



NUCLEAR ENERGY INSTITUTE

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BUSINESS OPERATIONS

December 20, 2001

The Honorable Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop 016 C1
Washington, D.C. 20555-0001

Dear Chairman Meserve:

In the July 19, 2001, stakeholder briefing of the Commission and our August 10 follow-up letter, we committed to keep you informed of industry plans and perspectives related to new plant activities. Now that the NRC staff has completed its Future Licensing and Inspection Readiness Assessment (SECY-01-0188), we are writing to update you on the industry activities we discussed in our August 10 letter and to provide the industry perspective on certain aspects of the staff's readiness assessment.

- Integration of the two NEI petitions for rulemaking with the Part 52 notice of proposed rulemaking (NOPR)

We were encouraged that the NRC staff stated in a public meeting with Exelon on November 29 that they are expediting their assessment of NEI's two July 18, 2001, petitions for rulemaking so as to allow their integration, as appropriate, into the forthcoming Part 52 NOPR.

The first petition (Docket No. PRM-52-1) seeks to modify Part 52 to avoid duplicative NRC reviews of valid, existing site/facility information that was previously approved by the NRC and subject to public hearing. The second petition (Docket No. PRM-52-2) requests elimination of Part 52 requirements to consider alternate sites in ESP applications. This petition also asks NRC to initiate rulemaking to amend Part 51 (and related provisions in Parts 2 and 50) to reflect that NRC review of alternatives

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under NEPA need not consider need for power, alternate sources or alternate sites, as these matters are best determined by state and local governments, the applicant and the marketplace.

Integration with the Part 52 rulemaking, as requested in both petitions, is important to provide stakeholders with the opportunity to assess the proposals in conjunction with the comprehensive update of Part 52. Integration is also important to avoid the potential need for later re-noticing of the rule to accommodate the changes that would be necessary if the NRC grants all or part of the requested actions. In the November 29 meeting, the staff further stated that their integrated assessment of the petitions includes reconsideration of the staff's own Part 51 "alternate site rulemaking" discussed in SECY-01-0188. This reconsideration is important to ensure consolidation of the industry and NRC staff proposals into a single, efficient path forward.

Expedited consideration of the two petitions is important to support the forthcoming Part 52 NOPR. The schedule for the NOPR has slipped twice since the July 19 briefing, and the staff now expects to forward the rulemaking package to the Commission on April 1, 2002. Because Part 52 is the centerpiece of the regulatory infrastructure for new plants, it is important that this framework be in place by the end of 2002 to enable applicants to prepare submittals in accordance with the provisions of the revised rule.

- The need for continued priority on resolving ITAAC issues

While not identified in SECY-01-0188, we have been discussing the NRC ITAAC verification process and related issues with the staff since last June. On November 20, we submitted a *Draft White Paper on ITAAC Implementation and Transition to Operation Under Part 52* to facilitate further discussion and resolution of specific issues. This activity is important to establish clear, common understandings for all parties on this critical element of the Part 52 process. We encourage the Commission to monitor this activity and to strongly support the timely resolution of ITAAC implementation and related issues. We understand that the staff intends to capture this important activity in a future update of SECY-01-0188.

As for the long-standing policy issue concerning the required scope of ITAAC in a combined license, and in particular, whether ITAAC are required on operational programs, we understand that the NRC staff will forward its recommendation to the Commission on this matter by March 1. We detailed our strong view that there should be no "programmatic" ITAAC in our letter to the Commission dated May 14, and stakeholder comments on this specific issue have been received by the NRC pursuant to the *Federal Register* notice dated June 25, 2001 (66 FR 33718). Because this issue has significant implications for the Part 52 process, and the perception of the public and prospective applicants in its predictability and certainty, we encourage the Commission to make its determination on this issue as soon as possible upon receipt of the staff's recommendation.

- Consistency of ESP and COL schedule estimates used by industry and NRC

Also discussed at the November 29 NRC-Exelon meeting were concerns about the schedule and resource estimates identified in SECY-01-0188 for obtaining ESPs and COLs. In particular, Exelon observed that 27 months to obtain a COL that references both an ESP and a certified design seems excessive, since most safety and environmental issues will have been resolved in advance. At the July 19 Commission briefing, the staff estimated that their review of such a COL could be completed in 12 months (exclusive of hearings). We do not feel the schedule estimates in SECY-01-0188 are consistent with the needs of prospective applicants and the expectation of the deregulated electricity marketplace for more effective and efficient licensing processes. In the November 29 meeting, the NRC staff acknowledged that the estimated schedules were nominal and highly uncertain and that additional information could allow refinements to reflect the schedule estimates of applicants. We think it is important that NRC and the industry continue to work toward a consistent set of schedule estimates as a planning basis for their respective ESP and COL activities.

We are continuing to support and coordinate with the specific activities of our member companies that are considering applications for an early site permit, design certification and/or combined license in the near term. Attached is an update of the chart from our August 10 letter that provides an overall perspective on the scope and schedule of significant industry activities related to new plants. As before, the chart depicts NEI activities; near term decision points for NEI member companies considering submittal of applications for early site permits, design certification, or combined construction and operating licenses; and nominal schedules for those member company activities, should they go forward. The updated chart reflects revised schedules for the

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Commission's determination on the "programmatic" ITAAC issue and possible submittal of COL applications for the PBMR and GT-MHR plant designs. The chart continues to underscore the importance of promptly resolving key issues and ensuring sound licensing processes as input to their imminent project decisions.

The importance and interrelationship of the issues discussed above underscore the need for continued NRC senior management and Commission engagement and leadership in the form of timely determinations on key policy issues related to new plants. We look forward to continued interactions with the Commission, the NRC staff and other stakeholders in the coming months to establish a regulatory infrastructure for new plants that is safety-focused, predictable and efficient, and to do so as promptly as possible to support timely project decisions and preparation of submittals by prospective applicants.

Sincerely,



Marvin S. Fertel

Enclosure

c: The Honorable Greta J. Dicus
The Honorable Edward McGaffigan, Jr.
The Honorable Jeffrey S. Merrifield
The Honorable Nils J. Diaz
Dr. William D. Travers

