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NUCLEAR ENERGY INSTITUTE

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RULES & DIR. BRANCH
Robert Willis Bishop
US NRC
VICE PRESIDENT &
GENERAL COUNSEL

January 31, 2000

Mr. David L. Meyer
Chief, Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: Request for Comment on Management Directive 8.11, "NRC Review Process for 10 CFR 2.206" (64 Fed. Reg. 54654; October 7, 1999)

Dear Mr. Meyer:

On behalf of the nuclear energy industry, the Nuclear Energy Institute¹ submits the following comments on changes the NRC recently has implemented to improve the process for evaluating and responding to petitions submitted pursuant to 10 CFR 2.206. These changes were based, in part, on input from past petitioners and interest groups, as well as NRC staff experience with the 2.206 process. NEI previously responded to the agency's July 6, 1999, announcement of the improvements, stating the industry's view that the changes serve the public interest by considerably improving communication between the NRC and petitioners, and fostering more timely issuance of Director's decisions.² The industry continues to support NRC efforts to improve the 2.206 process, and we believe the most recent changes will, indeed, make the process more transparent and the resulting decisions more understandable.

At heart, the 2.206 process permits a member of the public to direct substantial agency resources to a particular licensee or safety issue. Submission of a 2.206 petition sets in motion established agency procedures to evaluate and, if necessary, institute enforcement or other regulatory action to address an underlying safety issue of concern to the petitioner. Unlike more formal agency or judicial

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

² Letter from Robert Bishop to William Travers, dated July 30, 1999.

Mr. David L. Meyer
January 31, 2000
Page 2

RECEIVED

2000 FEB -1 PM 2:55

RULES & DIR. BRANCH

proceedings, this process does not require a statement of "interest" nor is there any time limit on submitting a petition. Thus, the 2.206 process provides a clear forum in which a member of the public can, with the expenditure of only minimal effort, bring to the NRC's attention his or her view that enforcement action against a particular licensee is warranted.

Although the overall purpose of the 2.206 process seems to have been met in the past, the process apparently has not been sufficiently "user friendly." We understand that petitioners' previous experience with the 2.206 process was not satisfactory. For example, after submitting a petition, petitioners rarely were notified regarding NRC actions to evaluate the petition or those currently being taken in response to the petition. Directors' decisions often took more than a year to process. Agency communications with petitioners were, at best, infrequent in the interim and, typically, petitioners did not hear from the agency at all until a final decision had been reached. Further, and perhaps most troublesome, director's decisions in response to 2.206 petitions have not provided a full explanation of the bases for the agency's granting or denial of the petition, fostering the often heard complaint that the NRC does not consider seriously 2.206 petitions.

We note at the outset that the NRC's failure to institute most requested enforcement action petitioned for does not establish a case for the inadequacy of the 2.206 process. In fact, the process works well as a check on other regulatory processes. Relatively few petitions result in regulatory action precisely because the NRC's pervasive regulatory regime does a thorough job in identifying safety issues before they come to the attention of the public. The vast majority of issues raised in 2.206 petitions is already well known to the NRC prior to the submission of the petition and, in most cases, is being addressed or has already been resolved. The effectiveness of the agency's entire regulatory approach would be subject to question if a substantial number of 2.206 petitions identified significant issues warranting institution of NRC enforcement proceedings. The limited number of substantiated concerns contained in 2.206 petitions also demonstrates the effectiveness of NRC licensees' many safety programs as well as their many mechanisms for routinely identifying and resolving issues.

That having been said, we believe the proposed modifications to the process should vastly improve the effectiveness and transparency of the 2.206 process. The process now includes:

- A single NRC contact for each petition

Mr. David L. Meyer
January 31, 2000
Page 3

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200 FEB -1 PM 2: 55

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- An opportunity for the petitioner to meet with the staff and licensees in a meeting, if certain criteria are met
- An opportunity for the petitioner to explain the bases for the petition to the petition review board and answer staff questions on the petition
- Increased management oversight, in the form of periodic petition review board meetings
- Significantly improved communication with the petitioner, including contact upon receipt of the petition³ and as the petition is being evaluated
- Addition of petitioners to the service list throughout the pendency of the petition and for 90 days thereafter
- More timely goals for issuance of the director's decision; procedure for providing an explanation to the petitioner if the director's decision will not be issued on the established schedule

By obtaining greater input from the petitioner earlier in the process, the NRC should be able to more quickly develop an in-depth understanding of the bases for the petition and, in turn, be able to respond in a more timely fashion. Maintaining closer communications with petitioners while the petition is being reviewed also should promote a better understanding by the petitioners of the NRC's evaluation process and the reasoning underlying the NRC's ultimate decision.

With respect to the ultimate decision to grant or deny the petition, the industry strongly encourages the NRC to expansively explain the bases for its decision. It is critical that the public be apprised of the extensive effort that the NRC went through to evaluate the petition and how the agency reached its eventual conclusion. The NRC will enhance the credibility of the 2.206 process simply by explaining fully, for example, NRC's evaluation of the technical issues contained in the petition, any tangentially related issues, past or ongoing NRC and/or licensee actions, and other facts relevant to the petition.

As a result of NRC discussions with stakeholders, we understand that the NRC is considering a proposal to provide petitioners with a draft version of the director's

³ We would suggest that the NRC include in the sample acknowledgement letter language explaining the 2.206 process – its basis in the NRC's enforcement process and that the NRC reserves the authority to depart from the review process (i.e., Management Directive 8.11) where public health and safety considerations warrant.

Mr. David L. Meyer
January 31, 2000
Page 4

decision. The objective of this step presumably would be to ensure that the petitioner has an opportunity to consider whether the NRC's statement of the facts underlying the petition and to present any new information that may have come to light since the submission of the petition. While providing another administrative step to consider the facts underlying the 2.206 petition can be argued to be excessive (by consuming additional time and resources), on balance, this step is worth serious consideration as it will advance the public's desire to participate meaningfully in the 2.206 process. Nevertheless, certain additional features should be implemented if this step is adopted. For example, the draft decision should be provided contemporaneously to the licensee to allow the licensee the same opportunity to evaluate the decision for errors, etc. In addition, and critical to this step, is a statement in the transmittal letter from the NRC that this is the final opportunity to provide the NRC with additional input.

In conclusion, the industry strongly supports maintaining a fair, efficient and effective 2.206 process. We believe that the NRC's recent efforts to improve the 2.206 process have been beneficial to all stakeholders. To the extent that the NRC continues to conduct discussions with stakeholders on this, as well as other regulatory processes and requirements, the industry requests that it be included in those discussions.

Sincerely,



Robert W. Bishop

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