



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 3, 1994

Mr. Joe Colvin, Executive Vice President
Nuclear Energy Institute
1776 Eye Street, N.W., Suite 400
Washington, D.C. 20006-3708

Dear Mr. Colvin:

SUBJECT: SECONDARY REFERENCES IN A DESIGN CERTIFICATION RULE

In a meeting on January 6, 1994, with the former Nuclear Management and Resources Council (NUMARC), industry and NRC representatives discussed the staff's proposal to identify and incorporate as primary references in a design certification rule (DCR), rather than maintain as secondary references, the various codes, standards, regulatory guides, etc., that are currently referenced in standard safety analysis reports (SSARs) for next-generation reactor designs. In that meeting, the staff took the position that incorporation of these codes, standards, etc., as primary references would provide a level of regulatory certainty that is commensurate with the goals of 10 CFR Part 52. NUMARC took the position that the burden of creating the list of references outweighed any resulting benefits, and it would create a major disruption in the final design approval and DCR schedules. NUMARC and the staff agreed to reconsider their positions and reconvene on January 13, 1994, to discuss the appropriate treatment of references.

NUMARC, vendor, and utility representatives stated that combined license (COL) applicants and licensees who reference a DCR must conform with all of the requirements identified in the documents that are referenced in that DCR's design control document (DCD), regardless of the legal standing of these requirements vis-a-vis the Office of the Federal Register. NUMARC, vendor, and utility representatives also agreed that the NRC can enforce conformance with these requirements (so-called secondary references), as written. Therefore, the NRC will not require design certification applicants to develop a list of referenced requirements for inclusion in the DCR as primary references, since industry representatives believe that the burden of creating the list would outweigh the increase in regulatory certainty and predictability that such a list would provide.

The staff performed a special review of the Commission regulations, and industry codes and standards, which are referenced in the certified design material (CDM or Tier 1) for the evolutionary designs currently under review, for the purpose of determining whether these references are sufficiently identified such that they will be considered legally-enforceable requirements. For Tier 1 references of regulations, the staff believes that the version of the regulation in effect at the time of certification would normally be viewed as applicable, without further identification. For Tier 1 references of codes and standards, the version of the code or standard need not be specified if it is otherwise specified in Tier 2. Combined license applicants (or applicants for construction permits or operating licenses), or licensees seeking to use a different version of a code or standard referenced in the DCD must use the applicable change process specified in the DCR. The staff's view is that

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applicants or licensees referencing a certified design will not be able to use the updated versions of codes or standards which are endorsed by the Commission in the periodic updates of 10 CFR 50.55a.

The proposed follow-up meeting on January 13 was determined to be unnecessary, and I stated that in a phone call to Mr. Dave Rehn on January 11, 1994. However, the staff is willing to discuss any future proposals or pilot programs to clarify the language in the DCD. I plan to document this position on the treatment of secondary references in a DCD in an upcoming revision to the NRC's guidance letter on preparation of a DCD, dated August 26, 1993.

On a separate matter, I also want to remind you that your letters to the NRC should be addressed to the NRC document control desk, in accordance with the requirements of 10 CFR § 50.4(a). If you have any questions on this letter, please contact Mr. Jerry Wilson of my staff at (301) 504-3145.

Sincerely,

Original Signed By:

Dennis M. Crutchfield, Associate Director
for Advanced Reactors and License Renewal
Office of Nuclear Reactor Regulation

cc: See next page

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