

AF01-2-39-



NUCLEAR ENERGY INSTITUTE

Phillip Bayne  
PRESIDENT AND  
CHIEF EXECUTIVE OFFICER

August 14, 1995

The Honorable Shirley A. Jackson  
Chairman  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Jackson:

We would appreciate the Commission's careful attention to a proposed rulemaking involving 10 CFR Part 21, scheduled for issuance as a final rule in the near future. The rulemaking results from a 1993 industry petition, and we are concerned that the final rule may not adequately address the objectives of the petition. Further, the NRC staff has added provisions to the proposed rule that were not sought by the petition, or supported by public comment. We would appreciate the Commission's consideration of whether these staff additions are warranted and clearly justified. These proposed changes have the potential for large economic impacts, as they could narrow the alternatives available for the industry to procure replacement parts. Our concerns are expressed in more detail below.

On June 22, 1993, the Nuclear Energy Institute's predecessor organization, Nuclear Management and Resources Council (NUMARC), submitted to the NRC a petition for rulemaking to modify 10 CFR Part 21. The petition requested changes to several of the requirements for utility dedication of commercial grade items for safety-related use to permit utilities to dedicate an expanded scope of commercial grade items. These changes were sought because of the diminishing numbers of Appendix B-qualified equipment suppliers and because utility dedication and procurement programs have proven to be effective in ensuring that suitable quality replacement parts can be used.

After extensive NRC inspections and assessments of utility procurement and dedication programs, the NRC staff concluded and documented to the Commission (SECY 94-277) that industry initiatives had resulted in significant improvements in procurement and commercial grade item dedication programs, and that new, more stringent regulations in these areas were not warranted. On the basis of this conclusion, NRC withdrew an Advance Notice of Proposed Rulemaking it previously had issued to address dedication and procurement issues.

The above conclusion notwithstanding, in developing a rule responding to the industry's petition for rulemaking, the NRC staff has proposed additional requirements for the commercial grade item dedication process. The additional

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requirements proposed by NRC staff significantly modify the industry's petition by codifying the NRC staff's interpretation of elements and terminology contained in the industry's procurement initiatives. Our January 6, 1995, and April 17, 1995, letters to the Secretary of the Commission (enclosed) further detail the industry's specific concerns with the proposed new requirements.

As you know, the industry is undertaking petitions for rulemaking in a number of areas, with the intent of developing an improved and more performance-based approach to regulation. Recently, the NRC proposed to amend 10 CFR 2.802 to encourage licensees and the public to submit to the NRC suggested regulatory improvements, and to set out the criteria upon which the assignment of priority for NRC staff review of such petitions will be based [*Petition for Rulemaking; Procedures for Submission* (60 Fed. Reg. 15878; March 28, 1995)]. We are concerned that the actions taken by the staff significantly modifying the industry's Part 21 petition will serve as a disincentive for the industry to pursue further regulatory reforms. We recognize that the staff has the authority to determine whether a particular petition for rulemaking should be pursued, and the responsibility to develop a rule based on a petition for rulemaking. However, the petition process should not be used to impose new requirements not requested by the petitioner, not sufficiently justified on the basis of protection of the public health and safety, and not supported by public comment. The NRC staff's course of action is particularly troubling in the case of the Part 21 rulemaking because the staff previously documented its conclusion that the new requirements it is now imposing are not necessary.

Therefore, due to the potentially significant impact of this rulemaking, we request the Commission's careful consideration of this matter.

Sincerely,



Phillip Bayne

Enclosures

c: Mr. James M. Taylor, Executive Director for Operations ✓