

September 16, 2014

**** MEETING TIME AND AGENDA REVISED ****

MEMORANDUM TO: Patrick Moulding, Assistant General Counsel
Division of New Reactor Programs
Office of the General Counsel

FROM: Michael A. Spencer, Senior Attorney /RA/
Division of New Reactor Programs
Office of the General Counsel

SUBJECT: **REVISED** NOTICE OF FORTHCOMING PUBLIC MEETING TO
DISCUSS PROPOSED PROCEDURES FOR ITAAC HEARINGS

DATE & TIME: Monday, September 22, 2014
1:30 p.m. – 4:00 p.m.

LOCATION: U.S. Nuclear Regulatory Commission Headquarters
Commissioners' Conference Room
One White Flint North, 1st floor
11555 Rockville Pike
Rockville, MD 20852

PURPOSE: To discuss issues related to the "Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met," which was published in the *Federal Register* on April 18, 2014. Comments on the proposed procedures were due on July 2, 2014, and six comment letters were received. Two commenters requested a public meeting on the procedures, and one specifically requested a meeting on issues associated with interim operation during the pendency of a hearing on inspections, tests, analyses, and acceptance criteria (ITAAC).

As explained in detail in the attached meeting agenda, the meeting will address seven issues associated with public comments on interim operation, claims of incompleteness, and early publication of the notice of intended operation. Members of the public will be given a chance to provide their perspectives on these positions, and the NRC staff may ask questions on some (or all) of these positions to better understand them. However, the NRC will not at the public meeting be making any determinations, tentative or otherwise, on the commenters' positions. Documents that are relevant to the public meeting are identified below.

The original meeting notice of September 5, 2014, was revised on September 16, 2014, to extend the meeting time to 4:00 p.m. and to add the issue of early publication of the notice of intended operation.

CATEGORY 3: This is a Category 3 meeting.* Public participation is actively sought to fully engage the public in a discussion of regulatory issues.

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* The NRC's Policy Statement, "Enhancing Public Participation in NRC Meetings," effective May 28, 2002, applies to this meeting. The policy statement may be found on the NRC Website, <http://www.nrc.gov/public-involve/public-meetings/v67n102p36920.pdf>, and contains information regarding visitors and security.

Please inform the NRC's meeting contact of your intention to attend by September 18, 2014. This should help speed your processing through security and ensure that sufficient copies of meeting materials are available.

TELECONFERENCING: Interested members may participate by telephone via a toll-free teleconference line. Those interested in participating in this meeting should dial 1-888-946-6305 and when prompted enter the pass code 8299361 followed by the # sign.

DOCUMENTS: The proposed procedures are available at <http://www.gpo.gov/fdsys/pkg/FR-2014-04-18/pdf/2014-08917.pdf>.

The public meeting will address seven issues related to interim operation, claims of incompleteness, and early publication of the notice of intended operation that have arisen because of public comments on the proposed procedures. These public comments are in the following comment letters, which can be obtained from the NRC's website through the Agencywide Documents Access and Management System (ADAMS):

- Nuclear Energy Institute (ADAMS Accession No. ML14190A012).
- South Carolina Electric & Gas Company (ADAMS Accession No. ML14190A013).
- Southern Nuclear Operating Company, Inc. (ADAMS Accession No. ML14190A011).
- Westinghouse Electric Company LLC (ADAMS Accession No. ML14190A010).

The meeting agenda specifically identifies which commenters made which comments. Meeting participants can access the comment letters to learn more about the commenters' positions.

PARTICIPANTS: NRC staff, interested stakeholders, and members of the public. NRC participants include staff from the Office of the General Counsel (OGC) and possibly staff from other NRC offices.

NRC

Michael Spencer, OGC, et al.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting, or need this meeting notice or the transcript or other information from the meeting in another format (e.g. braille, large print), please notify the NRC's meeting coordinator. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Seating may be limited and will be available on a first-come basis.

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ADAMS ACCESSION NO.: ML14259A445

*concurred via email

OFFICE	OGC/NRP
NAME	MASpencer
DATE	09/16/2014

OFFICIAL RECORD COPY

AGENDA

PUBLIC MEETING – PROPOSED ITAAC HEARING PROCEDURES

SEPTEMBER 22, 2014; 1:30 PM – 4:00 PM

LOCATION: NRC HQ – COMMISSIONERS' CONFERENCE ROOM, OWFN 1ST FLOOR

Time

1:30 PM Welcome/Introductions

1:35 PM *INTERIM OPERATION:* According to the proposed procedures, if an ITAAC hearing request has been granted, interim operation is allowed only if (1) the NRC staff makes the 52.103(g) finding that all acceptance criteria are met, and (2) the Commission determines that there is reasonable assurance of adequate protection during interim operation. Based on the relevant legislative history, the proposed procedures further provide that the Commission's adequate protection determination is not to be based on a conclusion that the petitioner's prima facie showing is incorrect. In addition, the proposed procedures state that the Commission's adequate protection determination will be timely so long as it is made before scheduled fuel load.

Issue 1: The Nuclear Energy Institute (NEI) and South Carolina Electric & Gas (SCE&G) assert that for the purposes of allowing interim operation, the 52.103(g) finding need only be made on the uncontested ITAAC.

Issue 2: NEI, SCE&G, and Westinghouse assert that the Commission's adequate protection determination for interim operation can be based on a pre-hearing conclusion that the petitioner's prima facie showing is incorrect.

Issue 3: NEI, SCE&G, and Southern Nuclear Operating Company (SNC) urge the Commission to make the adequate protection determination as soon as possible so that licensees can better schedule their preparations for fuel loading.

2:25 PM Break

2:35 PM *CLAIMS OF INCOMPLETENESS:* A claim of incompleteness is a claim that the licensee has not provided the information required by 10 CFR 52.99(c) and that this prevents the petitioner from making the required prima facie showing for ITAAC hearing requests. SNC suggests requiring petitioners to consult with the licensee before filing the claim because the licensee may voluntarily provide the requested information. SNC recommends that consultation be initiated 21 days after the notice of intended operation is published. On a related topic, Westinghouse suggests that the procedures include a process for access to SUNSI or SGI in the context of claims of incompleteness.

Issue 4: Is the consultation requirement a good proposal?

Issue 5: Should consultation also be required for claims of incompleteness after the original deadline, and if so, when should consultation be initiated?

Issue 6: If the petitioner seeks access to SUNSI or SGI, should any additional procedures apply to the consultation process? What is needed to grant a claim of incompleteness seeking access to SUNSI or SGI?

3:25 PM *EARLY PUBLICATION OF THE NOTICE OF INTENDED OPERATION:* In the proposed procedures, the NRC staff sought comment on (1) whether to publish

the notice of intended operation earlier than 210 days before scheduled fuel load, and (2) if so, how early should the notice of intended operation be published. NEI, SNC, and SCE&G commented on this issue and favored early publication by up to several months. One issue associated with early publication of the notice of intended operation is a corresponding increase in the number of uncompleted ITAAC when the notice of intended operation is published. The 10 CFR 52.99(c)(3) uncompleted ITAAC notifications provide information regarding the licensee's plans for completing the ITAAC, including the specific procedures and analytical methods to be used, which will provide information to petitioners on which they may seek to file contentions. However, there is an increased burden to petitioners arising from the fact that there would be a greater number of later ITAAC closure notifications to examine to determine if there is any new information that is materially different from previously available information and might give rise to a new or amended contention.

Issue 7: The NRC staff is interested in exploring methods by which such an increase in burden could be reduced. For example, the later ITAAC closure notification (1) could include a specific citation to the corresponding uncompleted ITAAC notification, (2) could physically include the corresponding uncompleted ITAAC notification as an attachment, or (3) could include a redline-strikeout version as an attachment that shows changes between the earlier uncompleted ITAAC notification and the later completed ITAAC notification. Other solutions might be possible, and attendees may suggest these at the public meeting.

3:55 Closing