

POLICY ISSUE NOTATION VOTE

July 22, 2002

SECY-02-0138

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING ON MANDATORY SUBMITTAL OF PERFORMANCE INDICATOR INFORMATION NEEDED FOR THE REACTOR OVERSIGHT PROCESS (PRM-50-72)

PURPOSE:

The purpose of this paper is to obtain Commission approval for denial of a petition for rulemaking on mandatory submittal of performance indicator (PI) information needed for the Reactor Oversight Process (ROP).

BACKGROUND:

In Regulatory Issue Summary (RIS) 2000-08, "Voluntary Submission of Performance Indicator Data," dated March 29, 2000, the NRC endorsed a program for voluntarily submitting PI information. Along with the results from the reactor inspection program, this PI information provides the basis for the NRC staff to assess plant performance and establish the appropriate regulatory response. The use of PI information is a basic element of the ROP.

On November 30, 2000, David Lochbaum of the Union of Concerned Scientists (UCS) submitted a petition for rulemaking requesting that the NRC revise its regulations to require nuclear power plant licensees to submit PI information needed for the NRC's ROP. The NRC

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published a notice of receipt and request for public comment in the *Federal Register* on March 5, 2001 (66 FR 13267). The comment period closed on May 21, 2001. Three comment letters were received.

DISCUSSION:

The UCS petition requested that the NRC revise its regulations to require that nuclear power plant licensees submit the PI information needed for the ROP. The petition acknowledged that licensees are now submitting this information on a voluntary basis. It also noted that PI information is an important part of the ROP. The petitioner stated that the NRC should require PI information in order to appear more authoritative and enhance public confidence. The petitioner also argued that currently, if one or two plants stop providing PI information, the NRC can compensate by performing more inspection but it is not clear that NRC will have the resources to compensate if many plants stop providing PI information in the future.

None of the three public comment letters received supported the petition. The Nuclear Energy Institute (NEI) contended there is no indication that a problem exists necessitating the requested rulemaking. Further, NEI indicated that licensees are already required to report or collect almost all of the information used to develop the PIs. Finally, NEI stated that if PI information was not reported by licensees, no unique and undue burden would be placed on NRC inspection resources. Exelon Corporation submitted a letter that supported NEI's comments. Robert Leyse, a member of the public, submitted a letter that did not indicate whether the petition should be granted or denied.

The staff has evaluated the advantages and disadvantages of the rulemaking requested by the petition as follows:

- (1) Maintaining Safety: The requested rulemaking would not affect safety for the following reasons. Currently, licensees are submitting the PI information needed for the ROP on a voluntary basis. The current voluntary program meets the NRC's regulatory needs. If circumstances change in the future (for example, if licensees decide to stop submitting the information voluntarily) the NRC can reevaluate its position on whether a rulemaking or other regulatory action is necessary at that time. The options available would include: imposition of mandatory reporting requirements by rulemaking or order; request for information under oath or affirmation under 10 CFR 50.54(f); direct gathering of PI information by inspection; and/or additional inspection of basic cornerstone areas. If necessary, during the time it would take to implement one of these options, the NRC could gather sufficient information to continue the ROP using modest inspection resources.
- (2) Enhancing Public Confidence: The requested rulemaking might enhance public confidence to some degree by making the NRC appear more authoritative in the view of some individuals. There would be no change, however, in the public availability of the PI information because it is already being made publicly available.
- (3) Improving Efficiency and Effectiveness: The requested rulemaking would result in a decrease in the efficiency and effectiveness of the NRC's use of resources for the following reasons. The requested rulemaking would consume resources to develop a rulemaking to codify the current practice, even though the current voluntary program meets the NRC's regulatory needs. Furthermore, the guidance and definitions used in reporting PI information are adjusted from time to time based on experience. If the

current practice were codified, any future changes in the definitions or guidance for reporting PI information might be more difficult, use greater resources, and consume more time, as compared with changing a voluntary program.

- (4) Reducing Unnecessary Regulatory Burden: The requested rulemaking would not affect the regulatory burden on licensees because the PI information needed for the ROP is already being provided on a voluntary basis by all licensees.

The staff recommends denial of the petition based on this evaluation. Currently, licensees are submitting the PI information needed for the ROP on a voluntary basis. The current voluntary program meets the NRC's regulatory needs. If circumstances change in the future (for example, if licensees decide to stop submitting the information voluntarily) the NRC can reevaluate its position on whether a rulemaking or other regulatory action is necessary at that time. The requested rulemaking might enhance public confidence to some degree by making the NRC appear more authoritative in the view of some individuals. However, it would consume resources to develop a rulemaking to codify the current practice, even though the current voluntary program meets the NRC's regulatory needs. Furthermore, if the current practice were codified, any future changes in the definitions or guidance for reporting PI information might be more difficult, use greater resources, and consume more time, as compared with changing a voluntary program.

COORDINATION:

The Office of the General Counsel has no legal objection to the denial of this petition.

RECOMMENDATIONS:

That the Commission:

- (1) Approve denial of the petition for rulemaking and publication of the *Federal Register* notice (Attachment 1) announcing the denial.
- (2) Note that:
- a. a letter is attached for the Secretary's signature (Attachment 2) informing the petitioner of the Commission's decision to deny his petition;
 - b. the appropriate Congressional committees will be informed.

/RA by William F. Kane Acting For/

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Attachments: As stated

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ACCESSION NUMBERS: ML021820150 (package); ML021820125 (Commission paper); ML021820186 (Att. 1); ML021820271 (Att. 2)

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* See previous concurrence