman Svinicki:

The purpose of this letter is to respectfully request that you direct the staff to process the above petition which I submitted on April 13, 2013 (ML13113A443) and supplemented on September 16, 2013 (ML13261A190). The petition submitted on behalf of myself, as a member of the public, is intended to address a regulatory gap. Specifically, the NRC regulations currently do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects.

A person who is not an applicant for a license (or certificate) or holder of a license or certificate, for example, a person who applies for a topical report approval, has only a moral obligation to provide complete and accurate information unless the person deliberately submits the information knowing that it is inaccurate or incomplete such that the rule on deliberate misconduct applies. In my view, based on my own experiences as a former NRC employee and a consultant in the nuclear industry, all persons who submit information to the NRC seeking an NRC approval should be required to submit complete and accurate information in all material respects.

Approving my petition would address this regulatory gap by providing a legal incentive for persons seeking NRC regulatory approvals and their employees and contractors to provide complete and accurate information. This is the standard for communication to the NRC set decades ago by the Atomic Energy Commission in the VEPCO case where it stated that “ We [the Commission] require ... a regime in which applicants and licensees have every incentive to scrutinize their internal procedures to be sure as they possibly can that all submissions to this Commission are accurate.”¹

¹ The VEPCO case involved, among other things, whether knowledge of falsity is necessary for liability under section 186 of the Atomic Energy Act of 1954, as amended. The Commission concluded it was not, stating that attaching liability

only if a statement is known to be false is inconsistent with the Commission’s obligation to protect the public health and safety. ... In short, forgiving innocent mistakes puts a premium on innocence. We require instead a regime in which applicants and licensees have every incentive to scrutinize their internal procedures to be sure as they possibly can that all submissions to this Commission are accurate.

Currently, this standard does not apply to a person seeking approval for a topical report that is an important part of the regulatory process.

The NRC in 2015 placed my petition into the rulemaking process after publishing it in the Federal Register on June 10, 2013, and January 21, 2014, without receiving any adverse comments. However, the staff concluded that it was of medium priority and given budget constraints did not work on it.

I recognize that the Commission has many issues before it and many of them have potential for greater safety impact. On the other hand, erroneous NRC decisions based on inaccurate or incomplete information can clearly impact the public health and safety. It has been my experience that while the NRC questions information in submittals, the staff frequently relies on the accuracy and completeness of submittals as it does not have the resources to verify every statement in a submittal. Thus, one can question whether the NRC should be making regulatory decisions based on information submitted by non-licensees if it cannot require that the submitted information be complete and accurate in all material respects.

I would hope that while the Commission focuses its attention on items of the most safety importance, it also addresses issues that are lesser but still important especially where the issues are relatively straight forward and do not require substantial resources to resolve. The petition I submitted falls into that category as the only comments received by the NRC were in favor of it. Moreover, this petition, if approved, should have minimum cost impact on the nuclear industry as it has been my experience that most persons are already providing complete and accurate information to the NRC and certainly that has been the expectation of the NRC in the past. This rulemaking, as noted above, will provide a legal mechanism for NRC to deal with those persons who do not meet this expectation. Given that the substance of the rule should be noncontroversial and unlikely to receive comments objecting to a requirement to provide complete and accurate information when seeking a regulatory approval, I would expect that it may qualify for a direct final rule.

I appreciate your attention to this matter. If the Commission or staff has any question on this petition, please contact me.

Respectively submitted,

James Lieberman

cc: The Honorable Stephen G. Burns, Commissioner
The Honorable Jeff Baron, Commissioner
Ms. Annette Vietti-Cook, Secretary
Mr. Victor McCree, EDO,
Ms. Margaret Doane, GC

CHAIRMAN Resource

From: Jim Lieberman <jl@lieblet.com>
Sent: Friday, February 03, 2017 11:09 AM
To: CHAIRMAN Resource
Cc: CMRBARAN Resource; CMRBurns Resource; Vietti-Cook, Annette; Doane, Margaret; McCree, Victor
Subject: [External_Sender] Requesting Action on Rulemaking Petition 50-217
Attachments: commission letter PRM 50-217 2-3-17.pdf

Dear Chairman Svinicki:

The purpose of the attached letter is to respectfully request that you direct the staff to process the above petition which I submitted on April 13, 2013 (ML13113A443) and supplemented on September 16, 2013 (ML13261A190). The petition submitted on behalf of myself, as a member of the public, is intended to address a regulatory gap. Specifically, the NRC regulations currently do not require all persons who seek NRC approvals to provide the NRC with complete and accurate information in all material respects. As a result, persons who submit topical reports for NRC approval have a moral but not legal incentive or obligation to provide complete and accurate information to the NRC. In my view, this should be addressed.

Respectively submitted,

Jim Lieberman