

May 18, 2023

Indiana Utility Regulatory Commission
101 W. Washington Street, Suite 1500 E.
Indianapolis, Indiana 46204
Attn: Beth Heline, General Counsel

Submitted via electronic mail

Subject: Nuclear Energy Institute Comments on RM #22-05 Regarding 170 IAC 4-11

The Nuclear Energy Institute (NEI) appreciates the opportunity to provide comments on the Indiana Utility Regulatory Commission's (IURC or Commission) draft proposed rules regarding small modular nuclear reactors (SMRs).¹ On behalf of our members, NEI seeks to promote the use of nuclear energy and technologies through optimal industry performance, effective policies, and efficient regulation.² We believe that preserving and expanding nuclear generation is vital to meeting U.S. and global clean energy goals, ensuring a reliable electric grid, and addressing the challenges posed by climate change.

Indeed, for environmental, public health, economic, and energy security reasons, the need to deploy new, advanced nuclear technologies is greater than ever. We therefore appreciate the State of Indiana's efforts to support the siting and deployment of advanced nuclear technologies, particularly SMRs, within the State, as evidenced by the enactment of SB 271 and SB 176 in 2022 and 2023, respectively.³ Such actions place Indiana squarely within the growing legion of states that are pursuing policies and legislation to support new nuclear generation.⁴ We encourage the State to take further

¹ See Draft Proposed Rule, 170 IAC 4-11, "Certification Requirements for the construction, purchase, or lease of small modular nuclear reactors by a public utility," IURC RM #22-05 (Draft as of 04-05-2023), <https://www.in.gov/iurc/files/2023-04-05-SMR-Draft-Proposed-Rule.pdf>.

² NEI has more than 300 members, including companies that own or operate nuclear power plants, reactor designers and advanced technology companies, architect and engineering firms, fuel suppliers and service companies, consulting services and manufacturing companies, companies involved in nuclear medicine and nuclear industrial applications, radionuclide and radiopharmaceutical companies, universities and research laboratories, labor unions, and international electric utilities.

³ SB 271 requires the IURC to adopt rules governing the certificates of public convenience and necessity (CPCN) for advanced reactors and adds SMRs to the list of clean energy projects eligible for certain state financial incentives. SB 176 changes the rated electric generating capacity from 350 megawatts to 470 megawatts for purposes of the definition of "small modular nuclear reactor" as used in the statutes concerning: (1) CPCNs issued by the IURC for the construction, lease, or purchase of electric generation facilities; and (2) financial incentives for energy utilities that invest in clean energy projects.

⁴ See NEI, "From Alaska to Maine: State Nuclear Energy Policy Action Is Booming" (Feb. 9, 2023) (<https://www.nei.org/news/2023/alaska-to-maine-state-nuclear-energy-policy-action>).

supportive actions, such as those recommended in Purdue University's and Duke Energy's recently released *Small Modular Reactor and Advanced Reactor Feasibility Study Interim Report*.⁵

With regard to proposed 170 IAC 4-11, we reiterate the concerns expressed by Indiana Michigan Power Company and Duke Energy Indiana in their comments.⁶ As those companies note, as currently drafted, 170 IAC 4-11-6 could be read to require an owner of an SMR to provide the IURC with each and every report it makes to the Nuclear Regulatory Commission (NRC), imposing a substantial administrative burden on the SMR owner with no commensurate benefit to the IURC. 170 IAC 4-11-6(a) suggests that this is likely **not** the IURC's intent, insofar as it recognizes that the IURC and its staff can readily access publicly-available documents related to a specific facility or applicant/licensee via the NRC's associated docket number.⁷ Namely, that provision directs owners or operators of a proposed or existing SMR to:

provide to the commission all docket numbers assigned by the NRC regarding the proposed or existing SMR within 30 days of the docket number being assigned, **thus allowing the commission and its staff timely access**, in accordance with applicable federal law and regulations, to any: (1) reports; (2) notices of violations; or (3) other notifications sent to or received from the NRC by or to the owner or operator of a proposed or existing SMR.⁸

Nevertheless, we agree that the IURC should either remove the references to "reports" and "report" in 170 IAC 4-11-6(a)(1) and (d)(1), respectively, or revise the regulation to clarify that only documents related to significant notices of violations must be provided to the IURC. We further note that the NRC's *Enforcement Manual* discusses the distribution of various types of NRC enforcement-related documents.⁹ Those documents include, among others, Non-escalated and Escalated Notices of Violation (NOV), Enforcement Orders (including Confirmatory Orders), Orders Imposing Civil Monetary Penalties (CP), and Confirmatory Action Letters. Importantly, the *Enforcement Manual* indicates that the NRC generally sends copies of these types of documents to States by regular mail. The NRC also places NOVs in ADAMS and posts Escalated NOVs on the agency's Enforcement web page.¹⁰ In addition

⁵ See Purdue University and Duke Energy, *Small Modular Reactor and Advanced Reactor Feasibility Study Interim Report* (May 2023), available at <https://www.purdue.edu/administrative-operations/nuclear/smr-study-report.php>.

⁶ See <https://www.in.gov/iurc/files/IM-Comments-re-RM-22-05-SMR-01-12-2023.pdf> (Indiana Michigan Power Company comments) and <https://www.in.gov/iurc/files/Duke-Energy-Indiana-Comments-re-RM-22-05-SMR-2023.01.12.pdf> (Duke Energy Indiana comments). These companies' parent organizations, American Electric Power and Duke Energy, are NEI members.

⁷ The NRC makes most of its correspondence and documents publicly available in electronic (PDF) format on its Agencywide Document Access Management System (ADAMS) (<https://www.nrc.gov/reading-rm/adams.html>). Documents containing confidential, proprietary, or other sensitive information may be withheld by the NRC from public disclosure in accordance with federal laws and regulations regarding confidentiality.

⁸ Proposed 170 IAC 4-11-6(a) (emphasis added).

⁹ *Nuclear Regulatory Commission Enforcement Manual*, Revision 11, Change 10 (Feb. 24, 2022), <https://www.nrc.gov/docs/ML2205/ML22056A177.pdf>.

¹⁰ See NRC, "Issued Significant Enforcement Actions (<https://www.nrc.gov/about-nrc/regulatory/enforcement/current.html>).

to sending copies of Enforcement Orders and Orders Imposing CPs to the relevant States, the NRC also publishes such orders in the *Federal Register*.¹¹

On a separate note, proposed 170 IAC 4-11-5(b)(3)-(4) directs an applicant for a CPCN to submit its plan to apply for all licenses or permits to construct or operate a proposed SMR as may be required by the NRC, the Indiana Department of Environmental Management, or any other relevant State or Federal regulatory agency, as well as its plan for education and community outreach regarding the proposed SMR. Relevant to these requirements, we note that the NRC licensing process typically begins long before an entity submits a license application to the NRC in the form of pre-application meetings and other interactions between the prospective applicant and NRC staff.¹² NRC regulations and guidance encourage such pre-application activities, which allow the NRC staff to become familiar with the proposed project and with the application's anticipated contents.¹³ In addition, the NRC staff and the applicant may seek to establish contacts with other Federal, State, and local agencies, as well as hold public outreach meetings to educate local communities about the project.

Importantly, the NRC's Advanced Reactor Policy Statement "encourages the earliest possible interaction of applicants, vendors, other government agencies, and the NRC to provide for early identification of regulatory requirements for advanced reactors and to provide all interested parties, **including the public**, with a timely, independent assessment of the safety and security characteristics of advanced reactor designs."¹⁴ Additionally, in May 2021, the NRC issued draft guidance that "provide[s] information to advanced reactor developers on the benefits of robust pre-application engagement in order to optimize both safety and environmental application reviews."¹⁵ The NRC expects that prospective applicants will conduct meetings, support audits, and provide white papers on key environmental topics, potentially including the site selection process, beginning as early as two years prior to application submittal. The guidance notes that "[e]arly engagement is important for assuring that sufficient data is available in the application and that appropriate engagement with other Federal and State agencies has begun."¹⁶ It also recommends that prospective applicants interact with other

¹¹ As Indiana Michigan Power Company and Duke Energy Indiana also note in their comments, NRC regulations impose substantial reporting requirements on NRC licensees, including nuclear reactor licensees, some of which include notification of state officials. See, e.g., 10 CFR 20.2202 ("Notification of incidents"), 10 CFR 50.72 ("Immediate notification requirements for operating nuclear power reactors"), and 10 CFR 50.73 ("Licensee event report system"). The NRC's [Reporting Requirements web page](#) lists these and other key NRC licensee reporting requirements.

¹² The NRC maintains a [Pre-Application Activities for Advanced Reactors](#) web page through which the public can access information on pre-application activities, including the NRC electronic dockets containing pre-application documents. On its [Public Meeting Schedule](#) web page, the NRC regularly posts notices of upcoming pre-application meetings. Unless the meeting or a portion thereof is closed to the public (e.g., due to the discussion proprietary or other sensitive information), members of the public can participate in the meeting via teleconference.

¹³ See, e.g., 10 CFR 51.40, "Consultation with NRC staff." NRC pre-application activities may include a tour of the site, discussions with applicant personnel who are familiar with the proposed site and siting process and involved in developing the applicant's environmental report, and a records assessment of the environmental portions of the application (including, for example, the availability of relevant environmental studies and environmental information).

¹⁴ NRC, *Final Policy Statement on the Regulation of Advanced Reactors*, 73 Fed. Reg. 60,612, 60,616 (Oct. 14, 2008) (emphasis added). The above-referenced *Small Modular Reactor and Advanced Reactor Feasibility Study Interim Report* also discusses the importance of stakeholder engagement and community education.

¹⁵ NRC, "Draft Pre-application Engagement to Optimize Advanced Reactors Application Reviews," at 1 (May 2021) (ADAMS Accession No. [ML21145A106](#)).

¹⁶ *Id.* at 9.

permitting agencies as discussed in [NEI 10-07](#) (an NEI-issued guidance document), and provide a list of the necessary project authorizations, permits, licenses, and approvals.¹⁷ We encourage both the IURC and CPCN applicants pursuing SMR projects to fully leverage the NRC pre-application process and the information developed by applicants to support their preparation of NRC license applications in satisfying the requirements of proposed 170 IAC 4-11-5(b)(3).¹⁸

Thank you in advance for your consideration of NEI's comments. If you have questions concerning this letter, please contact me at mjo@nei.org or 202-739-8139.

Sincerely,

Martin J. O'Neill

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¹⁷ *Id.* at 10. NRC regulations require that an NRC permit/license applicant "list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and [] describe the status of compliance with these requirements" in its environmental report. 10 CFR 51.45(d). The applicant's environmental report also must include "a discussion of the status of compliance with applicable environmental quality standards and requirements including, but not limited to, applicable zoning and land-use regulations, and thermal and other water pollution limitations or requirements which have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection." *Id.*

¹⁸ The NRC's formal acceptance and docketing of a license application for detailed technical review triggers various public notice requirements, as set forth in 10 CFR 2.101 ("Filing of application"), including distribution of copies of the application to Federal, State, and local officials. The NRC licensing process also provides extensive opportunities for public participation, including public meetings held near the proposed site, opportunities to submit written comments related to the NRC's environmental review under the National Environmental Policy Act (NEPA) and 10 CFR Part 51, and opportunities to request a hearing on the license application. See "Nuclear Power Plant Licensing Process" (July 2020) (<https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/licensing-process-fs.html>); *Nuclear Power Plant Licensing Process* (NUREG/BR-0298, Rev. 2) (July 2009) (<https://www.nrc.gov/docs/ML0421/ML042120007.pdf>); *Frequently Asked Questions About License Applications for New Nuclear Power Reactors* (NUREG/BR-0468) (Dec. 2009) (<https://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0468/index.html>).