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STATE OF ILLINOIS DEPARTMENT OF NUCLEAR SAFETY

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George H. Ryan
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Thomas W. Ortziger
Director



September 13, 2001

Mr. Joseph M. Sebrosky
U.S. Nuclear Regulatory Commission
Mail Stop 0-11 F1
Washington, DC 20555-0011

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Rules and Directives
Branch
Advises

Re: Public Comment on Inspections, Tests, Analyses and Acceptance Criteria
(ITAAC); *Federal Register*: June 25, 2001

Dear Mr. Sebrosky:

Thank you for allowing the Illinois Department of Nuclear Safety (IDNS or department) the opportunity to submit its comments on the issue of combined operating license (COL) inspections, tests, analyses and acceptance criteria for the construction and operation of new nuclear plants under 10 C.F.R. 50 and 52.

The Illinois Department of Nuclear Safety

The Illinois Department of Nuclear Safety is a cabinet-level agency of state government with primary responsibility for the coordination and oversight of all state governmental functions concerning the regulation of nuclear power, including low-level radioactive waste management, environmental monitoring, and transportation of nuclear waste. The department's emergency response functions include planning and training responsibilities for over 10,000 emergency workers and 26 counties in the State. Further, IDNS has participated in 154 nuclear power plant exercises since its creation in 1980. The department's Remote Monitoring System continually monitors conditions at and around each nuclear power plant for releases of radioactive material and reactor changes, which may signal potential problems. Under an agreement with the NRC, the department has a full time resident inspector at each nuclear power station in the state to help ensure that power reactors continue to be operated without undue risk to the public health and safety or the environment.

Each year, nuclear safety officials from other states and other countries visit the department to learn more about this unique system and about our programs and technology. In addition, IDNS officials have visited over ten foreign countries to explain the department's comprehensive program to help ensure nuclear safety in Illinois.

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The state has a strong interest in the continuing importance of emergency planning and the continued safety of its citizens. The Illinois Department of Nuclear Safety hereby submits its comments on the issue of combined operating license inspections, tests, analyses and acceptance criteria for the construction and operation of new nuclear plants as requested in the Federal Register of June 25, 2001.

Legal Opinion

It is the opinion of the department that COL applications should contain ITAAC on operational programs, especially emergency planning. Section 185 b. of the Atomic Energy Act of 1954 (as amended by the Energy Policy Act of 1992) states:

“...[T]he Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to *emergency planning*, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility *has been constructed and will be operated* in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations.”
(emphasis added)

The department believes that the plain language of Atomic Energy Act (Act) makes clear the requirement of an applicant to provide assurance, specifically with respect to emergency planning, that the facility will be operated in conformity with the license before the license is issued. The above-emphasized language “...has been constructed and will be operate...” along with the specific mention of “...emergency planning...” reflects the clear intent of Congress to include operational programs within the scope of ITAAC in COL applications.

In addition to the plain meaning of the Act, the position that COL applications should contain ITAAC on operational programs is supported by public policy concerns. Public hearings for the construction and operation of nuclear power plants are often centered on safety concerns; questions about emergency planning are critical issues to

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the public. These issues are even more important should an applicant bring in a non-certified design because without ITAAC in place before the COL is granted, the public would be given virtually no assurance on the quality and safety of operation of a new plant.

Technical Opinion and Part 52 Issues

The issue is whether combined license applications should contain inspections, tests, analyses and acceptance criteria on operational programs or if ITAAC should apply only to hardware and design issues. The department believes that without ITAAC in the COL, the existing inspection procedures, under the revised reactor oversight process, may be inadequate to evaluate pre-operational programs. If the COL applicant commits to following specific regulatory guidance or standards in implementing the programs by including ITAAC in the COL application, then the NRC can verify the existence of these programs before the operation of the plant.

As the Part 52 process was originally intended: 1) an experienced applicant would submit a standard design with the requisite ITAAC; 2) the plant would be built on an existing or banked site; and 3) the applicant would roll the programs in question into those already being implemented successfully, and develop ITAAC describing how they would accomplish these steps. The process of developing and describing programmatic ITAAC is not difficult if the first and second factors are in place.

However, Part 52 allows applicants to submit a non-precertified design and place it on a site without seeking an early site permit, thereby introducing numerous variables that impact the handling of programmatic ITAAC. There must be assurance that satisfactory programs are in place when needed to support plant construction and operation when applicants vary from the original process intended in Part 52. For these applicants who vary from the original three-step process, ITAAC must be at the front of the process.

Variables that make a large difference in whether or not Part 52 is adequate and effective when applicants vary from this three-step process include:

- Whether or not a proposed site already has operating units on it, for emergency planning purposes.

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- Whether the proposed plant is a certified standard design. If not, sufficient design detail must be submitted to support issuing the COL. We believe this should include a plant specific PRA and programmatic ITAAC.
- Whether an applicant has satisfactory existing programs in place for other operating units, into which they plan to adopt programs for the new unit.
- Whether the applicant is an experienced nuclear operator, or a recent entry into the industry.

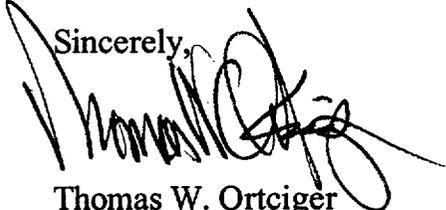
It may be that Part 52 is not adequate to deal with the circumstances surrounding these variables when applicants submit a non-precertified design and place it on a site without seeking an early site permit.

Conclusion

We believe that before a COL is granted, an applicant should be required to submit a detailed construction plan and schedule with the application and prior to the public hearing. The applicant should identify at what milestone of the plan the programs in question will be in place, and should have ITAAC sufficiently detailed so the NRC can, through its verification by inspection, ensure that a satisfactory program is in place before the COL is granted.

The Department believes that COL applications should contain ITAAC on operational programs. Further, an understanding of the underlying Part 52 process lends itself to this interpretation. The efficacy of Part 52 for those applicants who vary from the original process is diminished significantly if ITAAC are not at the front of this process.

Thank you for the opportunity to comment on this important issue. If you have any questions, please contact Gary Wright of my staff at (217) 785-9851.

Sincerely,

Thomas W. Ortziger
Director

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