

# PUBLIC SUBMISSION

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**Docket:** NRC-2019-0062

10 CFR Part 53: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**Comment On:** NRC-2019-0062-0012

Preliminary Proposed Rule Language: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**Document:** NRC-2019-0062-DRAFT-0158

Comment on FR Doc # 2020-24387

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## Submitter Information

**Email:** m.keller@hybridpwr.com

**Organization:** Hybrid Power Technologies LLC

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## General Comment

Attached is a letter expressing our concerns involving ASME Code Section XI and the NRC staff and associated broader concerns involving 10CFR53

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## Attachments

Hybrid Pwr letter to NRC Oct 4 2021

Michael F. Keller  
President  
Hybrid Power Technologies LLC



October 4, 2021  
10CFR53: ASME Code, Section XI, Division 2  
(DG-1383)

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Mr. John Tappert  
Director, Division of Rulemaking, Environmental, and Financial Support  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Hybrid Power Technologies LLC Input on the NRC Rulemaking Plan on, Risk-Informed, Technology-Inclusive Regulatory Framework; Proposed 10CFR53.

Mr. Tappert:

The recent **REF. (1)** September 29 external stakeholder's public meeting on 10 CFR53 included the topic: NRC proposed Regulatory Guide concerning ASME Code Division 2, Reliability and Integrity Management - see **REF. (2)**.

During the meeting, we expressed astonishment that the NRC Staff was using a regulatory guide (which is by definition non-mandatory) to overrule the ASME Code. The Boiler and Pressure Vessel Code is developed on a consensus basis by a large number of industry experts that includes the NRC staff. The NRC staff stated that they can veto the ASME Code because the NRC is responsible for the public's health and safety. We are certain that the various Acts defining the NRC's statutory authority do not grant the NRC staff such absolute powers.

In our opinion, the matters in question are more akin to technical disagreements that should be resolved amicably between the principals, versus the NRC staff resorting to imperious behavior that subjects all parties (including taxpayers) to unwarranted and much higher costs. "Vetoing" portions of major industry codes and standards should be a last resort reserved for unresolved issues that materially affect the public's risk to hazardous radiation.

That now brings us to 10CFR53.

In our view, the troubling situation with the ASME Code is a microcosm of a much more serious and fundamental flaw. The NRC staff is fixated on micromanaging the advanced reactor licensing process, as evidenced by the excruciatingly complex drafts of 10CFR53. In our view, NRC senior management needs to provide clear strategic direction to the NRC staff that the modernization considerations of the **REF. (3)** law are major sea-changes to the licensing process. The earlier exceptionally prescriptive NRC staff approach shall reasonably rapidly evolve into a broader methodology that provides greater latitude, particularly for those advanced reactor designs that are proven to be passively fail-safe.

The plant designers, constructors, and owners of advanced reactor are responsible for proving to the NRC that the public is not at undue risk from hazardous radiation. The NRC staff is **not** responsible for providing that proof. Nor is the NRC staff responsible for providing painfully complex guidance on how to exactly comply with the Code of Federal Regulations. Further,

Michael F. Keller  
President  
Hybrid Power Technologies LLC



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industry codes and standards generally provide reasonable guidance that does not require re-invention and micro-interpretation by the NRC staff.

We remain hopeful that a proper 10CFR53 will be the end result of the ongoing development efforts.

Regards,

*Michael F Keller*

Michael F. Keller      Professional Engineer – State of Kansas  
President  
Hybrid Power Technologies LLC

**References:**

- (1) [ML21270A092](#) – Final Slides September 29 2021 Meeting
- (2) [ML21120A185](#), Acceptability of ASME CODE, SECTION XI, DIVISION 2, “REQUIREMENTS FOR RELIABILITY AND INTEGRITY MANAGEMENT (RIM) PROGRAMS FOR NUCLEAR POWER PLANTS,” for Non-Light Water Reactors.
- (3) **Nuclear Energy and Modernization Act**, S512 enacted into law.