

DOUGLAS E. TRUE
*Senior Vice President and
Chief Nuclear Officer*

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8093
det@nei.org
nei.org



March 9, 2020

Mr. Ho Nieh
Director, Office of Nuclear Regulatory Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Part 50/52 Lessons Learned Rulemaking

Project Number: 689

Dear Mr. Nieh:

We appreciate the NRC's efforts to address lessons learned through the implementation of the Part 52 rule to license new reactors. The Part 50/52 Lessons Learned Rulemaking provides a unique and singular opportunity to make improvements based on the learnings that have occurred over the last 20 years. The purpose of this letter is to request that the NRC increase the transparency of this rulemaking. Of particular importance is the need for stakeholder engagement on the substance of the rulemaking. To this end, we request that the NRC hold a public meeting before the end of April to address the issues discussed in this letter.

Although the staff has held public meetings to discuss the rulemaking, these meetings have been infrequent and largely focused on schedule and process and have not provided sufficient information to allow for stakeholder engagement on the substance of the rulemaking. For example, the NRC meeting on November 21, 2019, did not entail a comprehensive discussion regarding proposed changes provided by the industry at a January 15, 2019 public meeting, or the learnings from Vogtle 3 and 4 licensing activities in the rulemaking. At the same meeting, additional significant changes were introduced by the NRC for which additional engagement is needed to allow the communication of stakeholder views.

We are concerned that the NRC may be preparing a draft regulatory basis that will not fully address past challenges and potential improvements. Many of the requirements identified by the industry that should be changed do not provide sufficient safety benefit to justify the burden imposed.

Specific examples of issues that were discussed during the November 21, 2019, public meeting on the Part 50/52 Lessons Learned Rulemaking that warrant additional public interaction include:

1. Delays in issuance of COLs due to errors in certified design – the industry has put significant effort into developing options to address this issue. There have been several public meetings and several rounds of correspondence in an attempt to propose viable solutions to this issue to prevent recurrence in the issuance of future COLs. The last correspondence from the NRC on May 10, 2019 indicated that this issue would be considered in the rulemaking. When this issue was raised at the public meeting it was noted that the issue had not been included in the scope of the rulemaking as previously indicated¹.
2. Changes during Construction – the industry has formulated an approach to allow changes to the licensing basis of a facility during construction without the need for preapproval from the staff. The staff had previously informed the industry that addressing this issue would require rulemaking, but at the meeting the staff noted that a draft regulatory guide is under development and that rulemaking was not needed. This remains a significant issue to be resolved and public interaction is needed to ensure this issue is addressed in a thorough and comprehensive manner that doesn't create undue burden without a corresponding benefit to public health and safety.
3. Consideration of Vogtle 3 and 4 license amendments in determining the scope of the rule changes – As discussed at the meeting, the industry believes that the staff should review all license amendments to determine if issues could have been avoided through changes or clarifications to the regulations. The staff communicated that lessons learned would be considered in the rulemaking but did not provide any details about the criteria used to screen the issues and those issue that have been selected. The industry believes more transparency and public stakeholder involvement is warranted.
4. Defining the term "essentially complete" design – developing a clear definition for the term, "essentially complete," as described in 10 CFR 52.41 has significant ramifications for future applicants and the level of design detail needed in a design certification application and developing such a definition should consider the views of stakeholders.

In addition, during the last public meeting and in a meeting with the ACRS the staff identified some of the general topics for changes being considered as "transformational changes," such as aligning the change process for design certifications with the 10 CFR 50.59 process, adding definitions of Tier 1, Tier 2 and Tier 2* information, and consideration of reducing requirements for standardization for certified designs. However, there has been little to no dialogue with the public on the specific changes being considered.

¹ NRC May 9, 2018 letter from Robert Taylor to Michael Tschiltz ADAMS Accession No.: ML18123A245

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Beyond the substance of the rulemaking, the industry is concerned that the current schedule for the completion of the rulemaking is not timely for near-term applicants that are considering the use of Part 50 or Part 52. As you know there are a number of companies that are considering licensing under Part 50 because the issues of Part 52 have not yet been resolved. The current NRC schedule would complete the lessons learned rulemaking more than 10 years after the need to address lessons learned was first identified, which is not timely.

In addition, a final rule that would not be effective until 2025 leaves little time between the completion of this rule and the creation of a technology-inclusive regulatory framework by 2027 as required by Nuclear Energy Innovation and Modernization Act. Acceleration of the Part 50/52 lessons learned rulemaking schedule, that would finalize the rule in 2022, would help to reduce regulatory uncertainty for potential applicants and avoid the repetition of past issues. Acceleration of the timeline would also allow the Part 50/52 rule improvements to benefit the rulemaking for the new technology-inclusive framework.

As the principles of good regulation state, "*nuclear regulation is the public's business, and it must be transacted publicly and candidly.*" Unfortunately, the staff's current schedule indicates the next public meeting will be held in the summer of 2020, which would be at the point where the draft regulatory basis is being finalized. This is of particular concern to the industry as additional input from external stakeholders during the development of the draft regulatory basis would be beneficial. To be able to make the most of this opportunity the rulemaking needs to be open and transparent to stakeholders.

If there are any questions on this matter, please contact me or Mike Tschiltz (mdt@nei.org; 202-471-0277).

Sincerely,

A handwritten signature in black ink, appearing to read "Doug True", with a long horizontal flourish extending to the right.

Doug True

Attachment

c: Patricia Holahan, Director, Division of Rulemaking, NMSS
Robert Taylor, Deputy Director for New Reactors, NRR
Anna Bradford, Director Division of New and Renewed Licenses, NRR
John Monninger, Director, Division of Advanced Reactors, NRR
John Segala, Branch Chief, Division of Advanced Reactors, NRR